



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

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

MATTER OF R-S-T-A-

DATE: AUG. 30, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a tennis academy, seeks to classify the Beneficiary, a tennis player, as an internationally-recognized athlete. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(P)(i), 8 U.S.C. § 1101(a)(15)(P)(i). This P-1A classification makes visas available to certain high performing athletes and coaches. Sections 204(i)(2) and 214(c)(4)(A) of the Act, 8 U.S.C. §§ 1154(i)(2), 1184(c)(4)(A)(ii)(I).

The Director of the Vermont Service Center denied the petition based on two separate grounds, concluding that the Petitioner did not demonstrate: (1) that the Beneficiary would be coming to the United States to compete in athletic competition(s) which require participation of an athlete who has an international reputation;<sup>1</sup> and (2) that the Beneficiary seeks to enter the United States solely for the purpose of performing as an athlete with respect to a specific athletic competition.<sup>2</sup>

The matter is now before us on appeal. In its appeal, the Petitioner submits additional material and maintains that the regulations do not require any specific evidence to show that the events have a distinguished reputation and do not preclude athletes from providing instruction and related administrative duties.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The classification sought authorizes a foreign national having a foreign residence which he or she has no intention of abandoning to come to the United States temporarily to perform services for an employer or sponsor.<sup>3</sup> 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 foreign national who:

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<sup>1</sup> 8 C.F.R. § 214.2(p)(4)(ii).

<sup>2</sup> Section 214(c)(4)(A)(ii)(I) of the Act.

<sup>3</sup> Section 101(a)(15)(P)(i) of the Act.

- (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 [certain conditions apply, or]
- (IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production . . . .

Further, the foreign national 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.<sup>4</sup>

The implementing regulation at 8 C.F.R. § 214.2(p)(4)(i)(A)<sup>5</sup> 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.

For clarification, the regulation at 8 C.F.R. § 214.2(p)(3) defines the following terms:

*Competition, event, or performance* means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event, or performance, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. A group of related activities will also be considered an event. In the case of a P-2 petition, the event may be the duration of the reciprocal exchange agreement. In the case of a P-1 athlete, the event may be the duration of the alien's contract.

. . . .

*Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily

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<sup>4</sup> Section 214(c)(4)(A)(ii)(I) of the Act.

<sup>5</sup> See also 8 C.F.R. § 214.2(p)(1)(ii)(A)(I) (requiring that the Beneficiary will perform "at an internationally recognized level or performance").

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encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

With respect to the evidence required, the regulation at 8 C.F.R. § 214.2(p)(2)(ii) provides:

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

To be considered internationally recognized, the athlete must also meet certain evidentiary requirements, including, for those without a major league contract, two of seven criteria.<sup>6</sup>

Finally, we have held that, “truth is to be determined not by the quantity of evidence alone but by its quality.”<sup>7</sup> We explained that, pursuant to the preponderance of the evidence standard, we “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.”<sup>8</sup>

## II. ANALYSIS

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking the Beneficiary’s services as a P-1 athlete for a five-year period ending in June 2020. It described the nature of the event on the O and P Classification Supplement by explaining the Beneficiary “will compete in [REDACTED].” The Petitioner did not describe the duties to be performed on the supplement; rather, the Petitioner indicated: “See Attached.” The contract offers a full-time position as an “athlete” and the attached job description confirms that the Beneficiary is expected to compete in at least 15 professional tournaments annually. The updated itinerary in the record lists 23 potential tournaments in 2016.

The Director concluded that the Petitioner did not establish that the Beneficiary was coming to the United States solely to compete or that the tournaments in which she would compete were limited to

<sup>6</sup> 8 C.F.R. § 214.2(p)(4)(ii).

<sup>7</sup> *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

<sup>8</sup> *Id.*

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internationally recognized athletes. On appeal, the Petitioner first maintains that the Beneficiary will be competing in [REDACTED] events that determine the participants for the U.S. Open, and notes that the regulations do not specify the evidence required to show that the events are qualifying. Next, the Petitioner states that the regulatory definition of “competition, event, or performance” is expansive, and does not reflect that the drafters intended to exclude athletes who would also be providing instruction and administrative duties for the petitioning entity.

For the reasons discussed below, while we withdraw the Director’s concern that the Beneficiary will be engaged in services other than as an athlete, we find that the plain, unambiguous language of the regulations support the Director’s decision regarding the nature of the competitions. We also conclude that the Petitioner did not meet its burden of establishing that the Beneficiary herself is internationally recognized.

A. Purpose for Coming to the United States

The Petitioner listed the job title on the P-1 petition as “Athlete.” The job description attached to the offer letter requires that the Beneficiary (1) represent the Petitioner in all areas of professional life and tennis competition, (2) compete in at least 15 tournaments, (3) adhere to and remain committed to the Petitioner’s training methods and program, (4) maintain a rigorous fitness regime and adhere to the Petitioner’s nutritional plan, (5) be available to promote the Petitioner at professional and junior tournaments and related functions before and afterwards, (6) wear clothing and gear with the Petitioner’s logo, (7) attend other promotional events and bi-weekly “Pro” meetings, and (8) train or play at the Petitioner’s facilities. The offer letter specifies that the Beneficiary will be expected to work Monday through Friday with one half hour for lunch, although needs will vary. The Petitioner also supplied a cover letter, explaining that when not competing, the Beneficiary would train at the Petitioner’s facilities and describing the training regimen. The submitted materials do not suggest the Beneficiary would be performing any instruction or administrative services for the Petitioner. The Director issued a request for a more detailed itinerary. The Director’s notice did not question whether the Beneficiary would be working solely as an athlete. The Petitioner’s response included a new itinerary with 23 competitions in 2016, 14 of which it marked as definite.

The Director noted that the Petitioner’s website listed the Beneficiary as an admissions associate, and concluded that this information, in addition to the hours the job offer listed, indicated that she was not coming to the United States solely to perform as an athlete. On appeal, the Petitioner quotes the definition of “competition, event, or performance” and posits that those who drafted the regulation were not concerned about an athlete who might also perform instruction and administrative services.<sup>9</sup>

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<sup>9</sup> While this response appears to concede that the Beneficiary will be working as an instructor and admissions associate, these statements are from counsel and do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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There is no presumption that the Beneficiary's position at the time of filing is the same one the Petitioner is offering during the period for which classification is requested. The petition, the cover letter, the job offer, and the job description all exclusively discuss athletic competitions and the Beneficiary's own training, without any reference to instruction or admissions duties. The Beneficiary's duties prior to acquiring P-1 status and her proposed hours are an insufficient basis to demonstrate that the Beneficiary will be engaging in administrative or instruction services that are not otherwise specified in the contract/job description.<sup>10</sup> For these reasons, we find that the Beneficiary will be coming to the United States solely to perform as an athlete.

**B. Performing Services that Require Participation of an Athlete with an International Reputation**

The record contains an itinerary listing 23 tournaments for 2016. The [REDACTED] and [REDACTED] sponsor 19 of these events. The other competitions include the [REDACTED] event, the [REDACTED] the [REDACTED] and the [REDACTED]

According to the materials the Petitioner submitted about [REDACTED] its circuit "provides entry level tournaments enabling players to eventually reach the [REDACTED] tour." [REDACTED] a former professional player, clarifies that the [REDACTED] Circuit "serves as the primary gateway for up-and-coming players to compete on the [REDACTED] Tour, the most elite level of women's tennis in the world." [REDACTED] explains that the [REDACTED] first admits those with the highest [REDACTED] rankings, then those with the highest national rankings and concludes that the Beneficiary is eligible to compete in [REDACTED] events based on her national ranking as a result of her achievements in [REDACTED] events.

Relying on the information from [REDACTED] and the [REDACTED] website, the Director concluded that the Beneficiary would be competing in entry level tournaments designed to afford players the opportunity to earn points toward an international ranking and entry into [REDACTED] tournaments. On appeal, the Petitioner maintains that the statute and regulation only require that the Beneficiary be internationally recognized and that the events have a distinguished reputation. The Petitioner notes that the regulation does not list any evidentiary examples to show the level of the competition. Next, the Petitioner describes how the Beneficiary will compete in [REDACTED] sanctioned events, which "will select participants for the [REDACTED] Finally, the Petitioner affirms that, based on prior results at this level of competition, the Beneficiary was "ranked first in the [REDACTED] as well as the [REDACTED] in December 20145 [sic]."

First, while the regulation does characterize the level of the competition as having "a distinguished reputation,"<sup>11</sup> it also expressly requires that the Beneficiary "be coming to the United States to

<sup>10</sup> If the Director did not find the contract credible based on those factors, the Director should have afforded the Petitioner an opportunity to respond to those concerns, but did not do so.

<sup>11</sup> 8 C.F.R. § 214.2(p)(4)(ii)(A).

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perform services which require an internationally recognized athlete.”<sup>12</sup> The absence of specific examples in the regulation that might show such a condition does not render the regulation unenforceable. It remains the Petitioner’s burden to meet this requirement, for example, through evidence that the tournaments require international rankings with limited, merit-based exceptions. The Petitioner has not offered such information for each competition where she intends to compete. While the Beneficiary’s past performances in mixed doubles may qualify her for some competitions that are limited to elite players, many of the competitions on the itinerary are [REDACTED] tournaments that are entry-level events. For these reasons, the Petitioner has not established that the Beneficiary is coming to the United States to perform services that require an internationally recognized athlete.

### C. The Beneficiary’s International Recognition

As discussed above, while not addressed by the Director, we will also consider whether the Petitioner has shown that the Beneficiary is an internationally recognized athlete as defined in the Act and regulations.<sup>13</sup> The Petitioner can establish that the Beneficiary is internationally recognized by submitting evidence satisfying at least two out of the seven evidentiary requirements.<sup>14</sup>

The Petitioner has satisfied only one of the evidentiary criteria. Specifically, she has participated for a U.S. college or university in intercollegiate competition through leading her college team to [REDACTED] championships.<sup>15</sup> The Petitioner does not affirm, and the record does not show, that the Beneficiary participated with a major United States sports league or a national team.<sup>16</sup> It also did not offer a written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how the Beneficiary is internationally recognized.<sup>17</sup> We will consider the remaining criteria below.

*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.*<sup>18</sup>

The Petitioner did not supply a written statement from a member of the sports media, but did offer several letters from other experienced members of the tennis industry. These letters, however, do not detail how the Beneficiary is internationally recognized. For example, [REDACTED] the Petitioner’s head coach, praises the Beneficiary’s slice ball and references the following accomplishments: two time [REDACTED] champion, [REDACTED] champion, and [REDACTED] champion. Finally, he affirms that the Beneficiary is “currently ranked [REDACTED] in the [REDACTED].” The record does not support this characterization. Rather, the Petitioner provided the [REDACTED] listing the

<sup>12</sup> 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A).

<sup>13</sup> See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

<sup>14</sup> 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).

<sup>15</sup> 8 C.F.R. §§ 214.2(p)(4)(ii)(B)(2)(iii).

<sup>16</sup> 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i), (ii).

<sup>17</sup> 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv).

<sup>18</sup> 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v).

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Beneficiary and her partner (as well as another pair) as having a rank of one. The record does not confirm that a ranking for an open seeding equates to a national ranking. Regardless, [REDACTED] does not explain how these accomplishments in the United States, most of which were not at the national level, garnered the Beneficiary international recognition.

[REDACTED] the coach of the Beneficiary's mixed doubles partner, describes the Beneficiary's collegiate record and noted "she was recognized at the [REDACTED] for her exceptional achievements in mixed doubles." The [REDACTED] event was where the Beneficiary won an [REDACTED] competition. [REDACTED] owner and director of [REDACTED] offers similar information. He also states that the Beneficiary "earned the [REDACTED] award) at the [REDACTED] While the record includes a captioned photograph of the Beneficiary and her partner receiving an award, this item has little evidentiary value as to the identity of the award or its significance. The record contains no media coverage of the event. As with [REDACTED] letter, neither [REDACTED] nor [REDACTED] explains how these accomplishments reflect the Beneficiary's international recognition.

The remaining letters contain little information relating to the Beneficiary's recognition. [REDACTED] references the Beneficiary's resume and character without detailing her international recognition. [REDACTED] head women's coach at the [REDACTED] discusses the Beneficiary's accomplishments there and her promise post-graduation. [REDACTED] a professional tennis coach in Germany, describes the Beneficiary's junior achievements in Germany and internationally. The record does not contain sufficient documentation to corroborate these results. The Petitioner offered a single foreign language article but did not attach a translation as required.<sup>19</sup> Without more specificity as to how the Beneficiary has achieved international recognition, these letters do not serve to meet this criterion.

*Evidence that the individual or team is ranked if the sport has international rankings.*<sup>20</sup>

The Beneficiary offered her number one [REDACTED] ranking and a seeding list for a national competition specifying her rank as [REDACTED] affirms that the Beneficiary's highest ranking during international competition was [REDACTED] in 2007 (Girls [REDACTED] He does not elucidate whether this ranking was national or international and the record does not contain an official international ranking document for 2007.<sup>21</sup> For these reasons, the Petitioner has not established that the Beneficiary meets this criterion.

<sup>19</sup> See 8 C.F.R. § 103.2(b)(3) (requiring full translations certified as complete and accurate for all foreign language documents).

<sup>20</sup> 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi).

<sup>21</sup> While the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vi) does not exclude a junior level ranking, the Petitioner must document the Beneficiary's official ranking at that level in order to meet this criterion.

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*Evidence that the alien or team has received a significant honor or award in the sport.*<sup>22</sup>

While at the [REDACTED] the Beneficiary was recognized as [REDACTED]. She also led her team to win the [REDACTED]. As noted above, the Beneficiary also won sectional and regional events post-graduation. The record does not contain evidence pertaining to the significance of these honors or awards, which appear to be primarily local to her school or a region. As discussed above, the photograph relating to the national indoor championship has little evidentiary value as to the award itself or its significance. For these reasons, the Petitioner has not satisfied this criterion.

For the above reasons, the record reflects that the Beneficiary is a talented tennis player who performed well in college and has notable achievements as a mixed doubles player, but the Petitioner has not met its burden of establishing that she is internationally recognized.

### III. CONCLUSION

In summary, while we withdraw the Director's concern that the Beneficiary would not be coming to the United States solely to perform as an athlete, the record does not confirm that the Beneficiary would be competing in events that require the services of internationally recognized athletes and that she is internationally recognized.

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.

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<sup>22</sup> 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(vii).