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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: AUG 0 8 2014 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary as an 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 sports training facility, seeks to temporarily employ the beneficiary as a basketball athlete for a period of five years.

The acting director denied the petition, concluding that the petitioner did not establish that 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. 8 C.F.R. § 214.2(p)(4)(ii)(A). The acting director further found that the petitioner failed to submit a tendered contract in an individual sport commensurate with international recognition. 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*).

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner asserts that all requirements for P-1 classification have been met. The petitioner submits a brief 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 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 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)(1)(ii)(A)(*1*) provides that a P-1 classification applies to an alien who is coming temporarily to the United States to perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

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. The Nature of the Proposed Activities

The first issue the acting director 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*).

The regulation at 8 C.F.R. § 214.2(p)(3) defines "competition" as follows:

> *Competition, event or performance* means an activity such as an athletic competition, athletic season, tournament, tour exhibit, project, entertainment event or engagement . . . . An athletic competition or entertainment event could include an entire season of performances.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on August 23, 2013. In a letter dated August 17, 2013, the petitioner stated that it seeks to employ the beneficiary in the position of basketball athlete at its headquarters in Florida, where the petitioner operates eight different sport training facilities, or academies. The petitioner specified that the beneficiary will be employed at its basketball academy, where he will "engage in basketball competitions on a daily basis at [the petitioner's] basketball training facilities against [the petitioner's] students as part of their training and development."

In describing its need for the beneficiary's services, the petitioner, quoting from its employment agreement with the petitioner, explained as follows:

> In order to achieve our goal of developing elite-level athletes, our academies regularly conduct in-house competitions. Our coaches have found, however, that competition between junior athletes alone is not enough to achieve significant

improvement . . . .

To overcome this problem, the academies employ athletes who have achieved international recognition in their respective sports to engage in regular competition with our junior athletes . . . .

We consider the five year period of employment to be a single event or project involving regular athletic competition at our facilities.

We believe that the competition at our facilities has a distinguished reputation.

The petitioner's offer of employment stated that the beneficiary's essential duties will include the following:

- Attend scheduled practice and training sessions.
- Participate in basketball competitions and tournaments with student athletes of [the petitioner] to prepare athletes for elite-level junior, intercollegiate and professional basketball competition.
- Exercise and practice with student athletes under direction of athletic trainers, professional basketball coaches and other experts in order to develop skills, improve physical condition, and prepare for competitions.
- Advise players on developmental issues, such as balancing of academic, sport and other commitments; and preparing for university competition or professional competition.
- Assess performance following competition, identifying strengths and weaknesses, and making adjustments to improve future performance.
- Receive instructions from coaches and other sports staff prior to events, and discuss performance afterwards.
- Represent self and the academy in public relations activities such as meeting with members of the media, making speeches at sports clinics or sports clubs, or participating in charity events.

The acting director issued a request for evidence ("RFE") on September 4, 2013, in which he instructed the petitioner to provide evidence to establish that the beneficiary will be participating in competitions that have a distinguished reputation.

In response, the petitioner submitted seven testimonial letters to establish that the competitions at its basketball academy have a distinguished reputation. Upon review, some of the letters are identical and others, while not identical, use very similar language consistent with a common source. We acknowledge that the authors all signed their letters, affirming the contents. Nevertheless, the use of boilerplate language reduces the evidentiary weight of these letters. *Cf. Surinder Singh v. Board of Immigration Appeals,* 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings

based in part on the similarity of some of the affidavits; *see also Mei Chai Ye v. U.S. Dept. of Justice,* 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Manager of states that "[m]any NBA teams take notice of the athletes and competitions which are held at [the petitioner's] facilities . . . due to the tremendous amount of talent which is localized there from around the world."

, head men's basketball coach a states that "[t]he fact that [the petitioner] . . . regularly hosts top collegiate athletes and NBA players is a clear indication that, when there are competitions at [the petitioner's facilities], these competitions will certainly be distinguished because of the talent involved."

Assistant Athletic Director for states that he can "attest to the high level of great competition that is held at [the petitioner's] academy here in the United States." He states that the petitioner's games are "well attended and monitored by scouts of all levels."

Letters from head men's basketball coaches at , and a letter from assistant men's basketball coach all state that "the basketball competitions which are held at [the petitioner's facility] have distinguished reputations due to the international skill level of the players who participate in the competitions and the attention these competitions draw."

The submitted testimonial letters affirm the petitioner's distinguished reputation as a sports training facility but do not establish that the beneficiary would be participating in an athletic competition in the United States which has a distinguished reputation or that the competitions at the petitioner's basketball training facility are competitions that may reasonably require the participation of internationally-recognized athletes.

Section 214(c)(4)(A) of the Act specifically states that section 101(a)(15)(P)(i)(a) of the Act refers to an alien who "performs as an athlete" and "seeks to enter the United States. . . for the purpose of performing as . . . an athlete with respect to a specific athletic competition." Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). The petitioner seeks to classify the beneficiary as an athlete who performs at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(I) of the Act.

The petitioner emphasizes that the beneficiary's activities for the petitioner would include in-house competitions against top national and international basketball players. However, the

petitioner has also unequivocally indicated that the beneficiary will be serving as part of a training program for its organization, and specifically for its student athletes. The evidence of record indicates that the beneficiary will be performing at in-house competitions with the petitioner's students. The petitioner has not established that these in-house competitions require an internationally-recognized athlete. The petitioner has not provided evidence of the entry requirements for such competitions or comparable evidence that would establish whether the competitions require the participation of internationally-recognized athletes. Rather, they are competitions of unknown significance in the sport. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Based on the foregoing, the petitioner has not demonstrated that the beneficiary would 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. *See* 8 C.F.R. § 214.2(p)(4)(ii). For this reason, the petition may not be approved.

B. Tendered Contract

The second issue the acting director addressed is whether the petitioner has satisfied the requirement at 8 C.F.R. 214.2(p)(4)(ii)(B)(*1*), which provides that the petitioner must submit 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. On appeal, the petitioner reiterates that it has submitted a copy of its employment agreement with the beneficiary setting forth the terms and conditions of his employment. The employment agreement does not indicate that the beneficiary will be competing on a major U.S. sports team or for a major U.S. sports league, and thus the petitioner is not required to submit a contract from such a team or league. Rather, the petitioner indicates that the beneficiary will be participating in regular athletic competition with students at the petitioner's basketball academy through 2018. Therefore, the AAO will withdraw the acting director's decision with respect to this issue.

III. Conclusion

The petitioner did not establish that 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. 8 C.F.R. § 214.2(p)(4)(ii)(A).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.