



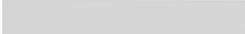
U.S. Citizenship
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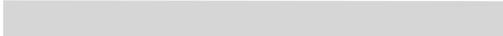
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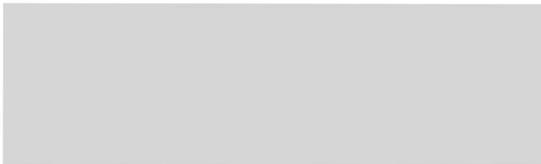
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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

The director denied the petition, concluding that the petitioner did not provide evidence of the beneficiary’s prior essentiality, critical skills or experience with the P-1 alien, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(2).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner asserts that the beneficiary meets the regulatory requirements of the requested classification, and submits a brief in support of the appeal. The petitioner also asserts that the director was in error in finding that the petitioner is required to establish that “the P-1A cannot, or has not performed in the capacity of jockey without the beneficiary.” We withdraw the acting director’s finding in this regard as unsupported by the plain language of the regulations, but we find, for the reasons discussed below, that the record supports the director’s finding that the petitioner has not established the beneficiary’s prior essentiality and experience with the P-1 athlete.

Additionally, we will address the petitioner’s claim that the director “issued a boilerplate denial to the Petitioner on July 31, 2014 in which the Service failed to even change the name of the beneficiary contained in the denial notice.” The petitioner’s contention is based upon the following sentence, which appears on page one of the director’s decision: “On December 27, 2013, you filed a Petition for Nonimmigrant Worker (Form I-129) to classify [a different beneficiary] as essential support personnel under section 101(a)(15)(P) of the Immigration and Nationality Act.” We acknowledge this error on the part of the director. However, while such error is regrettable, a review of the adverse decision as a whole reveals that the director conducted a review of the evidence and provided support for the conclusions reached regarding the petitioner and beneficiary’s eligibility, based on the evidence of record. Therefore, the petitioner’s assertion that the decision does not relate to the instant petition is without merit.

I. Pertinent Regulations

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

¹ The record reflects that at the time of filing, the beneficiary was in the United States in J-1 exchange visitor nonimmigrant status as a trainee in the field of agriculture, valid until November 30, 2013, with the [redacted] Minnesota.

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

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

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

- (A) *General.* An essential support alien as defined [above] may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.
- (B) *Evidentiary criteria for a P-1 essential support petition.* A petition for P-1 essential support personnel must be accompanied by:
 - (1) A consultation for a labor organization with expertise in the area of the alien's skill;
 - (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
 - (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

II. Factual and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on December 27, 2013. The petitioner stated that the beneficiary would serve as a jockey valet under the P-1S petition. The petitioner did not complete question #6 on the O and P Classification Supplement, which instructs the petitioner to list the dates of the alien's prior experience with the P alien if applying for a P support alien.

In a letter in support of the petition dated December 20, 2013, the petitioner stated that it seeks to employ the beneficiary in the position of "the essential role of jockey valet for [REDACTED]" The petitioner states that Mr. [REDACTED] "entered the U.S. in December 2010 under the P-1 status . . . to perform as a professional jockey." The petitioner described the beneficiary's duties as a jockey valet for the P-1 principal as follows:

[The beneficiary] will utilize essential skills to insure that the saddle weight meets specifications for each particular race. Additionally, the jockey valet performs a variety of services attending to the jockey. She must ensure the jockey's silks and gear conform to racing regulations and that their colors also pertain to each particular stable. A jockey valet must also apply relevant skills for unsaddling horses and maintaining saddles properly clean.

The petitioner further stated as follows:

[The beneficiary] has extensive horse racing experience as a stable worker and exercise rider in the United States, the United Kingdom and Ireland, where Mr. [REDACTED] raced. [The beneficiary] has been assisting him as valet/agent for the past 3 years. They have built up an excellent working relationship. She has accompanied him to many countries as he has raced. Please note that while in the U.S. only a jockey valet is allowed to perform services to attend to a jockey's needs. In most other countries in the world, like the United Kingdom, racetrack workers also attend to the jockey's needs . . . Since [the beneficiary] has had extensive prior horse experience at race tracks, she is perfectly familiarized with all the jockey's needs, such as taking care of the jockey's tack, dressing and changing with the correct stable's colors, weighing the saddle with the correct weight, carrying the tack to and from the scales, and etc. [The beneficiary] possesses the appropriate qualifications to perform the above services, critical knowledge of the above services and prior experience.

Although the petitioner asserts in the support letter that it submitted "an itinerary of events for 2014," the record does not contain this documentation, and on the Form I-129 at Part 5, the petitioner indicated that an itinerary was not included with the petition.

The petitioner also submitted a letter dated November 16, 2013, from the principal P-1 athlete, Mr. [REDACTED] describing the beneficiary as "trustworthy and professional," a valet who "learns as well as reacts and thinks quickly on their feet," and "a pleasant personality," possessing "a vast amount of horse knowledge." Mr. [REDACTED] also states that the beneficiary "is very good with the more difficult horses and this makes her a very valuable asset to m[y] team." Mr. [REDACTED] further states as follows:

[The beneficiary] and I have been together as a team for many years. We have worked together . . . from track to track in England and Scandinavia with her as a valet for my organization. Together we have accomplished several big victories including stake races

With all these qualities she would be an asset to any team as she has been to mine. I would not have accomplished what I have in my career without her skills and help.

While Mr. [REDACTED] credits the beneficiary with his success, he does not explain in any probative detail how the beneficiary's critical skills have been essential to his successful performance. For example, he does not indicate when or where he met the beneficiary or the date and duration of the beneficiary's past work for him. Further, while Mr. [REDACTED] letter generally recommends the

beneficiary for employment, he does not state that the beneficiary will be working for him as a jockey valet in the United States under an approved petition.

In further support of the petition, the petitioner submitted a letter from the beneficiary, stating as follows:

I met [redacted] while I was still riding races in Scandinavia. Unfortunately for myself I suffered an injury that turned me off riding races however I wanted to continue to work in the horse racing industry and it was [redacted] who gave [me] the ability to do so once I was ready to return to racing. Together we became a great team winning many races in Scandinavia and later in the UK . . . [redacted] and I work on the same professional level and with a lot of passion for the sport[.] [T]his makes us an exceptional team, and I hope to continue our good work in the USA.

Although the beneficiary states that she and Mr. [redacted] “became a great team winning many races,” she did not explain in any probative detail how her critical skills have been essential to Mr. [redacted] successful performance or indicate the date and duration of her past work for Mr. [redacted]

The petitioner also submitted undated testimonial letters from Scandinavian race horse trainers [redacted]. Mr. [redacted] states as follows:

[The beneficiary] was [redacted] valet when he was riding races in Norway[.] [The beneficiary] was professional and an asset to the track as a horseman and as a valet. [The beneficiary] and [redacted] worked extremely well together, and I can see why [redacted] wants [the beneficiary] back as her [sic] valet.

Mr. [redacted] states as follows:

[The beneficiary] and [redacted] worked for me over longer periods during 2009 – 2010. [The beneficiary] worked as [redacted] valet when he was riding for me and other trainers in races all over Scandinavia, including [redacted]. They worked well together as a professional team, and it was always a pleasure to work with them.

The petitioner’s initial evidence also included a letter dated March 15, 2012, from [redacted] the managing director of the [redacted], which appears to have been submitted in support of the beneficiary’s prior J-1 visa application. Mr. [redacted] states that the beneficiary has worked for the club’s subsidiary, [redacted] since 2003, “on race day basis” and that the beneficiary “has primarily worked with the starting procedures in connection with our race meetings.” He states that the beneficiary “has shown great commitment to the job. She is [a] good worker and has always taken the necessary responsibility. We can give [the beneficiary] our best recommendations.”

The petitioner's initial evidence also included photographs of the beneficiary with horses and riders at several different racing events.

The petitioner further submitted its Independent Contractor Agreement with the beneficiary dated December 1, 2013, signed by the parties on that date, which describes, in pertinent part, the beneficiary's duties under an approved petition as follows:

RECITALS:

A. VALET, has experience in providing equine services to Mr. [REDACTED] (JOCKEY). He can provide several aspects of equine services to JOCKEY for TRAINER such as assistance with riding preparation and cleanup. He can assist with general valet skills such as tending to JOCKEY silks, weight regulations, saddle care and etc. VALET desires to provide certain equine services to JOCKEY for TRAINER in the United States.

B. TRAINER desires to engage VALET as an independent contractor to provide such services, upon the terms set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements set forth below, the parties, intending to be legally bound, hereby agree as follows:

1. Scope of Services. TRAINER hereby engages VALET, as an independent contractor, to provide necessary equine services as requested by JOCKEY and TRAINER.

The agreement also states that, the petitioner agrees to pay the beneficiary ten percent (10%) of the P-1 principal's winning purses as compensation for her services.

In a request for additional evidence issued on January 23, 2014, the director requested that the petitioner "provide evidence to show that Form I-129 was filed for the principal athlete or artist." In response, the petitioner submitted evidence that Mr. [REDACTED] was granted P-1 classification for the period November 18, 2010 through January November 15, 2015, based upon a petition filed by [REDACTED]

The director issued an additional RFE on April 4, 2014, in which she requested a statement describing the beneficiary's prior essentiality, critical skills, and experience with the principal alien and any additional documentation that would establish the beneficiary's critical knowledge of and prior experience with the principal P nonimmigrant. The director also requested that the petitioner provide evidence that the beneficiary performs support services to the P-1 athlete which a United States worker cannot readily perform.

In response, the petitioner submitted a letter dated June 13, 2014, from its owner, [REDACTED] stating as follows:

[T]he P-1A jockey, [REDACTED] rides some mounts for me and some for [REDACTED] and some for other trainers. . . . I have entered into an agreement with [the beneficiary] whereby she will provide Jockey Valet services to [REDACTED] when he is riding horses I have trained. That agreement is also non-exclusive. So she can also provide those services when [REDACTED] is riding for other trainers. When [REDACTED] is riding horses I have trained and [the beneficiary] provides the required Valet services, I will pay her as per the contract.

The petitioner also submitted additional testimonial letters in response to the RFE. The petitioner provided an additional letter from Mr. [REDACTED] stating that he has known the beneficiary since 2003, “when she started working as a valet on race days here in Norway.” He states that the beneficiary “worked with many jockeys including [REDACTED] who she worked with for 6 race meets.” He describes her as being “skilled and knowledgeable in the job as a valet including saddling and taking care of tack and other needs a jockey may have including providing the appropriate silks and other items necessary for her jockey to be successful.”

The petitioner also submitted letters from [REDACTED] and [REDACTED]. Mr. [REDACTED] states that the beneficiary is “an excellent valet” and that the beneficiary “has saddled all my horses.” He states that there are “very few Americans capable of filling this position.” Mr. [REDACTED] states that he has known the beneficiary for nearly two years. He further states that he highly recommends the beneficiary “to remain in the position as valet for [REDACTED]. [REDACTED] [The beneficiary] is very professional and has a unique skill which is very hard to find among her peers.” These letters, however, do not satisfy the evidentiary requirement at 8 C.F.R. § 214.2(p)(6)(ii)(A), as they do not establish the credentials of Mr. [REDACTED] and Mr. [REDACTED] as recognized experts in the field of thoroughbred horse racing.

The director denied the petition on July 31, 2014, concluding that the petitioner did not establish that the beneficiary qualifies as an essential support alien. The director found that the petitioner submitted insufficient evidence that the beneficiary possesses prior essentiality, critical skills and experience with the principal alien.

On appeal, the petitioner asserts that the evidence submitted is sufficient to establish the beneficiary’s prior working relationship with and essentiality to the principal alien. Counsel contends that each letter, from [REDACTED] [REDACTED] who the petitioner identifies as jockeys, [REDACTED] “builds on the statement from [the petitioner], [the principal P-1 athlete] and [the beneficiary]. Together the statements provided the prior experience, skills and essentiality that [the beneficiary] previously provided Mr. [REDACTED].” The petitioner also asserts that three of the submitted photographs of the beneficiary “clearly with [REDACTED] at professional horse races . . . add credibility to the evidence by showing in picture form [the beneficiary] working in conjunction with Mr. [REDACTED] before or after the jockey’s competition.”

The regulations specifically require the petitioner to submit a statement describing the alien’s prior essentiality, critical skills, and experience with the principal alien. 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). The statements of the principal P-1 athlete that he and the beneficiary “have been together as a team for many years,” “have worked together . . . from track to track in England and Scandinavia with her as a

valet for my organization,” and “have accomplished several big victories including stake races,” are lacking in sufficient detail. As previously stated, the principal P-1 athlete does not state for what period he and the beneficiary previously worked together. Similarly, the beneficiary’s statement that she met [REDACTED] “while I was still riding races in Scandinavia” and that “[t]ogether we became a great team winning many races in Scandinavia and later in the UK,” is lacking in sufficient detail.

The additional submitted testimonial letters do not provide additional probative information regarding the beneficiary’s claimed relationship with the principal P-1 athlete. Mr. [REDACTED] states that the beneficiary “was [REDACTED] valet when he was riding races in Norway” and that they “worked extremely well together.” Mr. [REDACTED] states that the beneficiary and Mr. [REDACTED] worked for Mr. [REDACTED] “over longer periods during 2009 – 2010” and that “the beneficiary worked as [REDACTED] valet when he was riding for me and other trainers in races all over Scandinavia.” Simply stating that the beneficiary worked with the principal athlete is insufficient to meet the evidentiary requirement that the petitioner provide a statement describing the beneficiary’s prior essentiality, critical skills or experience with the principal P-1 alien. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942, at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The director specifically advised the petitioner that the initial evidence did not meet its burden of proof as the submitted letters are lacking in sufficient information regarding the beneficiary’s prior experience with the P-1 athlete, and provided the petitioner with an opportunity to provide the required descriptive statement and any other documentation to establish the essential support alien’s critical knowledge of and prior experience with the P-1 alien. Mr. [REDACTED] second letter states that the beneficiary “worked with many jockeys including [REDACTED] who she worked with for 6 race meets.” Simply stating that the beneficiary works with the principal athlete and worked with the principal athlete in the past is insufficient to meet the evidentiary requirement that the petitioner provide a statement describing the beneficiary’s prior essentiality, critical skills or experience with the P-1 alien. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In addition, even if it is assumed, *arguendo*, that the petitioner has established the beneficiary’s prior essentiality, critical skills or experience with the P-1 alien, the petitioner has not established that the duties performed by a jockey valet require a “highly skilled, essential person,” integral to the performance of the P-1 alien, or that jockey valets perform support services that cannot be readily performed by a United States worker. On appeal, the petitioner asserts that an inadequately prepared horse endangers the jockey. According to the record the jockey valet’s duties include assisting a jockey with riding preparation and cleanup, ensuring that silks and gear conform to racing regulations, riding preparation and cleanup. The petitioner does not address the director’s finding that the petitioner has not established that the knowledge required to perform these duties would be specific to a certain jockey. In fact, in its support letter the petitioner stated that “since [the beneficiary] has had extensive prior horse experience at race tracks, she is perfectly familiarized with all the jockey’s needs,” thereby suggesting that the beneficiary’s prior experience by which she acquired the knowledge to perform

these duties was not specific to a certain jockey, and that all jockey's needs in terms of valet services are essentially the same.

Further, the petitioner's support letter asserts that Mr. [REDACTED] "entered the U.S. in December 2010 under the P-1 status . . . to perform as a professional jockey." Accordingly, Mr. [REDACTED] has been able to compete successfully in the equestrian field by relying on services provided by local jockey valets in the United States. The petitioner has not established that the beneficiary performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1 alien. Therefore, the record also does not establish that the beneficiary meets the regulatory definition of an essential support alien at 8 C.F.R. § 214.2(p)(3). For this additional reason, the petition will be denied.

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

Finally, although not addressed by the director, the record does not contain any evidence to establish that the P-1 principal has maintained his P-1 visa status from November 18, 2010, to the date of filing the instant petition. In response to the director's second RFE, the petitioner asserted that Mr. [REDACTED] has performed as a professional jockey in the United States, "riding mounts" for the petitioner, [REDACTED] and other trainers. However, the record does not contain any evidence, such as the principal athlete's jockey record, indicating that the principal has competed in any races as a professional jockey during that period. We also note that the period of stay requested for the beneficiary does not coincide with the approval dates for the principal P-1's status. Mr. [REDACTED] P-1 status expires on November 15, 2015, and the petitioner has requested that the beneficiary be granted P-1S status to provide services to Mr. [REDACTED] until December 15, 2018. Based on the foregoing, the evidence of record raises doubts as to whether the beneficiary would be providing essential support services for Mr. [REDACTED] if the instant petition were approved. For this additional reason, the petition cannot be approved. We conduct appellate review on a *de novo* basis. Our *de novo* authority is well recognized by the federal courts. *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.