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

(b)(6)

Date: JUN 2 1 2013 Office: Vermont Service Center FILE:

IN RE: Petitioner:
Beneficiary:

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

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The beneficiary filed a Form I-129, Petition for a Nonimmigrant Worker, seeking to classify himself 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 self-petitioned beneficiary seeks to work as a jockey in the United States for a period of two years.

The director denied the petition on February 12, 2009 concluding that the beneficiary is not authorized by regulation to self-petition for a P-1 nonimmigrant visa. The director further found that the petitioner did not submit a tendered contract as required by 8 C.F.R. § 214.2(p)(4)(ii)(B)(1).

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 states:

> USCIS denied the case regarding some missing documents as follows:
> A) some missing documents such as agent athlete agreement
> B) evidence of having participated to a significant extent in a prior season with a major United States sports league or
> C) 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

Counsel states that the petitioner is submitting, among other evidence, a "memorandum agent agreement of beneficiary with US agent who filed P-1 visa for traditionally self-employed athlete." The petitioner submits a Memorandum of Understanding addressed to dated July 1, 2008, which discusses services as a personal agent to the beneficiary during the period July 1, 2008 until July 1, 2009. The document has not been signed by the beneficiary.

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 . . .[.]

Pursuant to 8 C.F.R. § 214.2(p)(2)(i), a P-1 petition for an athlete or entertainment group shall be filed by a United States employer a United States employer, a United States sponsoring organization, a United States organization, a United States agent, or a foreign employer through a United States agent.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

> An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

The petition was denied because the beneficiary self-petitioned, contrary to the regulatory requirements. On appeal, counsel does not explicitly acknowledge the stated grounds for denial, much less identify an erroneous conclusion of law or statement of fact on the part of the director. Instead, counsel submits an agreement between the beneficiary and his claimed agent, , and appears to suggest that the petition was actually filed by despite the fact that his name appears nowhere on the petition, the initial evidence, or the notice of appeal. The petitioner cannot cure the defects of the petition by submitting an agreement with an agent on appeal. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Bureau requirements. *Matter of Izummi*, 22 I&N 169 (Assoc. Comm., 1998). *See also* 8 C.F.R. § 103.2(b)(12). If is acting as the beneficiary's agent, then he must file a new petition on the beneficiary's behalf in accordance with the regulation at 8 C.F.R. § 214.2(p)(2)(i). An alien athlete, regardless of whether he has an agent, is not eligible to file a P-1 petition on his own behalf. Counsel also fails to address the director's finding that the petitioner failed to submit a contract as required by 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*). Therefore, the AAO affirms the denial of the petition on both grounds.

Furthermore, although not addressed by the director, the record as presently constituted does not include an explanation of the nature of the events or activities, the beginning and end dates for the events and activities, or an itinerary; or a written consultation for a labor organization. *See generally*, 8 C.F.R. § 214.2(p)(2)(ii). For these additional reasons, the petition cannot be approved.

Finally, the AAO does not concur with the director's determination that "the record established requirements needed for international recognition" pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*). The record shows that the beneficiary is an apprentice jockey who has competed in approximately 20 races in the United States and United Kingdom and has two career wins. The evidence submitted does not establish that the beneficiary has received international recognition in the sport based on his reputation, and does not satisfy at least two of the evidentiary criteria outlined at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 it discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025 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. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.