U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-T-S- LLC

DATE: SEPT. 30, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a sports instruction and training facility, 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, denied the petition. 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 coach a youth soccer team for a period of four years and two months 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 because the Beneficiary would not be performing as a coach for a U.S. team that is a member of a foreign league. On appeal, the Petitioner submits supplemental briefs and additional documentary evidence. 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);

[1] In 2006 Congress passed Public Law 109-463, 120 Stat. 3477 (December 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.

(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 . . . .

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on September 16, 2014, which the Director denied on January 22, 2015. The Petitioner's appeal includes an initial appeal brief, the Petitioner's "corrective" appeal brief, and additional evidence.

The record shows that the Beneficiary began coaching youth soccer in the Netherlands, his native country, in 2011, before coming to the United States as an H-2B temporary nonagricultural worker in February 2014 to work for In the O and P Classification Supplement to Form I-129, the Petitioner noted that the Beneficiary's duties are to coach soccer competitions in the for club teams competing in that Division and in seasonal league playoffs. The Petitioner's job offer letter dated September 11, 2014, confirms this information. The Petitioner also provided its coaching contract with the signed by the parties on August 29, 2014, explaining its relationship with that academy, which is based in New Jersey. In response to the Director's November 7, 2014, notice of intent to deny (NOID), the Petitioner included an addendum to its coaching contract with the signed by the parties on December 8, 2014, clarifying that the teams to be coached by the Beneficiary are "the boys and, as that team will shortly age up and is anticipated to compete in the , the boys team."

The Petitioner submitted internet materials containing general information about its soccer program, the and [2]

III. ANALYSIS

1. Foreign League

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."[3] *See* § 214(c)(4)(i)(III) of the Act. Upon review, the Petitioner did not establish that it satisfies the foreign league or association 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

In the Petitioner's initial cover letter dated September 15, 2014, it affirmed that "the qualifying league" is the within the and emphasized that several Canadian teams play in the According to the record, the is an amateur soccer league that operates in six regional divisions across North America, encompassing 14 age groups ranging from to boys and girls age groups, with 2,421 games scheduled for the 2015 season among more than 485 teams, including at least three Canadian soccer teams. The materials show that the league's season operates regionally from April to October with eight to 16 games per season, culminating with the held annually in December in Florida, where the is headquartered. The records of the Florida Department of State reflect that is a limited liability company, filed in Georgia, authorized to conduct business and conducting business in the State of Florida, with a principal place of business in The exhibits also reveal that the is a member of the commonly referred to as the governing body of the sport of soccer in the United States, and that the is a member of the governing body of the sport of soccer at the world level.

The Director's NOID requested evidence to establish 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, pursuant to section 214(c)(4)(A)(i)(III) of the Act. In response, the Petitioner asserted that the legislative history of the COMPETE Act "makes it clear that a predominantly U.S.-based league with foreign teams is intended to meet the league eligibility requirements of the COMPETE Act." More specifically, the Petitioner affirmed that the "Congressional discussion . . . makes it clear that a sports league should be considered a 'foreign league' for COMPETE Act purposes if its teams are predominantly based in the U.S. as long as any foreign teams also compete in the league, and even where foreign teams are few and are vastly outnumbered by the U.S. - based teams." The Petitioner therefore concluded that "the

[2] With regard to the information about from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

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

is a COMPETE Act 'foreign league' by virtue of the fact that several Canadian teams compete in it." As support for this proposition, the Petitioner submitted floor statements contained in the congressional record at the time the COMPETE Act was introduced. The Director subsequently denied the petition, finding that the Petitioner did not show that the U.S. team for which the Beneficiary will coach is a member of a foreign league or association of 15 or more amateur sports teams. The Director found that the evidence of record established that is based in the United States, and the fact that there are individual Canadian teams playing in the does not change the fact that is not a foreign league or association.

On appeal, the Petitioner reaffirms its assertion that the inclusion of foreign teams in the makes the a foreign league and, more specifically, notes that "USCIS has never promulgated meaningful guidance concerning what constitutes a level of foreignness sufficient to satisfy the 'foreign league or association' requirement." The term "foreign" is not defined by the statute. USCIS has not published any regulations governing the application of the COMPETE Act of 2006 other than to suggest that revised regulations will follow. *See* USCIS Policy Memorandum HQ 70/6.2.19, *"Creating Opportunities for Minor League Professional, Entertainers, and Teams through Legal Entry Act of 2006 (COMPETE Act of 2006)"- Admission as P-1 Nonimmigrant (December 28, 2006)*, http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/competeact122806.pdf.

Although the Petitioner explained that it is relying on congressional intent, statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984). We are expected to give the words used in the statute their ordinary meaning. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). The Petitioner's assertion that the term "foreign league" includes a league "based in the U.S. as long as any foreign teams also compete in the league," is contrary to the ordinary meaning of the word "foreign." *See* www.merrriam-webster.com, accessed November 2, 2015, (defining "foreign" as "located outside a particular place or country and especially outside your own country.")

Even considering the congressional record, it is not determinative with respect to the definition of "foreign league." In her introductory statements, Senator Dianne Feinstein described the problems faced by Major League Baseball, the National Hockey League, the National Basketball Association, and Disney on Ice in recruiting foreign players and performers, 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). Contrary to the Petitioner's assertions, the floor statements referenced by the Petitioner do not address the foreign league provisions of the COMPETE Act, which also contains a separate provision for professional athletes, including those playing in the minor leagues. § 204(i)(2) of the Act. Accordingly, the discussion of U.S. major and minor league teams in the congressional record does not necessarily apply to the "foreign league" provision. While the congressional record does not provide any guidance as to the meaning of the term "foreign league,"

Senator Susan Collins notes that the MAINEiacs, "a Canadian junior hockey league team that plays its games in Lewiston," Maine, would benefit from the COMPETE Act. From her description, this team meets the definition of a U.S. team that is a member of a foreign league.

Additionally, the Petitioner supplies its attorney's affidavit affirming that USCIS has inconsistently interpreted the statutory definition of "foreign league," because it previously approved 11 petitions for P-1 status which counsel filed on behalf of other similarly situated beneficiaries, namely, beneficiaries who would coach teams playing in the [redacted] league. The prior approvals do not preclude USCIS from denying a subsequent petition based on reassessment of the Petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision significant deference. On appeal, the Petitioner asserts that these cases involved different facts and classifications. Regardless, they are persuasive authority for the proposition that USCIS is not bound by prior approvals.

Moreover, to be inconsistent and actionable, it is well established that an agency "interpretation" that serves to modify a previous interpretation must be in the form of an actual precedent decision, regulation, or other published rulemaking. *See, e.g., SBC Inc. v. Federal Communications Comm'n*, 414 F.3d 486, 498 (3rd Cir., 2005) (citing *Paralyzed Veterans of America v. D.C. Arena, L.P.*, 117 F.3d 579, 586 (D.C.Cir. 1997)). Rulemaking by "practice" does not exist. Only when the agency specifically designates a decision as precedent can it bind future decisions. 8 C.F.R. § 103.3(c). Unpublished, non-binding service center decisions, such as those the Petitioner references, would 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.Hawai'i, 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001).

In summary, the plain language of the statute requires that the Beneficiary be coming to coach for a team that is a member of a foreign league, which by definition is one based outside the United States rather than a U.S. league that includes some foreign teams. Accordingly, the Petitioner has not established that the Beneficiary will be employed by the Petitioner 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* § 214(c)(4)(A)(i)(III) of the Act. The appeal will be dismissed on this basis.

2. Additional Issues

Beyond the decision of the Director, the Petitioner has also not established eligibility under the provisions set forth in subparagraphs (aa) through (cc) of the statute. 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

"represents the highest level of amateur performance of that sport in the relevant country."[4] Assuming arguendo that is a foreign league, the Petitioner has not shown that it "represents the highest level of amateur performance of that sport in the relevant country." We acknowledge that the Petitioner initially submitted a letter from Registrar, the stating that the foreign teams competing in the compete at the highest amateur level of soccer in Canada. While may represent the highest level of play for youth that age, the record does not confirm that the league constitutes the highest amateur level of soccer in the United States. The Petitioner provided 27 specific examples of amateur players from the who have succeeded in the professional leagues. The biographical information pertaining to three of those players, and indicated that they played college soccer before advancing to the professional leagues. Additionally, according to information on the website, it operates an and hosts annual which showcase players' skills in front of college coaches seeking to scout prospects for their programs. These materials reveal that college soccer would be a higher level of amateur soccer than the Moreover, the fact that individual teams playing in the represent the highest amateur level of soccer in the foreign country does not satisfy the plain language of the provisions of section 214(c)(4)(A)(i)(III)(aa) of the Act.

Next, section 214(c)(4)(A)(i)(III)(bb) of the Act requires the Petitioner to establish 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 Petitioner notes that the NCAA Bylaws list the circumstances in which an NCAA student-athlete can be ineligible for intercollegiate soccer competition, including if he or she participates during the academic year as a member of any outside soccer team in any non-collegiate, amateur competition, with some exceptions. *See* NCAA 2013-2014 Division I Manual Bylaws, Article 17 sections 17.19.8.1.1, 17.19.8.1.1.1 and 17.19.8.1.1.2, 17.19.8.1.2. Assuming arguendo that the Petitioner had shown that the is a foreign league, and that it represents the highest level of amateur performance of that sport in the relevant country, a player in the 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, but only by participating in the league during the student-athlete's academic year. As noted by the Director in the NOID, since this is a youth soccer league, it is highly unlikely that players in the would be college athletes and, thus, potentially impacted by this narrow provision. Such a rare event does not demonstrate eligibility under section 214(c)(4)(A)(i)(III)(bb) of the Act.

[4] We conduct *de novo* review of all issues involving the application of law, policy, and discretion to the facts of a case. *See* 5 U.S.C. § 557(b) (2012) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").

Lastly, section 214(c)(4)(A)(i)(III)(cc) of the Act requires the Petitioner to establish that a "significant number" of the individuals who play in a qualifying foreign league are "drafted by a major sports league or a minor league affiliate of such a sports league." Assuming argucndo that the other eligibility requirements were met, the Petitioner has not shown that a significant number of amateur soccer players from the [redacted] are drafted by a major sports league or a minor league affiliate of a major sports league. The Petitioner has included screenshots from the websites of the youth teams of the major league soccer teams [redacted] and [redacted] pertaining to their use of [redacted] team affiliates as farm teams. In the case of the [redacted] teams are at the base of the pyramid, followed by their pre-academy and elite teams and then their academy. As previously noted, the Petitioner provided 27 specific examples of amateur players who have succeeded in the professional leagues. The Petitioner's submissions indicate that two of those players, [redacted] and [redacted] were drafted from the [redacted] into a major sports league or minor league affiliate of such a league. The Petitioner has not offered any information or evidence estimating the total number of amateur soccer players who were drafted from the [redacted] into a major sports league or minor league affiliate of such a league to confirm that the number is "significant." In summary, the Petitioner has not established eligibility under 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.

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." § 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 Petitioner has not met its 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 D-T-S- LLC*, ID# 73133 (AAO Sept. 30, 2016)