U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-G-C-, LLC

DATE: SEPT. 18, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a gymnastics center, seeks to classify the Beneficiary as a coach under the COMPETE Act. *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, revoked the approval of the nonimmigrant visa petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner seeks to employ the Beneficiary as a gymnastics instructor[1] for a period of three years. The Director initially approved the nonimmigrant petition on June 17, 2013, granting the Beneficiary P-1A classification. On June 10, 2014, the Director issued a notice of intent to revoke (NOIR) the approval of the petition. After reviewing the Petitioner's response to the NOIR, the Director issued a notice of revocation (NOR), in which the Director revoked the approval on September 24, 2014.

On appeal, the Petitioner asserts that it has satisfied the requirements of the Compete Act[2] and submits additional documentary evidence in support of the appeal. 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:

[1] The Petitioner lists the job title as gymnastics instructor on the Form I-129, Petition for a Nonimmigrant Worker.

[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.

(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 . . .[.]

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)(10)(iii)(A) states that the Director shall send to the petitioner a notice of intent to revoke the petition if he or she finds that:

(1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(2) The statement of facts contained in the petition were not true and correct;

(3) The petitioner violated the terms or conditions of the approved petition;

(4) The petitioner violated requirements of section 101(a)(15)(P) of the Act or paragraph (p) of this section; or

(5) The approval of the petition violated paragraph (p) of this section or involved gross error.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 31, 2013, which the Director approved on June 17, 2013. The record of proceeding includes the Form I-129 and supporting documentation, a NOIR and the Petitioner's response to the NOIR, the Director's decision revoking the approval of the Form I-129 dated September 24, 2014, the Petitioner's appeal, and additional evidence the Petitioner submitted in support of the appeal.

The Petitioner indicated on the Form I-129 that it seeks to employ the Beneficiary as a gymnastics instructor. In the O and P Classification Supplement to Form I-129, the Petitioner noted that the Beneficiary's duties in that position were described in the attached contract. The Petitioner's employment agreement with the Beneficiary, dated May 23, 2013, and signed by the parties, specifies that the Beneficiary's duties will include training athletes for competitive cheerleading/tumbling events and attending all competitions as a coach. The Petitioner submitted an itinerary listing girls' athletic competitions which the Beneficiary is expected to attend between March 2013 and April 2016.

The Petitioner provided documentation pertaining to the Beneficiary's past performance as an athlete. The materials show that the Beneficiary competed in sport acrobatics competitions in and other countries between 1990 and 2004, and that the awarded the Beneficiary the grade of in and in [3] The Petitioner also provided evidence that in 2002 the Beneficiary completed a course to be classified as a of the The record further shows that the Beneficiary was previously admitted to the United States as a P-1 nonimmigrant between 2007 and 2013 to perform as an with .

The Director approved the Form I-129 on June 17, 2013. On June 10, 2014, the Director issued a NOIR and determined that the Petitioner had not established that it would employ the Beneficiary as an athlete, individually or as part of a group or team, at an internationally recognized level of

[3]The Petitioner provided foreign-language documents pertaining to the awards that were accompanied by uncertified translations. 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."

performance. *See* section 214(c)(4)(A)(i)(I) of the Act.[4] In response to the NOIR the Petitioner explained that it was not asserting the Beneficiary's eligibility under the internationally recognized athlete regulations but, rather, the Beneficiary's eligibility under the COMPETE Act 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. *See* section 214(c)(4)(A)(i)(III) of the Act, and subparagraphs (aa) through (cc). The Petitioner explained that the evidence of the Beneficiary's participation in "several competitions of international importance from his career as a competing athlete" was submitted "to serve as a distinguishing factor to highlight his qualifications for his work as a gymnastics coach, not for the petition to be classified under [s]ection 214(c)(4)(i)(I)."

In the NOR, the Director acknowledged the Petitioner's statement that it was relying on the provisions of the COMPETE Act and adjudicated the petition under those provisions. On appeal, the Petitioner submits a brief and additional documentation, continuing to rely on the provisions of the COMPETE Act.

III. ANALYSIS

The sole issue addressed by the Director is whether the Beneficiary 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." *See* section 214(c)(4)(i)(III) of the Act. Upon review, the Petitioner did not establish that it satisfies the team requirements for a coach at section 214(c)(4)(A)(i)(III) of the Act or the provisions set forth in subparagraphs (aa) through (cc) of that statute, all components of the COMPETE Act.

First, we note that section 214(c)(4)(A)(i)(III) requires the Beneficiary to perform as a coach "as part of a team . . . that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams."[5] Upon review of the record, the Petitioner has not shown that it is a "team" as defined for the P-1 classification. The contract establishes that the Beneficiary will be employed by the Petitioner solely as a gymnastics instructor, according to the terms of his contract, and the Petitioner does not contest this issue on appeal. The Petitioner's initial supporting documentation indicated that it is doing business as a gymnastics center, rather than as an athletic team. In response to the NOIR, the Petitioner explained that "[t]he team at [the Petitioning company] coached by the [B]eneficiary competes under the auspices of and hence under . . . the sole controlling the sport at all levels including Olympic competitions." Although the Petitioner contends that the Beneficiary will coach its gymnastics "team," there is no corroborating evidence that the Petitioner meets the regulatory definition of "team" at 8 C.F.R. § 214.2(p)(3), and that the Petitioner has been recognized in any capacity as a "team" competing in the sport of gymnastics.

---

[4] 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.

[5] The Petitioner does not claim that the Beneficiary will perform as a coach as part of a franchise.

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 a gymnastics 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 demonstrate that it has been recognized in any capacity as a "team." For example, the record does not include materials that show the team's organization, performance, and results performing together as a competitive unit in team events. Going on record without supporting documentation 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 record does not establish that the petitioning gymnastics center is a "team," such that it participates in a team sport or that it is recognized in the industry as a sports team that performs together as a competitive unit.

In addition, the Petitioner also does not identify a foreign league or an association of 15 or more amateur teams of which it is a member. 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 provided materials reflecting its member status with On appeal, the Petitioner asserts that the "[Petitioner] is a member of (a member of .) These associations abide by the rules of the ." The Petitioner submits a screenshot from its website providing general information pertaining to boy's gymnastics in New Jersey, the and the The Petitioner also provides a chart showing six other gymnastic schools that are member clubs of According to the materials in the record, and are governing bodies of the sport of gymnastics at the U.S. and world levels, respectively; the record does not show that either or is a foreign league or association of 15 of more amateur sports teams. Based upon the above, 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. *See* Section 214(c)(4)(A)(i)(III) of the Act.

Next, section 214(c)(4)(A)(i)(III)(aa) of the Act requires that the foreign league or association of 15 or more amateur sports teams of which the Petitioner is a member represents the highest level of amateur performance of that sport in the relevant country. The Director determined that the Petitioner did not show the Beneficiary's eligibility under this subparagraph. Upon review, the Petitioner did not establish eligibility under section 214(c)(4)(A)(i)(III)(aa) of the Act. The Petitioner asserts that is the highest level of amateur performance in the USA (the relevant foreign country)." As previously stated, and are governing bodies of the sport of gymnastics at the U.S. and world levels, respectively. Serving in these roles, however, does not suggest that either or is a foreign league or associations of 15 of

more amateur teams that represents the highest level of amateur performance of that sport in the relevant country.

Further, the Petitioner must show that "participation" in the foreign 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 [redacted]" *See* section 214(c)(4)(A)(i)(III)(bb) of the Act. The petitioner does not address the provision set forth in subparagraphs (bb) and the record contains no evidence pertaining to this issue. For this additional reason, the appeal will be dismissed.

Lastly, it is required that a "significant number" of the individuals who play in the foreign league or association are "drafted by a major sports league or a minor league affiliate of such a sports league." *See* section 214(c)(4)(A)(i)(III)(cc). As previously discussed, the Petitioner has not shown that the Beneficiary will be employed 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. As an initial matter, the record does not demonstrate that there is a draft in the sport of gymnastics.[6] Assuming that there is a system through which amateur gymnasts "turn professional" that can be considered a "draft" for purposes of section 214(c)(4)(A)(i)(III)(cc) of the Act, the Petitioner has not established that a "significant number" of amateur gymnasts are drafted into the professional ranks. The Petitioner has acknowledged in its statement on appeal that gymnastics is a purely amateur sport," and that "there are not a 'significant [number] of the individuals who play in such league' who can be drafted by a major or minor sports league." For this additional reason, the appeal will be dismissed. For the above reasons, the Petitioner has not satisfied the requirements at section 214(c)(4)(A)(i)(III) of the Act.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary 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) of the Act. The Petitioner also did not satisfy the provisions set forth in subparagraphs (aa) through (cc) of that statute, all components of the COMPETE Act. Accordingly, the Director properly revoked the approval of the petition.

---

[6] The legislative history of the COMPETE Act of 2006 references baseball, hockey, basketball, and ice skating. In a statement introducing the COMPETE Act of 2006, Sen. Feinstein discussed the problems faced by Major League Baseball, the National Hockey League, the National Basketball Association, and Disney on Ice in recruiting foreign players, and indicated that this bill "allows minor league athletes--whether in baseball, basketball, hockey, or ice skating--who will perform competitively in the United States to apply for a P-1 temporary visa." 152 Cong. Rec. S8839 (daily ed. Aug. 3, 2006). Similarly, in passing the bill through the House of Representatives, Rep. Conyers explained that "through this legislation, [Congress] will allow sport franchises and companies to bring minor league baseball players, hockey players and ice skating performers into the country to perform or compete when they are needed." 152 Cong. Rec. H9197 (daily ed. Dec. 8, 2006).

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.

Cite as *Matter of I-G-C-, LLC*, ID# 13419 (AAO Sept. 18, 2015)