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



U.S. Citizenship
and Immigration
Services



DATE: **JUN 12 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), as an internationally-recognized athlete. The petitioner, a Mixed Martial Arts (“MMA”) academy, seeks to employ the beneficiary as an MMA coach for a period of three years.

The director denied the petition, concluding that the petitioner did not establish that it would employ the beneficiary as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. The director observed that the petitioner seeks to employ the beneficiary principally as an MMA coach who “will train students who will participate in athletic competition,” and that, therefore, competitive MMA would be ancillary to his primary job duties.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner does not contest the director’s findings pertaining to the internationally recognized athlete regulations, and, therefore, we consider this issue to be abandoned.¹ On appeal, the petitioner asserts that the director erred in not considering the beneficiary’s eligibility as a coach under the COMPETE Act, a provision the petitioner raises for the first time on appeal.²

I. Pertinent Law and Regulations

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;

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). Upon review, the record supports the director’s determination that the petitioner did not establish that it would employ the beneficiary as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

² In 2006 Congress passed Public Law 109-463, “Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006” (COMPETE Act of 2006), which amended Section 214(c)(4)(A) of the Act, and authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance.

- (II) is a professional athlete, as defined in section 204(i)(2);
- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if
 - (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
 - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and
 - (cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league; or
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . . [.]

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)(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)(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)(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 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.

II. Factual and Procedural History

The sole issue addressed by the director is whether the petitioner established that the beneficiary is coming to the United States solely for the purpose of competing in an athletic competition or competitions which require participation of an athlete that has an international reputation. *See* section 214(c)(4)(A)(ii)(I) of the Act ; 8 C.F.R. 214.2(p)(1)(ii)(A)(1).

Although not addressed by the director, the petitioner initially provided foreign-language documents that were accompanied by uncertified translations, and has not provided any translation for several foreign language certificates and one article. In response to the director's request for evidence (RFE), the petitioner submitted copies of the translations accompanied by a photocopied certification dated after the initial filing and which does not identify the translations it certifies or the petitioner or beneficiary. Rather, it references "the above/attached document" in the singular. The regulation at 8 C.F.R. § 103.2(b) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Copies of a single blanket certification that postdates several of the translations and does not identify the translations it certifies are not probative evidence that the translator(s) certified each translation in the record. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have diminished probative value.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on July 1, 2014. The petitioner stated on the Form I-129 that the beneficiary's duties were described in the petitioner's support letter. After listing the evidence, the petitioner states:

Please note that [the beneficiary] is a well know[n] fighter and coach in Mixed Martial Arts (MMA) in Brazil and South America. He has participated and won both international and national level competitions. Now he will be coming to the United States as a coach in an Academy in [redacted] Florida to train and coach all level players.

The petitioner does not address the team requirements for a coach at section 214(c)(4)(A)(i)(III) or the provisions set forth in subparagraphs (aa) through (cc) of that statute, all components of the COMPETE Act.

In its letter dated June 20, 2014, submitted in support of the petition, the petitioner stated that the beneficiary will “train and coach our athletes” to “enable them to participate in professional tournaments.” The petitioner describes the beneficiary as “a world class fighter/coach.” The petitioner provided documentation that the beneficiary competed in martial arts competitions in Brazil between 1994 and 2004, and holds a Black Belt [REDACTED] in Karate the [REDACTED] awarded in [REDACTED]

The petitioner’s initial evidence also included a copy of its employment contract with the beneficiary signed by both parties in June 2014, which specifies that the beneficiary will be employed by the petitioner in the capacity of “Mixed Martial Arts Coach.” Under the terms of the contract, the beneficiary is responsible for the following:

- Devise advanced technical training for top National and State level athletes;
- Create new lesson plans, provide mental & physical training, progress reports, league organization, training, junior development and match monitoring;
- Demonstrate on-field technical skills and sophisticated instructional techniques to prepare them to better compete in various level tournament, and
- Be able to train athletes on a one-to-one basis or in group settings.

The director issued the RFE on July 7, 2014. The director requested additional evidence to address whether the beneficiary would be performing solely as an athlete with respect to specific athletic competitions including, but not limited, to an explanation regarding the nature of the events or activities and an itinerary for such events or activities. The director did note that coaches are eligible for P-1A classification where they will perform as a coach “with a U.S. team in a foreign league,” a provision of the COMPETE Act.

In response, the petitioner submitted a list of upcoming amateur and professional MMA events in Florida in which the petitioner asserts the beneficiary’s students would be competing. The petitioner also provided articles in support of the petitioner’s assertion that some of the MMA events in which the petitioner competed between 1994 and 2004 were international competitions. The petitioner asserted that “[t]he beneficiary’s extensive experience permits him to have a perspective unseen by average coaches in the sport.” The petitioner did not assert that the beneficiary is eligible under the COMPETE Act. Specifically, the petitioner did not assert that the beneficiary would perform “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. Section 214(c)(4)(A)(i)(III) of the Act. The petitioner also did not address subparagraphs (aa) through (cc) of that section, which pertain to the level of amateur performance; whether performance at the level renders an individual ineligible for college or university participation or scholarship under the rules of the National Collegiate Athletic Association (NCAA); and major league sports drafting statistics.

The director denied the petition on August 15, 2014, concluding that the petitioner did not establish that the beneficiary is coming to the United States solely for the purpose of performing as an athlete with respect to a specific athletic competition. The director determined that, based on the evidence

submitted, the petitioner seeks to employ the beneficiary as a coach or instructor, while participation in athletic competition would be ancillary to his primary duties.

On appeal, the petitioner does not contest the director's findings pertaining to the beneficiary's eligibility as an internationally recognized athlete. Rather, the petitioner asserts that the director erred in not considering the beneficiary's eligibility as a coach under the COMPETE Act. The petitioner explains: "The COMPETE Act enlarged the scope of P-1 nonimmigrant visas on several issues, to include performance as a coach." The petitioner does not, however, address whether the petitioner will be performing as a coach for "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." Section 214(c)(4)(i)(III). The petitioner also does not address subparagraphs (aa) through (cc) of that section. As the petitioner is raising the COMPETE Act for the first time on appeal, the petitioner has not demonstrated an error on the part of the director. Further, on appeal, the petitioner has not addressed the provisions of the COMPETE Act other than its application to coaches such that a full discussion by the director is necessary.

Upon review of the evidence in the instant record, the evidence establishes that the beneficiary will be employed by the petitioner solely as an MMA coach, according to the terms of his contract, and the petitioner does not contest this issue on appeal. P-1 classification can only be granted to coaches of certain teams or franchises located in the United States which are also members of a foreign league or association of 15 or more amateur sports teams. Section 214(c)(4)(A)(i)(III) of the Act. The petitioner's initial supporting documentation states that it is doing business as an MMA academy, rather than as an athletic team.

On appeal, the petitioner does not assert, nor does the record demonstrate, that the beneficiary would be coming to the United States as a coach of a U.S. team or franchise that is a member of a foreign league or association of 15 or more amateur sports teams. The petitioner does not assert that it meets the regulatory definition of "team" at 8 C.F.R. § 214.2(p)(3), and there is no corroborating evidence in the record to establish that the petitioner has been recognized in any capacity as a "team" competing in the sport of MMA.

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." (Emphasis added.) The petitioner has not provided any detailed information that it is an MMA team, such as the team's name, the names of all the team's players, their positions, or an explanation of the team's organization and how its players perform together as a competitive unit in competitive events. Moreover, the petitioner did not establish that it has been recognized in any capacity as a "team." Evidence of a "sports team" would include documentation of the team's organization, performance, and results performing together as a competitive unit in actual team events. The petitioner has submitted no such evidence. 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)). Accordingly, the evidence of record does not establish that the petitioning MMA academy is a

“team,” as there is no evidence that it participates in a team sport or that it is recognized in the industry as a sports team that performs together.

The petitioner also does not identify a foreign league or an association of 15 or more amateur teams of which it is a member. Accordingly, the petitioner has not established that the beneficiary will be employed by the petitioner 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. Section 214(c)(4)(A)(i)(III) of the Act. The petitioner has also not addressed the level of amateur performance of the sport, whether participation renders an individual ineligible for participation in or scholarship for college or university sport pursuant to NCAA rules, and whether a significant number of individuals who play in the league or association are drafted by a major sports league or minor league affiliate. Section 214(c)(4)(i)(III)(aa)-(cc) of the Act. The P-1 classification is not available to a beneficiary seeking employment individually as an MMA coach or instructor at an academy or school devoted to the sport.³

III. Conclusion

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.

³ Further, the regulation at 8 C.F.R. § 214.2(p)(4)(iv) provides for the classification of an essential support alien who is an integral part of the performance of a P-1 athlete or athletic team. While P-1 classification is available to coaches who qualify as essential support aliens, the petitioner did not check the essential support box on Section 1 of the O and P Classification Supplement to Form I-129. Ultimately, the petitioner does not assert, nor does the record demonstrate, that the beneficiary would be coming to the United States as an essential support worker accompanying an identified P-1 athlete or athletes.