U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-T-C

DATE: FEB. 19, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a sports agent, seeks to classify the Beneficiary, a road race runner, as an internationally recognized athlete. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(P)(i)(a), 8 U.S.C. § 1101(a)(15)(P)(i)(a). This P-1 classification makes nonimmigrant visas available to certain high performing athletes and coaches. *See* Section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). The Petitioner currently represents the Beneficiary and seeks to extend his P-1A status for five years.

The Director of the Vermont Service Center denied the petition based on several grounds, concluding that the Petitioner: (1) did not show that the Beneficiary is coming to the United States solely to participate, as an athlete, in an athletic competition that has a distinguished reputation and requires participation of an internationally recognized athlete, pursuant to 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A); *see also* Section 214(c)(4)(A)(i)(I), (ii)(I) of the Act; (2) did not demonstrate that the Beneficiary, as an individual athlete, has achieved international recognition in his sport based on his own reputation as defined at 8 C.F.R. § 214.2(p)(3); and (3) did not submit a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D).

The matter is now before us on appeal. In its appeal, the Petitioner maintains that the Director erred in determining that the Beneficiary is not eligible for the requested classification.

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

I. LAW

As relevant here, section 101(a)(15)(P)(i) of the Act establishes P-1 classification for an individual 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. Section 214(c)(4)(A)(i) of the Act provides, in pertinent part, that section 101(a)(15)(P)(i)(a) of the Act applies to an individual who:

> (I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance . . . .

In addition, section 214(c)(4)(A)(ii)(I) of the Act provides that 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; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(1).

The implementing 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.

Department of Homeland Security (DHS) regulations define "internationally recognized" as "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." 8 C.F.R. § 214.2(p)(3).

Next, DHS regulations set forth evidentiary criteria for establishing that a beneficiary has achieved international recognition in the sport based on his or her reputation, including documentation of at least two of seven categories of evidence. 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*i*)-(*vii*). When a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows that the beneficiary has a high level of achievement in his or her 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.

II. ANALYSIS

The Petitioner seeks to extend the Beneficiary's P-1 status as an internationally recognized athlete, so that he may compete as a professional road race runner in various races in the United States for a period of four years. The record shows that the Beneficiary has been competing for the Petitioner in road racing events in the United States since 2008. In support of the petition, the Petitioner submitted its signed contract with him and, in lieu of an itinerary, a racing schedule for the requested period, with dates and venues of annual competitions. After careful review of the entire record, 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.

A. Consultation from an Appropriate Labor Organization

The first issue we address is whether the Petitioner submitted a written consultation from a labor organization, as required by 8 C.F.R. § 214.2(p)(2)(ii)(D). The Petitioner submitted a "no objection" letter from Max Siegel, CEO of USA Track & Field (USATF) the national governing body for track and field in the United States. The Director determined that the consultation "does not provide evidence that the [B]eneficiary is internationally recognized for his achievements, and that the services to be

performed are appropriate for an internationally recognized athlete." Upon review of the record, we withdraw the Director's determination.

Pursuant to 8 C.F.R. § 214.2(p)(7)(i)(A), consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved. Pursuant to the regulation at 8 CFR §214.2(p)(7)(ii), the consultation requirements for P-1 athletes require consultation with a labor organization that has expertise in the beneficiary's field, which must evaluate and/or describe the beneficiary's ability and achievements in that field, comment on whether the beneficiary is internationally recognized, and state whether the services to be performed are appropriate to an internationally recognized athlete. Alternatively, in lieu of such advisory opinion letter, a labor organization may respond with a "no objection" letter. Upon review, we find the "no objection" letter from the USATF satisfied the labor consultation requirement set forth at 8 C.F.R. § 214.2(p)(2)(ii)(D).

B. Coming Solely to Participate in Athletic Competition that Requires Participation of an Internationally Recognized Athlete

The next issue addressed by the Director is whether the record illustrates that the Beneficiary is entering the United States temporarily and solely to perform in specific athletic competitions that have "a distinguished reputation" and require "participation of an athlete [who] . . . has an international reputation." 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A); *see also* Section 214(c)(4)(A)(i)(I), (ii)(I) of the Act.

On appeal, although the Petitioner maintains that the Beneficiary is an athlete of "international recognition" it does not provide sufficient evidence establishing that he will be competing only in qualifying events while in the United States. According to the racing schedule submitted, the Beneficiary's competitions in the United States will include the following races:

- [redacted] (New York)
- [redacted] (New York)
- [redacted] (New York)
- [redacted] (Massachusetts)
- [redacted] (New Jersey)
- [redacted] (New Jersey)
- [redacted] (New York)
- [redacted] (Minnesota)
- [redacted] (New York)
- [redacted] (Connecticut)
- [redacted] (New York)
- [redacted] (Massachusetts)
- [redacted] (Connecticut)
- [redacted] (New York)
- [redacted] (New York)

The record includes information on some of the races, such as the [redacted] and the [redacted] but it lacks documentation relating to other events in which the Beneficiary plans to participate, such as the [redacted] and the [redacted] Within its RFE response, the Petitioner explained that the Beneficiary's race schedule is "a yearly schedule that I have developed for our full time distance runners" composed of "long distance events offering prize money, and tailored [for] each athlete on the team." On appeal, the Petitioner states that "every professional prize money race in the U.S., North America, and worldwide are open to runners of all abilities. The mass participation is what allows the races to offer prize money." The Petitioner provides no further evidence pertaining to the specified events.

We will not address here the Petitioner's argument that there are not any running competitions that require an athlete with an international reputation. The regulations require us to examine the competitions in which the Beneficiary will compete. At issue is not his competitive successes or his qualifications as a road race runner. Rather, to demonstrate the Petitioner's eligibility to classify the Beneficiary as a P-1 internationally recognized athlete, it must establish that he will be participating in athletic competition which has a distinguished reputation and which requires participation of an athlete who has an international reputation. 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A); *see also* Section 214(c)(4)(A)(i)(I), (ii)(I) of the Act. The Petitioner has not made such a showing. [1]

C. The Beneficiary's International Recognition as an Individual Athlete

The final issue addressed by the Director is whether the Petitioner has shown that the Beneficiary is an internationally recognized athlete as defined in the Act and regulations. The Petitioner can establish that the Beneficiary is internationally recognized by submitting evidence satisfying at least two of seven evidentiary criteria listed at 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*). The Director determined that the Petitioner did not satisfy any of the evidentiary criteria. The Petitioner does not specifically address the regulatory criteria on appeal. In an accompanying letter, however, the Beneficiary discusses evidence and achievements relating to three criteria. Upon review of all of the evidence, we conclude that it does not establish that the Petitioner meets the requirements of at least two criteria.

[1] The Director also concluded that the Beneficiary may be coaching or training other athletes, in addition to competing. Section 214(c)(4)(A) of the Act specifically states that section 101(a)(15)(P)(i)(a) refers to an alien who "performs as an athlete" and "seeks to enter the United States temporarily and *solely* for the purpose of performing as . . . an athlete with respect to a specific athletic competition." (Emphasis added.) The Director cited language contained in an expert letter from running coach, [redacted] stating that "any assistance accorded to [the Beneficiary] will play a critical role in helping develop all athletes in [the petitioning organization] and surrounding communities." Upon review of the record, we withdraw the Director's determination. The assertion of the Petitioner's head coach, [redacted] on appeal that the Beneficiary is in the U.S. "strictly as an athlete, to compete in prize money competitions, and represent [the Petitioner] at such in these events," is corroborated by the contract, itinerary, and other supporting documentation, which focus solely on racing responsibilities.

> *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 alien is internationally recognized.* 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(iv).

In support of this criterion, the Petitioner offers the above-referenced letter from Max Siegel, CEO of USATF. Mr. Siegel's letter confirms the Beneficiary's interest in competing and training and lists his past accomplishments, but does not affirm that the Beneficiary is an internationally recognized athlete. Accordingly, this letter does not serve as a statement from a governing body in the sport that "details how the [Beneficiary] is internationally recognized" under this criterion. Because his letter mentions some of the Beneficiary's race results, however, we will discuss the letter below under the seventh criterion.

> *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.* 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(v).

The Petitioner submitted several testimonial letters in support of the petition. We determine that the submitted testimonials and other documentary evidence do not satisfy this criterion. The Petitioner provided a letter from who explains that the Beneficiary has been a member of the petitioning organization since his graduation from during which time he has been one of the organization's most successful athletes. He states that the Beneficiary "has won or placed near the top of races ranging from . . . [3.1 miles] to the marathon, and in 2013 became [the Petitioner's] all time record holder in the marathon," after his performance at the in Minnesota.

a running coach, describes the Beneficiary as "an elite level athlete," and states that he has been competing "at numerous high level and internationally recognized events," such as the and the He acknowledges that those races are "open to athletes of all abilities." He does not indicate how he first became aware of the Beneficiary's accomplishments in the field.

On appeal, the Petitioner provides letters from two journalists, and states he has known for more than twenty years. He calls the Beneficiary "a truly world class athlete" who is "a regular on the U.S. road racing circuit and someone whose names appears amongst the top handful of athletes wherever he competes." He asserts that the Beneficiary's marathon time at the 2013 is world class. praises "the positive impact" the petitioning organization has had on track and field; however, his letter does not mention the Beneficiary.

The Petitioner also submits letters from race organizers and of the indicates that the Beneficiary completed the 2013 "finishing 4th in a world-class field." , describes the Beneficiary as "an elite world class performer and Internationally Recognized athlete," and

characterizes his finishing time at the 2013 as "an outstanding achievement." He emphasizes that the "like all the other road races is open to the road running public" and that "[t]here are no qualifying standards."

Finally, the Petitioner provides a letter from the Beneficiary's colleague at the petitioning organization. states that she and the Beneficiary have been volunteer instructors at the Petitioner's youth summer running camp for the past ten years. She states that he is "one of the top running professionals on the national circuit" and praises his achievement in being Petitioner's marathon record holder.

The Petitioner also provided articles pertaining to the Beneficiary's career as a road race runner with its organization, including articles and a press release published in the *New Haven Register*, *Southampton Press*, *New Milford Spectrum*, and at www.hamptons.com and www.syracuse.com. Those materials show he placed first in the 2009 the 2009 the 2010 the 2012 and the 2013 but do not demonstrate international recognition.

The reference letters and published material submitted by the Petitioner are not without weight and have been considered above. United States Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. In addition, such letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility.

The list of the Beneficiary's career achievements provided in the letters and published materials is lacking an explanation of the significance of those accomplishments, or how such results conveyed international recognition on him. While some of the letters state the recognition he achieved participating in the events, the authors do not detail what materials they reviewed in issuing their letters or how such results conveyed recognition on him. In addition, and acknowledge that there are no requirements to participate in the specific road race events in which the Beneficiary has competed. Upon review, the letters do not establish how the Beneficiary's achievements are renowned, leading or well-known in more than one country. 8 C.F.R. § 214.2(p)(3). Based on the foregoing, the record does not establish that the evidence satisfies this criterion.

> *Evidence that the alien or team has received a significant honor or award in the sport.* 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(*vii*).

The Director did not address this criterion. The Petitioner maintains that the Beneficiary has had success in competitions which equate to significant honors or awards. Within its RFE response, the Petitioner provided the above-mentioned "no objection" letter from Mr. Siegel. Mr. Segal

summarizes some his "career highlights" based on "the information [USATF has] reviewed." According to his letter, the Beneficiary's career highlights include the following finishes:

- Eleventh place at the 2016
- Second place at the 2016
- Nineteenth place at the 2016
- Fourth place at the 2013
- Sixteenth place at the 2013
- Second at the 2012
- Forty-fifth at the 2007

Mr. Siegel's letter does not provide any information about those events. The Petitioner provided evidence of the Beneficiary's placements in some of the events, in the form of a completion certificate and information from the websites of several of the events. These materials do not demonstrate that participation in, or receiving an award at any of the events equates to a significant honor or award in the sport. Without more information, we are unable to determine that participation in, or receiving an award at any of the events equates to a significant honor or award in the sport. In light of the above, the submitted materials do not satisfy this criterion.

In summary, the evidence submitted by the Petitioner does not satisfy at least two of the evidentiary criteria listed in the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(*B*)(*2*). Therefore, the Petitioner did not establish that the Beneficiary has achieved international recognition in the sport of road racing. The appeal will be dismissed on this additional basis.

D. Prior Approvals

The record indicates that USCIS has previously approved petitions for P-1 status filed on behalf of the Beneficiary. In the present matter, the Director reviewed the record of proceeding and concluded that the Petitioner did not meet all eligibility requirements for the requested classification. Based on the lack of required evidence of eligibility in the current record, we find that the Director was justified in denying the instant petition. We are not required to approve applications or petitions where eligibility has not been demonstrated because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). Further, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, we are not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary is coming to the United States solely to participate in an athletic competition that has a distinguished reputation and requires participation of an internationally recognized athlete. Further, the Petitioner's submissions do not satisfy two of the evidentiary criteria listed in the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(*B*)(*2*). Consequently, the Petitioner has not shown that the Beneficiary is eligible for the P-1 visa classification as an internationally recognized athlete in the sport of road racing.

ORDER: The appeal is dismissed.

Cite as *Matter of W-T-C-*, ID# 1989668 (AAO Feb. 19, 2019)