



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-P-C-, LLC

DATE: OCT. 5, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a multi-sport health and fitness complex, seeks to classify the Beneficiary as an internationally-recognized 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). *See* Immigration and Nationality Act (the Act) § 101(a)(15)(P)(i), 8 U.S.C. § 1101(a)(15)(P)(i) and section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

According to Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner seeks to employ the Beneficiary as a “gymnastics coach” for a period of three years. The Director denied the petition, concluding that the Petitioner did not demonstrate the Beneficiary’s eligibility for the requested classification. More specifically, the Director determined that the Petitioner did not establish that the Beneficiary seeks to enter the United States solely for the purpose of performing as an internationally recognized athlete with respect to a specific athletic competition.

On appeal, the Petitioner confirms that the Beneficiary will be coming to the United States both to compete as a gymnast and to coach the sport at the petitioning facility and submits a brief and copies of materials already part of the record. Upon review, and for the reasons stated herein, we concur with the Director’s determination that the Petitioner has not established the Beneficiary’s eligibility for the requested classification.

I. PERTINENT LAW AND REGULATIONS

Under section 101(a)(15)(P)(i) of the Act, a beneficiary 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 a beneficiary who:

- (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;
- (II) is a professional athlete, as defined in section 204(i)(2);

- (III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if
 - (aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant country;
 - (bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the 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, provides that the Beneficiary 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 provides, 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.

Finally, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;

(b)(6)

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- (B) Copies of any written contracts between the petitioner and the alien beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129 on August 15, 2014, indicating the Beneficiary's job title is "Gymnastics Coach." In its initial letter, the Petitioner stated that it will employ the Beneficiary as a full-time gymnastics coach to "be in charge of [the Petitioner's] Xcel Team, an invitation only program." The Petitioner also explained that in addition to the Beneficiary's coaching duties she "will continue to compete at the [redacted] Competitions, a series of gymnastics events held in the [United States] in which gymnasts compete to qualify for national and international team membership." The Petitioner asserted that the events in which the Beneficiary would compete "usually take 1-2 days a month from [the Beneficiary's] duties at the club." The Petitioner affirmed that the Beneficiary "has demonstrated a record of achievement in gymnastics, both in competition and instruction in Spain and in the United States," and discussed the Beneficiary's credentials as a competitive gymnast and coach.

The Petitioner submitted a "Summary of Terms of Oral Agreement," listing the Beneficiary's duties as a gymnastics coach and acknowledging that "[the Beneficiary] will be competing in the US Gymnastics [redacted] Competitions throughout the [United States]." The Petitioner provided an itinerary for the Beneficiary listing 13 events scheduled for 2014/2015.

The Director issued a request for additional evidence (RFE) on August 26, 2014, requesting, *inter alia*, additional documentation to address whether the Beneficiary would be performing solely as an athlete with respect to a specific athletic competition. In a response dated September 29, 2014, the Petitioner asserted that it was "attempting to classify [the Beneficiary] as an athlete who will be competing in elite gymnastics competitions throughout the [United States]" and was "also attempting to classify [the Beneficiary] as a coach as well." The Petitioner stated that the Beneficiary "will be coming to the United States to coach, train, and compete" and that the itinerary "includes the dates and events she will compete in." The Petitioner provided an affidavit from the Beneficiary, stating that in addition to coaching for the Petitioner, she desires to continue competing "to try to remain a member of [Spain's] national team." The Petitioner described the Beneficiary as "internationally recognized as an athlete and coach as supported by the evidence"

On appeal, the Petitioner asserts that the Director denied the petition for the reasons specified in a previous petition on behalf of the Beneficiary, which sought to hire her solely as a coach. The Petitioner expresses concern that the Director did not consider the record for the current petition in

reaching her decision, including the itinerary listing the events where the Beneficiary would compete in the United States. The Petitioner concludes that USCIS has inconsistently interpreted section 214(c)(4)(A)(ii)(I) of the Act, listing the names of several beneficiaries whom it affirms were granted P-1 classification to serve as both an internationally recognized athlete and coach/instructor.

III. ANALYSIS

On appeal, the Petitioner asserts that the Beneficiary meets the requirements set forth in section 101(a)(15)(p) of the Act. The sole issue the Director addressed, however, is whether the Petitioner established that the Beneficiary is coming to the United States “solely” to compete as an internationally recognized athlete, language that appears in a different statutory provision. *See* section 214(c)(4)(A)(ii)(I) of the Act. The Director determined that, based on the evidence submitted, the Petitioner seeks to employ the Beneficiary as a coach or instructor who will participate in athletic competitions in addition to her primary duties as a coach. Upon review, the Petitioner has not shown that the Beneficiary is coming to the United States solely to compete as an internationally recognized athlete.

Section 214(c)(4)(A) specifically states that section 101(a)(15)(P)(i)(a) refers to a foreign national who “performs as an athlete” and, according to subparagraph (ii), “seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.” 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. While the COMPETE Act opened the P-1 classification to certain coaches, the Petitioner does not assert, and the record does not establish, that the Beneficiary meets the criteria set forth at section 214(c)(4)(A)(i)(III) of the Act, which limits P-1 classifications to coaches of teams or franchises that are located in the United States and members of a foreign league or association of 15 or more amateur sports teams. The Petitioner clearly seeks to classify the Beneficiary as an athlete, who performs at an internationally recognized level of performance, pursuant to section 214(c)(4)(A)(i)(I) of the Act.

We acknowledge that the Beneficiary intends to compete in professional gymnastics tournaments in the United States. However, the Petitioner has also unequivocally indicated that the Beneficiary will be serving as a coach and instructor for its organization. Therefore, based on the evidence submitted, the Director appropriately concluded that the Beneficiary does not seek to enter the United States “solely for the purpose of performing” as an athlete. Rather, the record confirms that the Beneficiary will be a gymnastics instructor in addition to any athletic competitions in which she may participate. There is no provision that would allow a foreign national to come to the United States individually as a P-1 coach, other than the above-referenced statutory provision allowing P-1 classification of coaches who participate in certain qualifying amateur sports leagues or associations, or as a P-1 essential support foreign national accompanying a P-1 athlete or athletes. *See* 8 C.F.R. § 214.2(p)(4)(iv). The statute and regulations do not provide for P-1 classification of an individual

who will serve as both a competitive athlete and coach/instructor. Accordingly, the appeal will be dismissed.

Finally, the Petitioner's position that USCIS has inconsistently interpreted section 214(c)(4)(A)(ii)(I) of the Act is not supported by the record. While the Petitioner provided the names of several beneficiaries whom it asserts were granted P-1 classification to serve as both a competitive athlete and coach/instructor, the Petitioner did not provide any evidence to establish that USCIS did, in fact, find eligibility under this classification and approve the petitions of these individuals based upon the same set of facts present here. In making a determination of a beneficiary's eligibility, USCIS is limited to the information contained in the instant record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Regardless, unpublished, non-binding USCIS decisions are not be enough to document an inconsistent agency interpretation. *See, e.g., R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp.2d 1014, 1024-25 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001).

IV. CONCLUSION

The Petitioner has not shown that the Beneficiary would be coming to the United States solely to compete as an internationally recognized athlete. Section 214(c)(4)(A)(ii)(I) of the Act. 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.

Cite as *Matter of C-P-C-, LLC*, ID# 13884 (AAO Oct. 5, 2015)