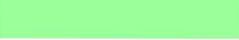




U.S. Citizenship
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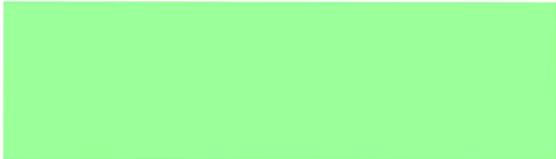


DATE: **AUG 06 2014** Office: VERMONT SERVICE CENTER FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (“Act”), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner is a race horse trainer. The petitioner seeks to employ the beneficiary in P-1S status so that he may work in the position of Professional Jockey Support for a P-1 athlete.¹

The acting director denied the petition, concluding that the petitioner failed to provide evidence of the beneficiary's prior essentiality, critical skills or experience with the P-1 alien, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(2).

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the beneficiary meets the regulatory requirements of the requested classification, and submits a brief in support of the appeal.

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

Essential support alien means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, [or P-3] alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that the beneficiary is qualified to perform the services and United States workers cannot readily perform the services.

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

- (A) *General.* An essential support alien as defined [above] may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.

¹ The record reflects that at the time of filing, the beneficiary was in the United States in P-1 nonimmigrant status, pursuant to an extension petition U.S. Citizenship and Immigration Services (USCIS) approved in 2009 and valid until November 30, 2013 [REDACTED]. USCIS originally granted the beneficiary P-1 status in 2008 with an equestrian facility other than the petitioner.

- (B) *Evidentiary criteria for a P-1 essential support petition.* A petition for P-1 essential support personnel must be accompanied by:
- (1) A consultation for a labor organization with expertise in the area of the alien's skill;
 - (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
 - (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The issue is whether the petitioner established the beneficiary's prior essentiality, critical skills and experience with the principal alien. The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on October 23, 2013. The petitioner stated that the beneficiary, who was in P-1 status at the time of filing, would serve as professional jockey support under the P-1S petition. The O and P Classification Supplement to Form I-129 instructs the petitioner to provide dates of the P support alien's prior experience with the O-1 or P alien. Here, the petitioner stated: "The beneficiary has assisted the principal P-1 visa holder with various racehorses around the world and has also assisted with the training of the racehorses."

In a letter dated October 22, 2013, the petitioner stated that he seeks to employ the beneficiary in the position of "support personnel for professional racehorse jockey Mr. [REDACTED]". The petitioner also submitted evidence that Mr. [REDACTED] was granted P-1 classification for the period January 23, 2013 through January 19, 2018, with another equestrian facility.

In support of the petition, the petitioner submitted a letter dated October 17, 2013, from the principal P-1 athlete, Mr. [REDACTED] describing the beneficiary as "a very experienced horse groom and exercise rider" and "a knowledgeable horse racing professional, who knows the details and peculiarities of my racing style, grooming priorities, exercise routine and other peculiarities involved in [the] horse racing industry." He further states:

[The beneficiary] is familiar with my racing style including both race preparation and in race strategy and style. . . [The beneficiary] is able to exercise horses utilizing my riding style, which provides valuable information before the race.

When [the beneficiary] and I were working together, we developed a good working relationship with [sic] that provided strong grooming and exercise work on the horses. In addition, we learned to communicate effectively relaying valuable information about the horse. This helped me achieve an international reputation, which led to my own P-1 visa. Riding the horse, preparing them for competitions, and working as a team to accomplish the same goal is something that cannot be done by a horse groom and exercise rider that has not worked with me previously.

I am requesting a P-1S [sic] for [the beneficiary] because he is an integral part of my team. We act and train as a team and without her [sic] I could not perform on the highest level.

Mr. [REDACTED] does not explain in any probative detail how the beneficiary's critical skills have been essential to his successful performance, and there is no evidence in the record to corroborate what little information he did provide regarding his prior working relationship with the beneficiary. For example, he does not indicate when or where he met the beneficiary or the date and duration of the beneficiary's past work for him.

The petitioner's initial evidence also included photographs of the beneficiary and the principal P-1 athlete together at several different racing events. In addition, the petitioner submitted his employment agreement with the beneficiary dated September 30, 2013, signed by the parties on October 4, 2013, and addressed to the beneficiary, which states in pertinent part:

This agreement confirms your employment by [the petitioner] . . . for the task of assisting P-1 professional race horse jockey Mr. [REDACTED] in preparing for and participating in professional competition.

1. Services to be performed

Job duties will include but not be limited to: Grooming the race horses, acting as an assistant trainer with the horses in preparation for competition, insuring the quality of the living conditions and diet of the horses, insuring proper exercise of the horses, and all other tasks essential to maintaining Mr. [REDACTED]'s ability to compete at the highest level in thoroughbred racing.

2. Wages

As compensation you will be provided a salary of \$400.00 per week as well as housing during your stay in the United States and transportation to all events.

With respect to the consultation requirement, the petitioner submitted a letter dated September 30, 2013, from [REDACTED] former President and CEO of the [REDACTED] and President of the [REDACTED]. Mr. [REDACTED] states that there is no organization that governs racing nationally. He states that groups such as the [REDACTED] "provide assistance to workers on the backside of the track but they are not unionized." He states he has been asked to provide a written advisory opinion "regarding the nature of the grooms' work in the racing industry and the specific qualifications of [the beneficiary]." Mr. [REDACTED] further states:

[The petitioner], [a] well-known U.S. Thoroughbred trainer, has selected professional horse groom, [the beneficiary], to be part of his racing team. [The petitioner] has recognized [the beneficiary's] skills as a groom and has hired him to serve as the support personnel for P-1 jockey, Mr. [REDACTED]. Mr. [REDACTED] success as a jockey in the United States has been partly due to the assistance that has been provided to him

by his dedicated horse grooms. Mr. [REDACTED] as a jockey who races in the highest-caliber races across the country, only works with grooms that have extensive knowledge and previous groom experience.

Mr. [REDACTED] expresses his opinion that “in the Thoroughbred racing industry, the groom is an essential part of the overall racing team” and that “the success of a professional jockey depends greatly upon the high standards of equine care that a knowledgeable and experience[d] groom provides.” However, Mr. [REDACTED] fails to evaluate the beneficiary’s essentiality to and working relationship with Mr. [REDACTED]. Mr. [REDACTED] refers to the beneficiary as Mr. [REDACTED]’s groom, but fails to provide any details regarding the date and duration of the beneficiary’s past work for Mr. [REDACTED]. Mr. [REDACTED] also states that his program, the [REDACTED] is “part of the Thoroughbred racing industry’s attempts to solve the labor shortage” and that “[t]op jockeys are still unable to find qualified American grooms to perform the support services that are essential to their success.”

The acting director issued a request for additional evidence (RFE) on November 15, 2013, in which she requested a statement describing the beneficiary’s prior essentiality, critical skills, and experience with the principal alien and any additional documentation that would establish the beneficiary’s critical knowledge of and prior experience with the principal P nonimmigrant. The acting director also requested that the petitioner provide evidence that the beneficiary performs support services to the P-1 athlete which a United States worker cannot readily perform.

In response, the petitioner submitted a joint letter from professional jockeys [REDACTED] [REDACTED] who state that they know the beneficiary and have each worked with him “in different capacities.” They state that when Mr. [REDACTED] rides one of the petitioner’s horses, “he will use the groom services of [the beneficiary], who has been hired by [the petitioner]. [The beneficiary] helps [REDACTED] prepare for the race.” They next discuss at length the duties of a groom, and conclude as follows:

[The petitioner], has been working as a groom and exercise rider for top trainers for the [sic] over five years. He has worked at some of the country’s premier racetracks and has assisted some of the top jockeys. We know [the beneficiary] and have established a professional relationship with him. We can attest that he has the appropriate qualifications and critical knowledge to provide groom services to trainers and jockeys. We can also state that [the beneficiary] has experience working with jockey, [REDACTED]. When [REDACTED] rides for [the petitioner], [the beneficiary] performs essential groom duties prior to the race and after the completion of the race. When we see them working as a team, it’s evident that they have worked together in the past. [The beneficiary] knows [REDACTED]’s racing style, tack and grooming preferences and can prepare the horses according to [REDACTED]’s preference without having to be informed. When they are preparing for a race they work perfectly in sync – a type of professional relationship that is built from previous experience working together.

The joint letter of jockeys Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] is significantly lacking in information regarding beneficiary’s prior experience with the P-1 athlete. Simply stating that the beneficiary works with the principal athlete and appears to have worked with the principal athlete in

the past is insufficient to meet the evidentiary requirement that the petitioner provide a statement describing the beneficiary's prior essentiality, critical skills or experience with the P-1 alien.

The acting director denied the petition on March 20, 2014, concluding that the petitioner had failed to establish that the beneficiary qualifies as an essential support alien. The acting director found that the petitioner submitted insufficient evidence that the beneficiary possesses prior essentiality, critical skills and experience with the principal alien.

On appeal, the petitioner reiterates that "there remains a labor shortage, especially with top competitors like those that hold . . . P-1 visas" and asserts that the submitted letters from the principal P-1 athlete and jockeys Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] together with the petitioner's contract with the beneficiary, contain "a description of the critical skills that the beneficiary would provide." The petitioner also asserts that the letter from the principal P-1 athlete discusses the services that the beneficiary has provided to the principal P-1 athlete. Upon review, the petitioner's assertions are not persuasive.

The regulations specifically require the petitioner to submit a statement describing the alien's prior essentiality, critical skills, and experience with the principal alien. 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). The statement of the principal P-1 athlete is significantly lacking in detail. For example, the principal P-1 athlete does not state for what period he and the beneficiary previously worked together. Simply stating that the beneficiary worked with the principal athlete is insufficient to meet the evidentiary requirement that the petitioner provide a statement describing the beneficiary's prior essentiality, critical skills or experience with the principal P-1 alien. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942, at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The acting director specifically advised the petitioner that the initial evidence did not meet its burden of proof and provided the petitioner with an opportunity to provide the required descriptive statement and any other documentation to establish the essential support alien's critical knowledge of and prior experience with the P-1 alien. The petitioner submitted the joint letter from jockeys Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] which does not provide additional information regarding the beneficiary's claimed relationship with the principal P-1 athlete. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Upon review, not only is the record significantly lacking in detail to establish the beneficiary's prior essentiality, critical skills and experience with the principal alien, but there are inconsistencies in the record regarding the nature of the beneficiary's prior experience. Jockeys Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] refer to the beneficiary as a "groom and exercise rider for top trainers for [the] over five years." At the time of filing, the petitioner stated that "[the beneficiary] is a licensed groom who has been performing groom services for the past 10 years." However, as noted above, the beneficiary was granted P-1 status in 2008, a status reserved for athletes with an internationally recognized reputation

coming to the United States to participate in an athletic competition which has a distinguished reputation. *See generally* 8 C.F.R. § 214.2(p)(4)(ii)(A).

Given these facts, the letters of the principal athlete and jockeys Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] are insufficient to establish that the beneficiary has previously worked for the principal athlete as jockey support personnel. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Given these discrepancies, and considering the lack of documentary evidence related to the beneficiary's prior experience in the field, the petitioner has not established the beneficiary has the appropriate qualifications to perform the proposed services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1 alien, as required by 8 C.F.R. § 214.2(p)(3).

Furthermore, even if it is assumed, *arguendo*, that the beneficiary has previously worked as a groom and exercise rider for the principal athlete, the petitioner has not established that the duties performed by a groom and exercise rider require a "highly skilled, essential person," integral to the performance of the P-1 alien, or that a groom and exercise rider performs support services that cannot be readily performed by a United States worker. Mr. [REDACTED] states that the duties the beneficiary performs require someone with proper training, and discusses, as an example, a two-year groom-training program he helped develop and implement for American workers. The petitioner has not demonstrated that U.S. stable grooms are unable to meet these qualifications and could not satisfactorily perform the same duties. Notably, jockeys Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] indicate that Mr. [REDACTED] "relies heavily on the services of the grooms who are employed with each trainer," and only uses the beneficiary when competing for the petitioner. The statistics for Mr. [REDACTED] that the petitioner provided do not reflect how many of his first, second and third finishes were for the petitioner while riding the petitioner's horses.

In sum, the evidence of record fails to sufficiently describe the beneficiary's prior essentiality, critical skills and experience with the P-1 athlete, as required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). In addition, the petitioner has failed to establish that the beneficiary has critical knowledge of the specific services to be performed for, and his experience in providing such support to, the P-1 athlete as required by the regulation at 8 C.F.R. § 214.2(p)(3). Accordingly, the petitioner has not established that the beneficiary qualifies for classification under section 101(a)(15)(P)(i) of the Act as an essential support alien for the principal athlete. For this reason, the petition may not be approved.

Beyond the decision of the acting director, the petitioner did not satisfy the evidentiary requirement of providing a consultation from a labor organization with expertise in the area of the alien's skill, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(1). The regulation at 8 C.F.R. § 214.2(p)(7) further discusses the consultation requirement and states, in pertinent part:

- (vi) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a

labor organization with expertise in the skill area involved. If the advisory opinion provided by the labor organization is favorable to the petitioner, it must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether United States workers are available who can perform the support services. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support the conclusion reached in the opinion. A labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

The regulation at 8 C.F.R. § 214.2(p)(7)(i)(C) provides that the advisory opinion shall be submitted along with the petition when the petition is filed. At the time of filing, the petitioner submitted the above-referenced letter from [REDACTED]. However, Mr. [REDACTED] letter does not evaluate the beneficiary's essentiality to and working relationship with Mr. [REDACTED] as required by 8 C.F.R. § 214.2(p)(7)(vi). As stated previously, Mr. [REDACTED] refers to the beneficiary as Mr. [REDACTED]'s groom, but he does not provide any probative details regarding the working relationship between the beneficiary and Mr. [REDACTED]. Again, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942, at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15. Therefore, the letter from Mr. [REDACTED] does not satisfy the petitioner's burden to provide a written consultation from an appropriate labor organization. For this additional reason, the petition may not be approved.

We may deny an application or petition that fails to comply with the technical requirements of the law 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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that we review appeals on a *de novo* basis).

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 we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that we abused our discretion with respect to all of our 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.