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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



Date: **JUN 11 2014** Office: CALIFORNIA 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 California Service Center Director 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 a P-1 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, which is a U.S. company engaging in the business of training and racing thoroughbred horses, seeks to employ the beneficiary temporarily in the United States as a "Horse Jockey/Exercise Rider" for a period of five years.

The director denied the petition on two grounds. First, the director found that the petitioner failed to establish that the beneficiary is an internationally recognized athlete or a member of an internationally recognized team. Second, the director found that the petitioner failed to establish that the beneficiary will participate in 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, the petitioner clarifies that the beneficiary will be a member of the petitioner, which it characterizes as an "internationally recognized team within the sport of thoroughbred racing." The petitioner asserts that it has submitted sufficient evidence establishing the international recognition and reputation of the petitioning "team." In support of the appeal, the petitioner submits a brief and a copy of the USCIS Memorandum, Clarifying Guidance on Definition of Internationally Recognized for the P-1 Classification; Revisions to Adjudicator's Field Manual (AFM) Chapter 33.5(a); AFM Update AD11-03 (December 31, 2011).

## 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)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i)(I), provides that section 101(a)(15)(P)(i)(a) of the Act applies to an alien who "performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance." Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I), further 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 C.F.R. § 214.2(p)(1)(ii)(A)(I) provides that P-1 classification applies to an alien who is coming to the United States "[t]o perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance."

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."

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

- (A) *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.
- (B) *P-1 classification as a member of an entertainment group or an athletic team.* An entertainment group or athletic team consists of two or more persons who function as a unit. The entertainment group or athletic team as a unit must be internationally recognized as outstanding in the discipline and must be coming to perform services which require an internationally recognized entertainment group or athletic team. . . .

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. Discussion

On appeal, the petitioner asserts that the beneficiary will perform as an athlete as part of a group or team at an internationally recognized level of performance.

### A. The Petitioner as an Athletic "Team"

The first issue to be addressed is whether the petitioner established that the beneficiary will perform as an athlete as part of a group or team at an internationally recognized level of performance.

The petitioner, [REDACTED] LLC, asserts that it is an "athletic team" that has been internationally recognized in the sport of thoroughbred racing. In documentation submitted with the initial petition, the petitioner stated:

[REDACTED] LLC is one of the most recognized teams in the thoroughbred racing business. Led by Trainer [REDACTED] is internationally recognized as a leading competitor on the Thoroughbred Horse Racing Circuit.

[REDACTED], from [REDACTED] was voted to serve a third term as the [REDACTED] president (2008) after serving as its [sic] vice president. [REDACTED] was also reappointed to serve on the [REDACTED] for a term ending January 31, 2014. [REDACTED] has a Bachelor of Arts degree from [REDACTED]

& an . He is the owner of Inc., currently also serves on the Board. of received for [sic] second year in a row [sic] With co-owner they received the award for which bred. also received the award from the and the for breeder of And received awards as owner of voted of the year for the second time (2005) & owner/breeder of 2-year-old filly champion that he owns with [sic]. was voted is owner/breeder/trainer of He owned & trained and trained

LLC meets the regulatory definition of team as it is a group of two or more persons organized together as a competitive unit in a competitive event.

In the same document, the petitioner described the general composition of a “horse racing team” as consisting of a trainer, an assistant trainer, a jockey, an exercise rider, and grooms. The petitioner provided brief descriptions of each position.

In support of the petition, the petitioner submitted several documents including, *inter alia*:

- A print-out of a blog by
- An article stating that “Trainer had a
- Trainer profiles of Mr. ;
- Mr. s biography from the website of
- Print-outs from the website of the listing the Mr. as its President and quoting him in his capacity as President; and
- Race Records for the and showing that of LLC was the trainer for the winning horses

The director issued a request for evidence (RFE) instructing the petitioner to submit additional evidence of the international recognition of the beneficiary or foreign team of which the beneficiary is a member.

In response, the petitioner submitted letters attesting to the international reputation of ‘s team,” another copy of Mr. ’s trainer profile, and a news article discussing the winning performances of horses trained by Mr. at the

Specifically, the petitioner submitted a letter from , Chief Executive Officer of the attesting to the reputation of “Mr. ’s team .” Mr. states that Mr.

has trained horses since 1996 and that “[t]he team competes with approximately 90-to-100 horses at tracks in Florida, Ohio and Kentucky.” Mr. further states that Mr. “amassed an impressive list of awards during the past 15 years” including: ;

and Mr. also states the trainer standings achieved by Mr. , including his ranking within the top 5% of all trainers in the United States in . Mr. asserts: “Preparing a horse to compete at a high level is a team effort. Each member of the team plays an important role in the process. The horse trainer, jockeys and exercise riders are the glamour positions most noticed by the public.” Mr. concludes: “ under the direction of trainer has an international reputation as an exceptional horse racing team.”

The petitioner also submitted a letter from Editor-in-Chief of attesting that owner of is widely recognized in the thoroughbred racing world as one of the best trainers and team leaders in the world.” Mr. lists “ ’s numerous awards and recognitions,” such as and and his ranking within the top 5% of all trainers in the United States in . Mr. explains that “preparing a horse to compete at a high level is a team effort and that each member of the team, from trainer to exercise rider and from jockey to groom, plays an equally important role in the overall success of the team and the horse.” Mr. concludes: “I believe that Mr. and his team of talented jockeys, exercise riders and grooms are internationally recognized as an exceptional racing team . . . ’s team, as a unit, therefore meets the international recognition criteria of the P-1 visa.”

The director denied the petition, stating that the petitioner failed to establish that is a foreign team that is internationally recognized. On appeal, the petitioner asserts that the beneficiary is coming to join a U.S.-based internationally recognized group. The petitioner asserts that it has already provided evidence of ’ team accomplishments.

Upon review, we find that the petitioner failed to establish that it can be considered an athletic “team” within the meaning of that term.

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.” The regulation at 8 C.F.R. § 214.2(p)(4)(i) reiterates that an “athletic team consists of two or more persons who function as a unit,” and states that the athletic team “as a unit must be internationally recognized as outstanding in the discipline.” Similarly, the regulation at 8 C.F.R. § 214.2(p)(4)(ii) states that a petition for an athletic team “must be accompanied by evidence that the team as a unit has achieved international recognition in the sport.”

While the petitioner claims that it is an internationally recognized “team,” the petitioner failed to submit sufficient evidence to establish that the petitioner has been recognized as a “team” in the sport. Evidence of an athletic “team” would reasonably include documentation of the team’s organization, performance, and results as a competitive unit in actual team events.

Here, the only member of the petitioning “team” the petitioner has specifically identified is Mr. [REDACTED] who alone and in his capacity as a trainer/owner, cannot constitute an athletic “team” within the regulatory definition of the word. Again, 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.” See also 8 C.F.R. § 214.2(p)(4)(i); 8 C.F.R. § 214.2(p)(4)(ii). The petitioner has not identified any members of the petitioning “team” who actually perform together as a competitive unit in competitive events.<sup>1</sup> The petitioner’s general description of the positions that make up a generic “horse racing team” are insufficient to identify the petitioner’s actual, performing “team” members. Similarly, the letters from Mr. [REDACTED] and Mr. [REDACTED] refer generally to “Mr. [REDACTED] and his team,” but do not identify any of the “team” members.

Moreover, the petitioner provided no documentary evidence establishing that the petitioning “team” has ever achieved international recognition as a unit, such as documentation of the team’s performances and results as a competitive unit in actual team events. The petitioner only submitted evidence of the individual accomplishments of Mr. [REDACTED] including his officer positions for [REDACTED] and [REDACTED] his awards for horses he owns or co-owns, and his trainer ranking in the United States. These documents do not make any reference to a “team” or “team members” that performed with Mr. [REDACTED] as a competitive unit. While it is not disputed that Mr. [REDACTED] is the trainer for and owner of [REDACTED] his accomplishments were awarded to him individually, not to [REDACTED] as a “team.” The results of horses owned and/or trained by Mr. [REDACTED] is not evidence that the petitioner is competing as a competitive unit as an athletic “team.”

Overall, the petitioner failed to establish that the petitioner can be considered an athletic “team” that competes as a unit and is internationally recognized as a unit. As such, the petitioner must establish that the beneficiary will be performing as an athlete individually at an internationally recognized level of performance.

In addition, on appeal the petitioner asserts that it is a U.S.-based “team.” The regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B) states that a petition for an athlete “who will compete 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.” Again, it is the petitioner’s burden to establish that the beneficiary is internationally recognized in the sport based on his reputation.

## **B. The Beneficiary’s International Recognition an Individual Athlete**

To demonstrate that the beneficiary is an internationally recognized athlete, the petitioner must satisfy at least two of the seven evidentiary criteria provided at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The petitioner asserts that it has established eligibility under the criteria at 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(2)(iv), (v), (vi), and (vii).<sup>2</sup>

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv), the petitioner must submit a written statement

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<sup>1</sup> While we acknowledge that the petitioner submitted a blog written by [REDACTED] who identified herself as one of Mr. [REDACTED]’s assistant trainers, an assistant trainer, like a trainer, is not an athlete who performs as a competitive unit in the actual competitive events.

<sup>2</sup> The remaining criteria at 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(2)(i)-(iii) will not be discussed.

from an official of the governing body of the sport which details how the beneficiary is internationally recognized. In this regard, the petitioner submitted a letter from [REDACTED] Chief Executive Officer of the [REDACTED], attesting to the reputation of “Mr. [REDACTED]’s team [REDACTED]”. This letter does not mention the beneficiary individually. As such, this letter fails to meet the plain language of the regulatory criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv). The petitioner submitted no other evidence under this criterion.

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 beneficiary is internationally recognized. In this regard, the petitioner submitted a letter from [REDACTED] Editor-in-Chief of [REDACTED] attesting to the reputation of “Mr. [REDACTED] and his team.” Again, this letter does not mention the beneficiary individually. As such, this letter fails to meet the plain language of the regulatory criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v). The petitioner submitted no other evidence under this criterion.

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi), the petitioner must submit evidence that the beneficiary is ranked. Here, the petitioner submitted evidence of Mr. [REDACTED]’s individual trainer ranking, but submitted no evidence of the beneficiary’s individual ranking. As such, the petitioner failed to submit evidence meeting the plain language of the regulatory criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi).

Finally, to meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii), the petitioner must submit evidence that the beneficiary has received a significant honor or award in the sport. Under this criterion, the petitioner submitted evidence of the individual honors and awards received by Mr. [REDACTED] including receiving the [REDACTED] and awards for [REDACTED]. None of these honors or awards was given to or credited the beneficiary. As such, the petitioner failed to submit evidence meeting the plain language of the regulatory criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii). The petitioner submitted no other evidence under this criterion.

In summary, the petitioner failed to establish the beneficiary’s eligibility under any of the regulatory criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). The petitioner failed to establish that the beneficiary has achieved international recognition in the sport based on his own reputation.

### **C. Events Requiring Participation of an Athlete who has an International Reputation**

In the denial, the director found that the petitioner failed to establish that the beneficiary will participate in events requiring participation of an athlete who has an international reputation. The director acknowledged the petitioner’s evidence regarding the American graded stakes process, but found that the petitioner did not present evidence to establish that the specific competitions the beneficiary will compete in requires the participation of an athlete that has an international reputation.

On appeal, the petitioner states that the competition schedule previously submitted “included a summary of the graded stakes process, highlighting that graded stakes races are the pinnacle of the horse racing sport.” The petitioner provides no further explanation or evidence with regards to the events requiring participation of

an athlete who has an international reputation.

Upon review, we concur with the director that the petitioner failed to establish that the specific competitions the beneficiary will participate in require the participation of an athlete that has an international reputation. 8 C.F.R. § 214.2(p)(4)(ii). The petitioner provided a list of the beneficiary's proposed races as well as a general description of the American graded stakes process, but provided no specific information as to the grades or quality of the races in which the beneficiary will participate. Merely identifying the beneficiary's proposed races is insufficient to establish that these races require the participation of an athlete that has an international reputation.

#### **D. Performing Solely as an Athlete**

Finally, beyond the decision of the director, the petitioner failed to establish that the beneficiary will be entering the United States temporarily and *solely* for the purpose of performing as such an athlete with respect to a specific athletic competition pursuant to Section 214(c)(4)(A)(ii)(I) of the Act.<sup>3</sup>

The petitioner indicated on the Form I-129 that the beneficiary will be employed as a "horse jockey/exercise rider." On the Form I-129, the petitioner described the duties to be performed by the beneficiary as: "Training horses, riding in competitions, working with support staff and grooms to ensure the health and ability of the horses, [and] maintaining a competition schedule." The petitioner's employment agreement with the beneficiary also lists his duties as: training horses; riding in competition; working with support staff and grooms; maintaining and competition schedule; and all other tasks essential to maintaining the horses' ability to compete.

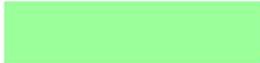
While it appears that the beneficiary will perform as an athlete in carrying out his duty of "riding in competition," he will not be *solely* performing as an athlete with respect to the rest of his duties. As such, the petitioner failed to establish the beneficiary's eligibility under Section 214(c)(4)(A)(ii)(I) of the Act.

#### **III. Conclusion**

The petitioner failed to establish that the beneficiary will be performing as an athlete, individually or as part of a group or team, at an internationally recognized level pursuant to section 214(c)(4)(A)(i)(I) of the Act. The evidence submitted by the petitioner fails to meet at least two of the criteria listed in the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2), thereby failing to establish that the beneficiary has achieved international recognition in the equestrian sport. The petitioner failed to establish that the beneficiary will participate in events requiring participation of an athlete who has an international reputation, pursuant to 8 C.F.R. § 214.2(p)(4)(ii). Finally, the petitioner failed to establish that the beneficiary will be entering the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition pursuant to section 214(c)(4)(A)(ii)(I) of the Act.

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<sup>3</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).



The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.