



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

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

MATTER OF C-D-M-, INC.

DATE: FEB. 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a business that conducts tennis club management services for resorts, hotels, and private tennis clubs, seeks to classify the Beneficiary as a High Performance 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 denied the petition. We rejected a subsequent appeal and denied the following motion. While denying the Petitioner's motion, however, we reopened the appeal on our own motion. Accordingly, the matter is now before us on appeal. The appeal will be dismissed.

The Petitioner requests that the Beneficiary be granted P-1 status so that he may perform as a tennis coach for a period of five years pursuant to the COMPETE Act of 2006, codified at section 214(c)(4)(A)(i)(III) of the Act.¹ The Director denied the petition, concluding that the Petitioner did not establish the Beneficiary's eligibility under section 214(c)(4)(A)(i)(III) of the Act. On appeal, the Petitioner asserts that the Beneficiary is eligible for the classification sought and submits a brief and additional evidence. Upon *de novo* review, we find that the Petitioner has not demonstrated the Beneficiary's eligibility.

On May 5, 2015, we rejected the Petitioner's appeal as improperly filed because the Form I-290B, Notice of Appeal or Motion, was not accompanied by a new and properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. In our decision, we noted that we had not received a response to our facsimile request for a new and properly executed Form G-28. On December 11, 2015, upon receipt of a new and properly executed Form G-28 and an affirmation that counsel had not, in fact, received our facsimile request, we reopened the Petitioner's Form I-290B appeal on our own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for the purpose of entering a new decision on the merits.² As required by that regulation, the Petitioner was permitted a period of 30 days in which to provide a supplemental brief. The Petitioner has not submitted a supplemental brief; however, the record contains the original appellate brief.

¹ In 2006 Congress passed Public Law 109-463, 120 Stat. 3477 (Dec. 22, 2006), "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.

² Also on that date, we denied the Petitioner's motion to reopen for lack of jurisdiction.

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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)(III) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i)(III), provides that section 101(a)(15)(P)(i)(a) of the Act applies to a beneficiary who:

[P]erforms 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

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.”

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 14, 2014. In the O and P Classification Supplement to Form I-129 the Petitioner explained the nature of the Beneficiary’s events as “coaching players who compete in [REDACTED] and [REDACTED] events. Players compete both in team competitions and in competitions where they compete individually.” The Petitioner characterized the Beneficiary’s duties as “planning, organizing, and conducting practice sessions, identifying players with potential; studying and analyzing opponents, [and] designing professional coaching and conditioning plans.”

In a letter submitted with the initial petition, the Petitioner confirmed that the Beneficiary will serve the Petitioner as a high-performance tennis coach for its most successful amateur players, and that he would be coming to “perform as a coach for our teams which are some of the many teams around the world whose coaches and players all participate in an international tennis league governed by a network of national and international governing bodies.” In the same letter, the Petitioner explained that it “runs a number of tennis academies with programs to meet the needs of top-level junior,

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amateur, and semi-professional tennis players.” The Petitioner stated that these academies are located at various clubs within the United States and that the Beneficiary will be “based in [the Petitioner’s] headquarters in [REDACTED] TX but will travel to other clubs and to tournaments with various academy players on an as-needed basis. He will start at the [REDACTED] Florida.”

The Petitioner explained that the Petitioner’s “academy teams” at various clubs include players in three age groups (14 and under, 16 and under and 18 and under) who “train on a regular basis both for individual and Academy team competitions,” representing the academies in amateur and semi-professional competitions in the United States and globally. As discussed by the Petitioner, the competitions “give young tennis players the opportunity to experience international competition and the unique atmosphere of playing in a team for their country.” The Petitioner maintained: “The COMPETE Act does not distinguish between teams that have players competing individually and teams whose players compete in team competitions.” The Petitioner acknowledged: “Entries into these tournaments are primarily based on the players’ performances and results in previously played tournaments,” resulting in a week-to-week determination of eligible players. The Petitioner also addressed the draft and NCAA ineligibility requirements.

In support of the petition, the Petitioner submitted, *inter alia*, player records, a copy of the 2012-2013 NCAA Division 1 Manual, Bylaw 12, and overviews for the [REDACTED] [REDACTED], and [REDACTED]. The Petitioner also offered the [REDACTED] Calendar of Events and U.S. tournament schedule, which, according to the Petitioner, represents the “individual competitions in which the Academy Teams members are competing.” In response to the Director’s request for evidence (RFE), the Petitioner supplied copies of exhibits previously filed as part of the record and elaborated on the “draft” process for the sport of tennis. The Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary will coach as part of a team that is a member of a foreign league or association or that it represents the highest level of amateur performance. The Petitioner included a brief on appeal, asserting that it has documented that the Beneficiary will coach as part of a team that is a member of a foreign league or association, that participation in [REDACTED] tennis events may render a player ineligible to compete in the NCAA, and that a “significant number” of amateur tennis players are drafted into the professional leagues. In support of the appeal, the Petitioner provided, *inter alia*, the [REDACTED] Competitions Regulations and additional information describing the [REDACTED] Circuits.

III. ANALYSIS

The Petitioner asserts that the Beneficiary qualifies as a coach under Section 214(c)(4)(A)(i)(III) of the Act. Upon review, the Petitioner did not establish that it satisfies the team requirement 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.

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A. As Part of a Team

The first 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.”³ See § 214(c)(4)(i)(III) of the Act. Upon review, the evidence supports the Director’s conclusion that the Petitioner has not established eligibility under this threshold element, as the Petitioner is not a “team” as defined for the P-1 classification.

The regulation at 8 C.F.R. § 214.2(p)(3) defines a “team” as “two or more persons organized to perform together as a competitive unit in a competitive event.” Here, the Petitioner is a tennis management company that runs tennis academies located at various clubs throughout the United States. The Petitioner asserts that the Beneficiary will coach its “Academy Team” based at the [REDACTED] Florida. However, the Petitioner has not established that the “Academy Team” the Beneficiary will be coaching, as well as the Petitioner’s other “academy teams,” meet the definition of a “team” pursuant to 8 C.F.R. § 214.2(p)(3). The Petitioner has not provided any detailed information about any of its “academy teams,” such as the team’s name, the names of all the team’s players, their positions, results as a competitive unit, or an explanation of the team’s organization and how its players perform together as a competitive unit in competitive events. While the Petitioner identified [REDACTED] and [REDACTED] as some of its most successful amateur players based at the [REDACTED], the Petitioner did not offer any further information about which specific “team” they play for, their positions on the team, or any explanation of how they are organized to perform together as a competitive unit. Specifically, the player records for [REDACTED] [REDACTED] and [REDACTED] list their individual accomplishments and make no reference to a “team”; these records only reference the Petitioner’s [REDACTED] as the venue for some of the competitions in which those athletes competed.

In addition, the record does not contain any evidence of team competitions in which players represent a certain tennis academy and compete with other players representing that or another academy. Rather, the record reflects that the sport of tennis is primarily an individual sport, in which players compete with each other in their individual capacities (or in doubles pairs) and do not represent “academy teams.” Similar to the player records, the background information on the [REDACTED] highlights successful individual tennis players, but makes no mention of their “academy teams.” Such information does not support the Petitioner’s assertion that “team competitions” in which players represent their respective tennis academies are ubiquitous.

The evidence of record establishes there are team competitions in the sport of tennis, such as the [REDACTED] the [REDACTED] the [REDACTED] and the [REDACTED]. However, the record reveals that in these team competitions, players represent their respective countries, not their associated tennis academies. In particular, the [REDACTED] Competitions Regulations reflect

³ The Petitioner does not assert that the Beneficiary will perform as a coach as part of a franchise.

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that each player invited to the international tournaments represents a particular country or nation, and each player is nominated to take part in the international team competitions by his/her nation's National Association. The Petitioner does not indicate that the Beneficiary will be coaching any teams on this type of national level.

In light of the above, even assuming that [REDACTED] is a "league" as the Petitioner asserts on appeal, the record does not establish that the Beneficiary will be performing as a coach as part of a team that is a member of [REDACTED] as required at section 214(c)(4)(A)(i)(III) of the Act. There are no other provisions within this section that allow for a coach to be eligible for P-1 classification. For this reason, the petition may not be approved.

B. Participation in the League Renders Players Ineligible to Play under NCAA Rules

In addition, the Petitioner did not establish eligibility under section 214(c)(4)(A)(i)(III)(bb) of the Act. This provision requires the Petitioner to show that participation in the foreign league or association that is the highest level of amateur performance in the sport "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 [NCAA]." The NCAA Bylaws provide that only an "*amateur* student-athlete is eligible for intercollegiate athletics participation in a particular sport (emphasis added)." The NCAA Bylaws list the circumstances in which a student-athlete can lose amateur status, including if he/she uses her athletics skill to receive pay in any form in that sport, or receives prize money beyond any actual and necessary expenses.

The Petitioner indicated that the equivalent of the foreign league or association that is the highest level of amateur performance in the sport of tennis is the [REDACTED] Circuit and that participation in the [REDACTED] Circuit "*may* render a player ineligible to compete in the NCAA." (Emphasis added.) Specifically, the Petitioner explained that any player who "wins" an [REDACTED] tournament with prize money, or accepts payment beyond actual and necessary expenses or other forms of compensation for playing, will be rendered ineligible to play in the NCAA.

A player in the [REDACTED] Junior Circuit, however, is not rendered ineligible to play in the NCAA merely by "participating" in the league, as required by the plain language of section 214(c)(4)(A)(i)(III)(bb) of the Act. Although a player in the [REDACTED] Circuit *may* become ineligible to play in the NCAA if they win an [REDACTED] or [REDACTED] tournament with prize money or otherwise lose their amateur status by violating the rules set forth in the NCAA Bylaws, not all players who participate in the [REDACTED] Circuit are ineligible under NCAA rules; only the subset of players who lose their amateur status are ineligible. Therefore, the Petitioner has not established eligibility under section 214(c)(4)(A)(i)(III)(bb) of the Act. For this additional reason, the petition may not be approved.

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C. A Significant Number of League Players Are Drafted by a Major League or a Minor League Affiliate

Beyond the decision of the Director, the Petitioner also did not establish eligibility under section 214(c)(4)(A)(i)(III)(cc) of the Act. This provision requires the Petitioner to show that a significant number of the individuals who play in the foreign league or association that is the highest level of amateur performance in the sport, i.e., the ██████████ Circuit, are “drafted by a major sports league or a minor league affiliate of such a sports league.”

Upon review, the Petitioner did not demonstrate eligibility under section 214(c)(4)(A)(i)(III)(cc) of the Act. As an initial matter, we note that, unlike Major League Baseball, the National Hockey League, or the National Basketball Association, the record does not corroborate that there is a draft in the sport of tennis.⁴ The Petitioner has conceded that amateur tennis players are not “drafted into professional tennis circuits *per se*.” Rather, as the Petitioner explained, amateur tennis players “turn professional” by accumulating enough points and high-rankings to qualify for and be invited into the professional circuit. The system through which amateur tennis players “turn professional” is not equivalent to the professional-league draft system through which professional sports teams select eligible players. The lack of a draft *per se* in the sport of tennis precludes the Petitioner from establishing eligibility under the plain language of section 214(c)(4)(A)(i)(III)(cc).

Nevertheless, assuming for the sake of argument that the system through which amateur tennis players “turn professional” can be considered a “draft” for purposes of section 214(c)(4)(A)(i)(III)(cc), the Petitioner has not shown that a significant number of amateur tennis players are drafted into the professional leagues. The Petitioner has not provided any information regarding the total number of amateur tennis players who are drafted into the professional leagues. 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)). The Petitioner did not establish eligibility under section 214(c)(4)(A)(i)(III) (cc) of the Act. For this additional reason, the petition may not be approved.

⁴ The legislative history of the COMPETE Act of 2006 makes clear that the amendment was geared towards specific sports: 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 stated 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 stated 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).

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary is coming to perform as a coach “as part of a team” pursuant to section 214(c)(4)(A)(i)(III) of the Act. The Petitioner also did not satisfy the provisions set forth in subparagraphs (bb) through (cc) of that statute, all components of the COMPETE Act.

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. § 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-D-M-, Inc.*, ID# 11695 (AAO Feb. 25, 2016)