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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAY 2 7 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 appeal will be dismissed.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(P)(i)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i)(a). The petitioner is engaged in the horse racing competition and training stables business. It seeks to employ the beneficiary in the position of "Professional Racehorse Exercise Rider/Trainer" for a period of five years.

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary would perform as an athlete at a specific athletic competition. The director further determined that the petitioner failed to establish that the beneficiary is 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 asserts that exercise riders are athletes participating in athletic competitions, and thus the beneficiary qualifies under section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i). The petitioner also asserts that the beneficiary is internationally recognized, as evidenced by written statements from experts describing the beneficiary's international recognition and the receipt of a significant honor or award in the sport, pursuant to 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(*2*)(*v*) and (*vii*).

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, in pertinent part, 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), 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 . . . .

(B) *Evidentiary requirements for an internationally recognized athlete or athletic 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. Statement of Facts and Procedural History

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the beneficiary will be employed as a "Professional Racehorse Exercise Rider/Trainer." In a letter submitted with the initial petition, the petitioner described the beneficiary as a professional horserace exercise rider and trainer who has trained top horses such as ," and ." The petitioner described the job duties as follows: "ride, train and prepare our race horses for top races on the international racing calendar . . .

includ[ing] the preparation of mounts for various stakes and handicap races, in addition to riding the horses daily for training and exercise purposes." The petitioner stated that the beneficiary would also be "consulting with the racehorse trainer and owners in order to devise the best competitive strategy for races and will assist in determining which races a horse should enter."

The petitioner provided its contract of employment with the beneficiary, in which it described the beneficiary's duties as follows:

> Professional Thoroughbred Racehorse Exercise Rider/Trainer will ride, train and condition racehorses by riding the horses daily for competition, exercise and training purposes. Will also walk, jog, gallop and run the horses at different speeds and distances. As an exercise rider/trainer, he will also train the horses to start from the gate and get used to the conditions of the track running with other horses. He will also confer with other race personnel and owners to devise the best competitive strategy for races based on the abilities and peculiarities of own horse and other horses in the respective competitions.

The petitioner submitted testimonial letters from professional jockeys, who attest to the beneficiary's skills and recognition. states that the beneficiary "is a professional racehorse exercise rider/trainer with international reputation and recognition" and that he is "well regarded in the racing community as an excellent and very successful exercise rider and trainer." states that the beneficiary is a "talented professional racehorse exercise rider and trainer who has ridden [and] prepared horses for competition, and is internationally recognized by his peers as being exceptionally competent in this challenging sport." states that the beneficiary is "an internationally recognized and talented racehorse exercise rider/trainer who is able to participate successfully in this extremely demanding sport." states that the beneficiary's "outstanding abilities as a professional racehorse exercise rider/trainer have led him to be internationally recognized by his peers" and that the beneficiary "is well on his way to reaching the top of his field." Finally, states that the beneficiary "has attained a high level of achievement in this distinguished field, and is internationally recognized for his exceptional ability and talent in regard to riding thoroughbreds, a difficult and demanding sport."

The petitioner submitted several photographs of the beneficiary, published in .com, and other unidentified sources. The petitioner also submitted the cover of a pamphlet from picturing the beneficiary riding "

The director issued a request for additional evidence (RFE) evidence that the beneficiary: (1) has performed or will perform as an athlete in a specific athletic competition; and (2) has achieved international recognition as an individual athlete in the sport of thoroughbred horseracing.

In response, the petitioner stated that the beneficiary is an athlete who participates in competitions. The petitioner asserted that exercise riders are athletes because "[t]he tasks performed by professional jockeys and exercise riders are identical -- the difference between the positions turns on factors that have nothing to do with their athletic ability." The petitioner highlighted the weight/height limits imposed on jockeys as one such factor. The petitioner also asserted that the "activities of an exercise rider are equal to those performed by a jockey, which includes maneuvering a horse at high speed on a racetrack, and maximizing the horse's

performance based on the length of the track, the duration of the race and horse's strengths." The petitioner claimed that the activities of an exercise rider "fall squarely within the definition of an athlete" because an "Exercise Rider is a person who is trained or skilled in a sport which requires physical strength, agility or stamina" to perform his or her duties. Specifically, the petitioner explained that an exercise rider must demonstrate their ability to ride a horse at a high speed and "races the thoroughbred under his or her care against other horses on the racetrack to familiarize the horse with the competition environment, race-like conditions and the presence of other horses galloping at full speed." The petitioner pointed out that exercise riders "have been traditionally considered as athletes around the world."

With regards to how exercise riders participate in "athletic competition" or "a group of related activities," the petitioner explained that the morning workouts are led by exercise riders like the beneficiary, and that these morning workouts are "a part of the competition that often draws the elite of the horse racing industry such as race horse aficionados, reporters, industry media such as the Daily Racing Form, trainers and experts." The petitioner asserted that "[t]he horse's performance during the morning workout is timed, published and directly affects the handicap listed in the racing program." The petitioner elaborated:

> The difference between the activities performed by a jockey and an exercise rider turn solely on the time of the day during which they are performed. Spectators are able to wager on a horse's performance in a race but not during "workout." However, the exercise rider's morning "workout" race is still a part of the competition as the resulting rankings and performance directly influence [the] odds maker/handicapper as the workout results are published.
>
> Exercise riders compete for best time and the horses they ride are ranked amongst each other before the live race. The workout ranking results are distributed by the racetracks and widely published to the public at large, usually on the racetrack's website or industry related publications such as www.equibase.com and the Daily Racing Form, sold at every racetrack in the United States as well as other outlets. Therefore, exercise riders, like jockeys, lead horses in competitions and the results are made public to spectators who use this information to shape their wagering. Please see a sample of workout results published by major racetracks currently holding live races in the United States attached here as **EXHIBIT 13.**
>
> The morning race is a vital component of the competition aspect of the sport. Although the exercise rider does not participate in the competition in which the public wagers on the horses' performance, they do indeed participate in competition. Additionally, as indicated by your RFE, "a group of related activities will also be considered an event". Here, the performance of the horse is evaluated and ranked during both races: the one led by the exercise rider, made available to the public by publication, and the one led by the jockey, in which the public wagers. The morning workout is an activity directly related to the public race and is, therefore, part of a group of related activities which constitutes competition.

With respect to the beneficiary's international recognition as evidenced by the regulatory criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*), the petitioner submitted new letters in an attempt to cure the deficiencies noted by the director in the RFE. The petitioner also submitted the following explanation regarding the beneficiary's "significant honor or award" pursuant to 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vii*):

> Despite providing invaluable services to the horseracing industry and being part of an essential component of the competition, no formal awards, honors or rankings are available for Exercise Riders. An Exercise Rider's recognition is marked by the continued job opportunities offered to him or her, the level of the horses he or she is invited to gallop and by the recognition of his or her peers.
>
> In the Exercise Rider community, being featured on the cover of industry-related publications is already a significant honor worth writing home about. In this case, not only was the Beneficiary featured in industry-related publications, but also honored with a feature in the world-famous publication " A publication about his work with a top level horse in such a prestigious news source is one of the highest possible recognitions for an Exercise Rider and therefore a significant honor.

In response to the RFE, the petitioner submitted, *inter alia*, three articles. In the first article, "Exercise Rider," the author describes an exercise rider's general responsibility as "riding racehorses in workouts according to the instructions of the trainer." In "The Art of an Exercise Rider: Horse Racing," the author describes an exercise rider's general athletic requirements as equal to those for jockeys. A third article, entitled "What are the Tasks of an Exercise Jockey?" describes the general tasks of exercise jockeys as the following:

> An exercise rider or exercise jockey does the basics, grooming, takes care of tack and exercise the horses . . . . They help train horses to race and to respond to instructions. They teach a horse how to act during the warm-up period, how to walk into the starting gate and adjust the horses to the conditions they encounter during a race. These conditions might be crowd noise, being crowded against the rail by other horses or other distractions that aren't usual to the barn and paddock environment. They also take care of the horse or horses at the race track . . . . Some of the exercise jockeys tasks can overlap with the jockey's . . .or . . . groom's tasks . . . .

This article further describes the differences between jockeys and exercise riders, stating:

> Some jockeys start out as exercise jockeys. Jockeys do the actual racing, communicate with the owners, trainers, racing stewards and maintain racing equipment. The jockey has to have excellent riding skills and know horses intimately. They have to know how to make horses win races. The exercise jockey is a good starting point for people who want to be jockeys or those who just want to be around horses. The exercise jockey focuses on the training and preparation of horses for racing.

The petitioner submitted job advertisements for exercise riders which illustrate the position's various titles such as: "athletic exercise rider," "racehorse exerciser (athletic/exercise rider)," "exercise rider/athlete," "racehorse exercise rider/athlete," and "exercise rider/jockey."

The petitioner submitted a print-out from www.equibase.com stating the following: "Workouts are the official timed works of race horses preparing for an official start. The information includes the distance traveled in

the work and a description of how the horse performed the exercise. Workout information is provided by individual tracks and training facilities and is made available for free at *equibase.com.*" The petitioner also provided "Workouts Information" for various tracks, listing horses' times and ranks.

The petitioner submitted several letters. Senior State Steward of the wrote: "I have been informed that [the beneficiary] has experience as a racehorse exercise rider/trainer and is qualified for the position. As such, I have no objection for the filing of a temporary worker petition on his behalf." , Professional Racehorse Jockey, attested that the beneficiary is "one of the top exercise riders and trainers in the sport." Mr. states that "[w]hen jockeys take the helm prior to the race, exercise riders have long prepared the thoroughbred to perform in top shape and have trained them to execute movements flawlessly." Professional Racehorse Jockey, stated that the beneficiary is "internationally recognized throughout the sport as a uniquely qualified and well decorated exercise rider" and is "one of the best exercise riders." Mr. states that the beneficiary "earned his reputation by riding top horses such as legendary '" Mr. further states that "racehorse competitions encompass more than what is witnessed by spectators" and that the competition "begins with an exercise rider and ends with a jockey." He concludes that "exercise riders are indeed part and parcel of race horse competitions."

Finally, the petitioner submitted a letter from Professional Graded Stakes Winning Jockey, attesting that the beneficiary is "internationally recognized [as a] thoroughbred racehorse exercise rider/trainer." Mr. states that the sport of horse racing "is an intricate sport that requires exercise riders so that jockeys can compete successfully," and that exercise riders "require athletic prowess and a sport-like temperament equal to that [of] a professional jockey." He further states: "Expert racehorse exercise riders' participation in horse racing competitions is therefore crucial."

The director denied the petition, finding the petitioner failed to establish that the beneficiary qualifies as a P-1 athlete pursuant to section 214(c)(A) of the Act. Specifically, the director noted that while the beneficiary's duties may require skills of an athlete, the performance of the duties of an exercise rider "is not the performance of an athlete in a specific athletic competition." Secondly, the director concluded that the petitioner failed to establish that the beneficiary would perform as an athlete at an internationally recognized level.

On appeal, the petitioner asserts that the beneficiary performs as an athlete and that exercise riders are engaged in competition, namely, the "morning workout race." The petitioner states that these morning workout races are "still a part of the competition as the resulting rankings and performance directly influence [the] odds maker/handicapper as the workout results are published." The petitioner says that exercise riders compete for best time and the horses they ride are ranked amongst each other before the live race, and that these rankings are used by spectators to shape their wagering. In this respect, the petitioner concludes: "The morning race is a vital component of the competition aspect of the sport and it is a directly related activity to the live races . . . and is, therefore, part of a group of related activities which constitutes competition according to the definition set forth at 8 C.F.R. [§] 214.2(p)(3)."

With respect to the beneficiary's international recognition, the petitioner asserts that the letters previously provided were sufficient to meet at least two of the seven types of documentary evidence listed under 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i)-(vii). The petitioner resubmits copies for the record.

III. Discussion

1. Has the petitioner established that the beneficiary will be performing as an athlete in a specific athletic competition?

The first issue to be addressed is whether the petitioner established that the beneficiary will be performing as an athlete at an internationally recognized level of performance. Section 214(c)(4)(A)(ii)(I) of the Act provides that such an athlete 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.

Upon review, we conclude that the petitioner has failed to establish that the beneficiary will be performing as an athlete in a specific athletic competition, as required under section 214(c)(4)(A)(ii)(I) of the Act.

First, the petitioner failed to establish that the beneficiary will be coming to the United States "solely" for the purpose of performing as an athlete, as required by the plain language of the statute at Section 214(c)(4)(A)(ii)(I). The petitioner describes the beneficiary's proffered duties as a racehorse exercise rider/trainer as to "ride, train, and prepare our race horses for top races," including the duties of "preparation of mounts" and "riding the horses daily for training and exercise purposes." The beneficiary's employment contract with the petitioner similarly states the beneficiary will ride, train, condition and prepare racehorses. In addition, the article entitled "What are the Tasks of an Exercise Jockey?" describes the general tasks of exercise jockeys as including grooming, taking care of tack, helping to train and teach horses, and taking care of the horses at the race track. Notably, this article states that the exercise rider/jockey "focuses on the training and preparation of horses for racing." The article "The Art of an Exercise Rider: Horse Racing" describes the exercise rider as "critical" to a trainer. Based on the totality of the evidence, we find that the beneficiary will be coming to the United States primarily for the purpose of training and preparing horses for racing, not solely for the purpose of performing as an athlete. The beneficiary's performance of some athletic duties is insufficient to meet the statutory requirement that he be performing *solely* as an athlete. Section 214(c)(4)(A)(ii)(I).

The petitioner asserts that exercise riders are athletes in the same way jockeys are athletes. The petitioner states that the positions of exercise riders and jockeys are "identical" because the tasks and activities performed by professional jockeys and exercise riders are identical, and that both positions require the same physical strength, agility or stamina to perform their duties. The petitioner asserts that the difference between exercise riders and jockeys "turns on factors that have nothing to do with their athletic ability," implying that the only difference between the two positions depend on the weight/height limits for jockeys and the time of day they perform their activities. However, the petitioner has not established that these two positions are "identical." We find the petitioner's assertions to be unpersuasive and contrary to the evidence submitted.

The petitioner submitted an article titled "What are the Tasks of an Exercise Jockey?" that describes the differences between jockeys and exercise riders. The article states that "[j]ockeys do the actual racing," while "[t]he exercise jockey focuses on the training and preparation of horses for racing." Similarly, several of the letters submitted in support of the instant petition distinguish between jockeys and exercise trainers, such as the letter from which explains that jockeys "take the helm before the race" while the exercise riders "have long prepared the thoroughbred to perform in top shape and have trained them to execute movements flawlessly." It is not disputed that the duties and required athletic skills of exercise riders and

jockeys are similar and may overlap. However, the similarities in duties and skills do not establish that the two positions are "identical" as the petitioner claims. The evidence clearly reflects that the jockeys are the "athletes" who do the actual racing, while the exercise riders perform the training and preparation work prior to the actual racing.

In addition, the petitioner has not established that the beneficiary would be performing as an athlete in a specific athletic competition, as required under section 214(c)(4)(A)(ii)(I) of the Act. The petitioner asserts that the beneficiary will be participating in morning workouts, claiming that these workouts constitute activities which are "directly related to the public race and is, therefore, part of a group of related activities which constitutes competition." In particular, the petitioner asserts that during the morning workouts, exercise riders compete against each other for best time, and that these times are published and ranked. The petitioner asserts that the resulting rankings and performance "directly influence [the] odds maker/handicapper as the workout results are published," and are used by the public to shape wagering.

However, the petitioner failed to establish that these morning workouts are considered part of the official race itself, i.e., the actual athletic competition. Instead, the print-out from www.equibase.com describing workouts as "the official timed works of race horses *preparing* for an official start" indicates that these workouts are not a part of the official race (emphasis added). The fact that these workouts are timed and publicly published does not establish that they constitute athletic competitions or are part of the official athletic competitions. The petitioner has not cited to any legal authority to support its expanded definition of "athletic competition" to include the preparation and training work taking place before the actual competition. Furthermore, while the petitioner asserts that the workout rankings and performances "directly influence odds [set by the] maker/handicapper," the petitioner failed to provide any explanation of the significance and role of the "odds maker/handicapper" with respect to the actual race.

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. Comm'r 1972)).

Even if the beneficiary can be said to perform as an athlete during the morning workouts and that these workouts constitute athletic competitions, the statute clearly requires the beneficiary to be coming to the United States "solely" for the purpose of performing as such an athlete in a specific athletic competition. Section 214(c)(4)(A)(ii) of the Act. Here, the beneficiary's responsibilities during the morning workouts are but one part of his overall duties. As such, it cannot be concluded that the beneficiary will be "solely" performing as an athlete at a specific athletic competition as required at Section 214(c)(4)(A)(ii)(I) of the Act.

2. **Has the petitioner established that the beneficiary is an internationally recognized athlete?**

The petitioner can establish that the beneficiary is internationally recognized by submitting evidence satisfying two out of the seven of the criteria listed at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*). On appeal, the petitioner asserts that it has submitted evidence meeting the evidentiary criteria at 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(*2*)(*v*) and (*vii*).

Upon review, and for the reasons discussed herein, the petitioner has not submitted sufficient evidence to establish the beneficiary's eligibility under 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*) or (*vii*). The remaining criteria will

not be discussed, as any claims of eligibility the petitioner may have previously made under them have been abandoned on appeal.[1]

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

To meet the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*), the petitioner must provide a written statement from a member of the sports media or a recognized expert in the sport which details how the alien is internationally recognized.

With the initial petition, the petitioner submitted letters from professional jockeys and briefly attesting that the beneficiary is internationally recognized. In the RFE, the director advised the petitioner that these letters were insufficient. The petitioner did not contest the director's determination in its response to the RFE. Instead, the petitioner provided new letters from professional jockeys and

Upon review, the letters from and are still insufficient to meet the regulatory criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*). None of the letters have detailed how the beneficiary is internationally recognized in the sport. The letters are written in vague language and do not establish how the beneficiary's achievements are renowned, leading, or well-known in more than one country.

For instance, the letter from asserts that the beneficiary is "one of the top exercise riders and trainers in the sport," but fails to provide any more information or explain the factual basis behind this assertion. Mr. does not discuss the scope of the beneficiary's recognition. Mr. 's conclusory assertion regarding the beneficiary's reputation is insufficient and not entitled to probative value. Mr. focuses the remainder of his letter to discussing the athletic disposition and abilities of the beneficiary and exercise riders in general, which is not pertinent to the issue of the beneficiary's international recognition.

In a letter, assertts that the beneficiary earned his international reputation as a "uniquely qualified and well decorated exercise rider" by "riding top horses such as legendary ' ' However, other than this statement, Mr. does not detail the beneficiary's international recognition. Again, like Mr. Mr. focuses the remainder of his letter to discussing the athletic disposition and abilities of the beneficiary and exercise riders in general, which is not pertinent to the issue of the beneficiary's international recognition.

writes that the beneficiary is "internationally recognized [as a] thoroughbred racehorse exercise rider/trainer." Mr. fails to provide any more information or explain the factual basis behind this assertion. Mr. 's conclusory assertion regarding the beneficiary's reputation is insufficient and not entitled to probative value. Like the other two letters, Mr. focuses the remainder of his letter to discussing the athletic disposition and abilities of the beneficiary and exercise riders in general, which is not

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[1] *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

pertinent to the issue of the beneficiary's international recognition. Based on the foregoing, the petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*v*).

Receipt of a significant honor or award in the sport

In order to satisfy the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vii*), the petitioner must submit evidence to establish that the beneficiary has received a significant honor or award in the sport.

Under this criterion, the petitioner submitted copies of several publications in which the beneficiary's photograph appears. The petitioner explained that "no formal awards, honors or rankings are available for Exercise Riders." In lieu of formal honors or awards, the petitioner claimed that "being featured on the cover of industry-related publications . . . [including] the world-famous publication constitutes "a significant honor."

We are not persuaded that the published photographs of the beneficiary constitute the "[r]eceipt of a significant honor or award." The petitioner has not explained why being photographed by industry-related media qualifies as the "receipt" of an "honor or award," much less the "receipt of a *significant* honor or award" (emphasis added). These photographs merely depict the beneficiary riding as the exercise rider; the underlying articles themselves make no mention of the beneficiary.

Based on the foregoing, the petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vii*).

IV. Conclusion

The petitioner failed to establish that the beneficiary, as an exercise rider/trainer, will be coming to the United States solely for the purpose of performing as athlete in a specific athletic competition, as required under section 214(c)(4)(A) of the Act. In addition, the petitioner failed to establish that the beneficiary meets any of the regulatory criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*), thus failing to establish that the beneficiary is internationally recognized in the sport.

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.