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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
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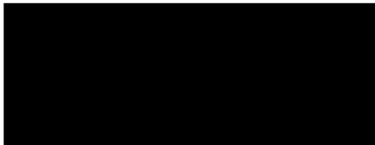
IN RE:

Petitioner:

Beneficiary: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 the beneficiary as an internationally-recognized athlete under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner, a Taekwondo school, seeks to employ the beneficiary as a Taekwondo coach for a period of one year.

The director denied the petition, concluding that the petitioner failed to establish: (1) that the beneficiary as an individual athlete has achieved international recognition in his sport based on his own reputation; and (2) that the beneficiary is coming to the United States solely to participate in an event or events requiring the participation of an internationally recognized athlete.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that all requirements for P-1 classification have been met. The petitioner submits new evidence and copies of previously submitted evidence in support of the appeal.

I. The Law

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 . . .[.]

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.

Finally, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) 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 or activities; and
- (D) A written consultation from a labor organization

II. The Issues on Appeal

A. Internationally-Recognized Athlete

The first issue addressed by the director is whether the petitioner established that the beneficiary is an

internationally recognized athlete as defined in the Act and regulations. The petitioner can establish that the beneficiary is internationally recognized by submitting evidence satisfying two out of the seven of the documentary requirements listed at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The petitioner's evidence must support a finding that the beneficiary's achievement in the sport is renowned, leading or well-known in more than one country, pursuant to the definition of "internationally recognized" at 8 C.F.R. § 214.2(p)(3).

The petitioner claims that the beneficiary meets the criteria at 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(2)(iv) and (v). These criteria will be discussed below.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv), the petitioner must provide a written statement from the governing body of the sport which details how the alien or team is internationally recognized. The petitioner submits a letter signed by [REDACTED]

[The beneficiary] is internationally recognized for his athletic ability in Taekwondo . . . evidenced by a degree of skills and recognition substantially above that ordinarily encountered. I know of his qualifications as a coach and athlete in our sport. [The beneficiary] has attained the 4th degree black belt in Taekwondo as recognized by the World Taekwondo Federation. He is also recognized by Kukkiwon, the belt certification division of the world Taekwondo instructor. He majored in Taekwondo at Keimyung University. Also, as an Olympic Taekwondo Demonstration Team, he represented his country internationally.

In the RFE, the director provided the petitioner with an opportunity to submit additional evidence in support of this criterion and the other six evidentiary criteria pertaining to internationally-recognized athletes. The petitioner did not reference this criterion in response to the RFE, but submits new evidence in support of the appeal that relates to this criterion. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted with the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Regardless, the AAO notes for the record that the newly submitted letter would be insufficient to satisfy this criterion. The petitioner submits a written statement from [REDACTED] Taekwondo Keimyung University.

[REDACTED] indicates that [the beneficiary] attended the Taekwondo Department of Keimyung University from 2003 until 2010." He indicates that the beneficiary was a member of the Taekwondo Demonstration Team and that he participated in several Taekwondo events held in the USA, Laos, China and Samoa which were broadcast worldwide. [REDACTED] also indicates that the beneficiary holds various certificates, including 4th degree in Taekwondo, 2nd degree in Judo and 4th degree in Hapkido.

Upon review, [REDACTED] fails to explain the significance of the beneficiary's achievements or how they convey international recognition in the sport. As discussed further below, the evidence of record does

not support a finding that the beneficiary received any recognition for his achievements beyond the scope of the awarding organizations, such that his individual achievements are recognized as leading, renowned or well-known in more than one country. While the beneficiary has achieved degrees in several forms of martial arts, the record does not in fact support a finding that such an athlete necessarily enjoys a degree of recognition "substantially above that ordinarily encountered" among Taekwondo athletes.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v), the petitioner must submit 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. The petitioner submitted the above-referenced "expert opinion" from Grandmaster

I am pleased to endorse this request and to confirm that the beneficiary is one of the best Taekwondo athletes and coaches in this field. I know of his qualifications as a Taekwondo coach and athlete. [REDACTED] was a member of the prestigious Korean Olympic Taekwondo Demonstration Team and he represented his country at international demonstration and friendly games. There is no question that [the beneficiary] is a person of extraordinary abilities as he has showcased his skills at a worldwide level, and represented his country internationally.

In denying the petition, the director determined that [REDACTED] did not adequately detail how the beneficiary is internationally recognized, and emphasized that "simply stating that the alien is internationally recognized is not enough." The director further noted that the evidence of record does not support [REDACTED] statement that the beneficiary is "internationally recognized based on his own reputation as a Taekwondo coach."

Upon review, we concur with the director's determination that the evidence submitted fails to satisfy the regulatory criterion. The petitioner has not established that achievement of a 4th degree in Taekwondo or membership on the Korean Olympic Taekwondo Demonstration Team garnered the beneficiary international recognition that establishes him as an athlete who is leading, renowned or well-known in the sport. The petitioner has not submitted evidence pertaining to the number of similarly ranked Taekwondo practitioners.

Finally, the petitioner submitted several certificates of participation for the following events: 30th Annual Fort Worth International Taekwondo Championships; World Hanmadang 2003, 2004, 2008, 2009; and, University of California, Berkeley Martial Arts Internship Program 2010. The director determined that the evidence submitted was insufficient to establish that any of the beneficiary's awards are internationally recognized in the sport as significant, to the extent that the recipient could derive an international reputation from having received them. The certificates only indicate participation and do not indicate whether the beneficiary won, or placed in the competitions. The plain meaning of the term "internationally recognized," requiring "a high level of achievement," indicates that participation in competitive sports at an intern or amateur level will usually be insufficient, by itself, to establish the international recognition of an adult or professional competitor.

Based on the foregoing, the AAO concurs with the director's conclusion that the petitioner failed to satisfy at least two of the seven criteria for internationally-recognized athletes as set forth at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

B. The Beneficiary's Intended Activities in the United States

The remaining issue to be addressed is whether the beneficiary is coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete that has an international reputation.

Pursuant to 8 C.F.R. § 214.2(p)(4)(i)(A), an individual P-1 athlete must be coming to the United States to perform services which require an internationally recognized athlete. The beneficiary must be coming solely for the purpose of performing as such an athlete. *See* section 214(c)(4)(A)(ii)(I) of the Act ; 8 C.F.R. 214.2(p)(1)(ii)(A)(1). In this case, the petitioner has not established that the beneficiary will be coming solely for the purpose of performing as an internationally recognized athlete. The petitioner stated in its contract with the beneficiary dated April 11, 2011 that it wishes to hire the beneficiary as a Taekwondo coach to instruct Taekwondo movements to students, prepare and train students in Taekwondo so as to participate individually and as a team in a major US Taekwondo competitions and tournaments. On the Form I-129, the petitioner indicates that the beneficiary's title would be "Taekwondo coach." There is no indication that the beneficiary will be competing in Taekwondo competitions, rather the petitioner seeks to employ the beneficiary as a coach for its existing team. Thus, the petitioner has not met the regulatory requirements of 8 C.F.R. § 214.2(p)(4)(i)(A), and the petition will be denied for this reason as well.

The petition will be denied and the appeal dismissed for the above-stated reasons, with each considered as an independent and alternative basis for the decision. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.