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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



D9

DATE: JUL 03 2012 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of three years. The petitioner, which is self-described as a gymnastics and cheerleading center, seeks to employ the beneficiary temporarily in the United States as a P-1 athlete to serve as a "gymnastics coach."

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary falls under any of the classes of athletes, performers and coaches admissible under section 101(a)(15)(P)(i) of the Act. The director determined that the beneficiary does not qualify as a "professional athlete" as defined at section 204(i)(2) of the Act. The director further found that the petitioner does not qualify for eligibility under the 2006 COMPETE Act, part of amended Section 214(c)(4)(A) of the Act, which authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance.

I. The Law

The instant petition was filed on October 3, 2011, subsequent to the passage of Public Law 109-463, "Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006" (COMPETE Act of 2006), which amended Section 214(c)(4)(A) of the Act, and authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance. The COMPETE Act, signed into law on December 22, 2006, expanded the P-1 nonimmigrant visa classification to include certain athletes who were formerly admitted to the United States as H-2B nonimmigrants.

Under the current statute, as amended by the COMPETE Act, the P-1 nonimmigrant classification includes: (1) athletes who perform at an internationally recognized level of performance, individually or as part of a team; (2) professional athletes as defined in section 204(i)(2) of the Act; (3) athletes and coaches who participate in certain qualifying amateur sports leagues or associations; and (4) professional and amateur athletes who perform in theatrical ice skating productions.

Under section 101(a)(15)(P)(i) of the Act, an alien having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or sponsor. Section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who:

- (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;
- (II) is a professional athlete, as defined in section 204(i)(2);
- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in

the United States and a member of a foreign league or association of 15 or more amateur sports teams, if

- (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
 - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and
 - (cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . .[.]

In relevant part, a "professional athlete," as defined at section 204(i)(2) of the Act, 8 U.S.C. § 1154(i)(2), is an individual who is employed as an athlete by:

- (A) A team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage.

The regulation at 8 C.F.R. § 214.2(p)(3) defines "team" as "two or more persons organized to perform together as a competitive unit in a competitive event."

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I) provides that the alien must seek to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

The regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) states:

P-1 classification as an athlete in an individual capacity. A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

The regulation at 8 C.F.R. § 214.2(p)(3) further states, in pertinent part:

Internationally recognized means having a high level of achievement in a field

evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

The regulation at 8 C.F.R. § 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

- (A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.
- (B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* A petition for an athletic team must be accompanied by evidence that the team as a unit has achieved international recognition in the sport. Each member of the team is accorded P-1 classification based on the international reputation of the team. A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:
 - (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and
 - (2) Documentation of at least two of the following:
 - (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;
 - (ii) Evidence of having participated in international competition with a national team;
 - (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;
 - (iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;
 - (v) A written statement from a member of the sports media or a

recognized expert in the sport which details how the alien or team is internationally recognized;

- (vi) Evidence that the individual or team is ranked if the sport has international rankings; or
- (vii) Evidence that the alien or team has received a significant honor or award in the sport.

II. The Issues on Appeal

The director issued a Request for Evidence (RFE) of October 13, 2011 requesting that the petitioner submit evidence to establish that its team meets the requirements for the COMPETE Act. Specifically, the director requested that the petitioner submit events for the three year period requested along with the required advisory opinion. The director noted that the petitioner submitted evidence that the beneficiary will perform as a coach for the petitioner and that he was formerly a member of the Colombian national gymnastics team.

The director noted that the evidence submitted is insufficient to establish that the team meets the very specific requirements of the COMPETE Act. The director noted that the applicant in order to establish eligibility, the petitioner must submit evidence such as reviews, articles and reports from established sports media outlets showing the level of performance of the league or association, and copies of contracts, rules and other by-laws from the league showing the level of performance of the member teams. The director further noted that the petitioner had not submitted evidence that established that the team in the United States is either a member of a foreign league or part of an association of 15 or more amateur sports teams provided that the team or franchise is the highest level of amateur performance of that sport in the relevant country.

Here, the petitioner's claim is that the beneficiary qualifies under Section 214(c)(4)(A)(i)(III) of the COMPETE Act. The COMPETE Act requires:

1. The alien performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams.
2. The foreign league or association is the highest level of amateur performance of that sport in the relevant country;
3. Participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and,

4. A significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league as a "professional athlete" as defined in section 204(i)(2) of the Act, and that the petitioner therefore does not need to establish that the beneficiary is an internationally recognized athlete.

The director noted that the criteria noted above have not been established. On appeal, the petitioner indicates that it has received approvals for other gymnastics coaches in the P-1 visa category.¹ The petitioner also asserts that it has submitted sufficient evidence establishing that the beneficiary is a member of a qualified foreign league and that the league is the highest organization governing the sport of [REDACTED]

The first issue to be addressed is whether the petitioner has established that the beneficiary will be coaching a team or franchise that is located in the United States *and* is a member of a foreign league or association of 15 or more amateur sports teams.

Upon review, the AAO concurs with the director's determination. The petitioner has submitted evidence that the beneficiary will be coming to the United States to coach and compete on behalf of the petitioner. The petitioner has submitted a schedule of events for the [REDACTED] which lists gymnastics competitions from December 2011 until April 2012. The petitioner notes that events past April 2012 have not yet been determined or announced publicly.

First, the AAO notes that the petitioner has requested a validity period of three years, through September 2014, however, the itinerary submitted fails to include any events following April 2012. Thus, the AAO finds that the petitioner has not provided an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events and activities, as required by 8 C.F.R. § 214.2(p)(2)(ii)(C).

The AAO also notes that the petitioner has submitted evidence that the beneficiary was a member of the [REDACTED]. This evidence includes several letters attesting to the beneficiary's membership, including a letter from the [REDACTED]. Furthermore, the petitioner submitted evidence that the [REDACTED] is the only entity at a

¹ The AAO acknowledges that USCIS has previously approved other P-1 nonimmigrant petitions filed by the petitioner. The prior approval does not preclude USCIS from denying a subsequently filed petition based on reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference.

national level recognized by the [REDACTED] and is in charge of leading, overseeing and promoting the sport of gymnastics. The [REDACTED] oversees the competition for approximately 18 leagues at the state and national level within Colombia. However, the AAO notes that the petitioner has not submitted any evidence that the team for which the beneficiary will coach, is a member of a foreign league or association of 15 or more amateur sports teams. The P-1 visa classification requires that the team for which the beneficiary will coach be a member of the foreign league or association. It is not sufficient that the P-1 beneficiary is individually a member of a foreign league or association, if the team in the United States is not a member of a foreign league or association. Because the petitioner has not submitted evidence of its membership in a foreign league or association, the requirements for P-1 classification under the COMPETE Act have not been met.

Because the initial membership in a foreign league or association has not been established, further examination of the qualifications of the foreign league or association, found under Section 214(c)(4)(A)(i)(III) is moot.

III. Conclusion

In summary, as discussed above, the petitioner has also failed to establish that the beneficiary is a professional athlete as described at section 214.2(c)(4)A)(i)(II) of the Act. Therefore, the petitioner failed to establish that the beneficiary is eligible as a P-1 coach under the COMPETE Act. Accordingly, the appeal will be dismissed.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.