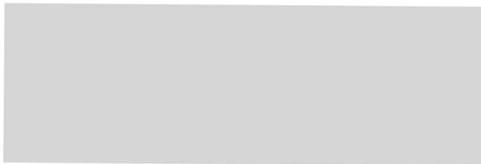




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 22 2015** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(P)(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(P)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. We will dismiss the appeal.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (“Act”), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner is in the business of training and racing thoroughbred horses. The petitioner seeks to employ the beneficiary in P-1S status so that he may work in the position of Professional Jockey Support for a P-1 athlete.<sup>1</sup>

The acting director denied the petition, concluding that the petitioner did not provide evidence of the beneficiary’s prior essentiality, critical skills or experience with the P-1 athlete, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). The acting director also determined that the record did not establish that “the principal P-1A individual is maintaining a valid nonimmigrant status.” In this regard, the acting director stated as follows:

Other than the approval notice in the initial filing showing that the P-1A nonimmigrant was valid until 2016 and a copy of a race result dated May 11, 2013, you have not demonstrated that the P-1A nonimmigrant is still in the United States, maintaining his status and working as of the filing date of this petition, January 6, 2014.

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner asserts that the beneficiary meets the regulatory requirements of the requested classification, and submits a brief in support of the appeal. In addition, the petitioner asserts as follows:

Attached as evidence in the initial petition was [sic] the Equibase statistics for the P-1 nonimmigrant showing that the jockey had competed in 675 professional horse races in 2013. In the RFE [Request for Evidence] response, the Petitioner submitted the Equibase statistics report as of April 2, 2014[,] showing that the jockey had competed in 135 professional horse races in 2014. The P-1A nonimmigrant had earnings of almost 1.8 million in 2013. [Six hundred seventy-five] professional horse races and almost 1.8 million in earnings establishes by a preponderance of the evidence that the P-1A nonimmigrant is still in the United States maintaining his status and working as of the filing date of this petition, January 6, 2014.

For the reasons discussed below, we withdraw the acting director’s finding relating to the P-1 nonimmigrant’s status but find that the record supports the director’s finding that the petitioner has not established the beneficiary’s essentiality and past experience with the P-1 athlete.

<sup>1</sup> The record reflects that at the time of filing, the beneficiary was in the United States in H-2A nonimmigrant status pursuant to a petition filed by the petitioner, which U.S. Citizenship and Immigration Services (USCIS) approved on April 10, 2013, valid until December 25, 2013 ( ). The record also reflects that the beneficiary had multiple previous entries into the United States in H-2A nonimmigrant status since at least April 28, 2009.

## I. Pertinent Regulations

The regulation at 8 C.F.R. § 214.2(p)(3), provides, in pertinent part:

*Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, [or P-3] alien. Such alien must have appropriate qualifications to perform the services, critical knowledge of the specific services to be performed, and experience in providing such support to the P-1, P-2, or P-3 alien.

Accordingly, the petitioner must establish that the support alien will provide support to a P alien and is essential to the success of the P alien. The petitioner must also establish that the beneficiary is qualified to perform the services and United States workers cannot readily perform the services.

The regulation at 8 C.F.R. § 214.2(p)(4)(iv) states:

- (A) *General.* An essential support alien as defined [above] may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.
- (B) *Evidentiary criteria for a P-1 essential support petition.* A petition for P-1 essential support personnel must be accompanied by:
  - (1) A consultation for a labor organization with expertise in the area of the alien's skill;
  - (2) A statement describing the alien(s) prior essentiality, critical skills, and experience with the principal alien(s); and
  - (3) A copy of the written contract or a summary of the terms of the oral agreement between the alien(s) and the employer.

The regulation at 8 C.F.R. § 214.2(p)(7) further discusses the consultation requirement and states, in pertinent part:

- (vi) *Consultation requirements for essential support aliens.* Written consultation on petitions for P-1, P-2, or P-3 essential support aliens must be made with a labor organization with expertise in the skill area involved. If the advisory opinion provided by the labor organization is favorable to the petitioner, it must evaluate the alien's essentiality to and working relationship with the artist or entertainer, and state whether United States workers are available who can perform the support services. If the advisory opinion is not favorable to the petitioner, it must also set forth a specific statement of facts which support

the conclusion reached in the opinion. A labor organization may submit a letter of no objection if it has no objection to the approval of the petition.

The regulation at 8 C.F.R. § 214.2(p)(7)(i)(C) provides that the advisory opinion shall be submitted along with the petition when the petition is filed.

## II. Factual and Procedural History

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on January 6, 2014. The petitioner stated that the beneficiary would serve as professional jockey support under the P-1S petition. The O and P Classification Supplement to Form I-129 instructs the petitioner to provide dates of the P support alien's prior experience with the O-1 or P alien. Here, the petitioner stated: "The beneficiary has assisted the principal P-1 visa holder with various racehorses around the world and has also assisted with the training of the racehorses."

In a letter dated December 17, 2013, the petitioner stated it has hired the beneficiary "to perform groom services for P-1 jockey, Mr. [REDACTED]" The petitioner also submitted evidence that Mr. [REDACTED] was granted P-1 classification for the period September 1, 2011 to August 31, 2016. The petitioner further asserted as follows:

[The beneficiary] is a licensed groom who has been performing groom services for the past 15 years. [The petitioner] frequently contracts P-1 jockey, Mr. [REDACTED] to compete with the horses they own. When Mr. [REDACTED] races for [the petitioner], he relies on the groom services of [the beneficiary.] While [the beneficiary] and Mr. [REDACTED] have been working together, [the petitioner] has been very successful. Mr. [REDACTED] is a [REDACTED] who has built an impressive racing record in the few short years he has spent in the United States. Part of his success as a jockey can be attributed to [the beneficiary's] groom services in preparation for each race.

The petitioner's initial evidence included two photographs of the beneficiary and the principal P-1 athlete together at an unidentified stable. In addition, the petitioner submitted its employment agreement with the beneficiary dated December 15, 2013, signed by the parties on that date, and addressed to the beneficiary, which states in pertinent part:

This agreement confirms your employment by [the petitioner] . . . for the task of assisting P-1 professional race horse jockey Mr. [REDACTED] in preparing for and participating in professional competition.

### 1. Services to be performed

Job duties will include but not be limited to: Grooming the race horses, acting as an assistant trainer with the horses in preparation for competition, insuring the quality of the living conditions and diet of the horses, insuring proper exercise of

the horses, and all other tasks essential to maintaining Mr. [REDACTED]'s ability to compete at the highest level in thoroughbred racing.

2. Wages

As compensation you will be provided a salary of \$500.00 per week as well as housing during your stay in the United States and transportation to all events.

With respect to the consultation requirement, the petitioner submitted a letter dated December 11, 2013, from [REDACTED] President of the [REDACTED] and Vice Chairman at the [REDACTED]. Mr. [REDACTED] states that there is no organization that governs racing nationally. He states that groups such as the [REDACTED], "provide assistance to workers on the backside of the track but they are not unionized." He states he has been asked to provide a written advisory opinion "regarding the nature of the grooms' work in the racing industry and the specific qualifications of [the beneficiary]." Mr. [REDACTED] further states:

[The petitioner] has selected professional horse groom, [the beneficiary], to be part of the racing team. [The petitioner] has recognized [the beneficiary] possesses the critical skills of the specific groom duties that make [the petitioner] successful. Based on [the beneficiary's] qualifications and his experience with Mr. [REDACTED] [the petitioner] has hired [the beneficiary] to serve as the support personnel for P-1 jockey, Mr. [REDACTED]. [The petitioner's] success as a Thoroughbred racing team has been partly due to the essential support that the grooms have provided to the jockeys and overall team.

Mr. [REDACTED] expresses his opinion that "in the Thoroughbred racing industry, the groom is an essential part of the overall racing team" and that "the success of a professional jockey depends greatly upon the high standards of equine care that a knowledgeable and experience[d] groom provides." However, Mr. [REDACTED] does not evaluate the beneficiary's essentiality to and working relationship with Mr. [REDACTED]. Mr. [REDACTED] refers to the beneficiary's experience with Mr. [REDACTED], but he does not provide any details regarding the date and duration of the beneficiary's past work for Mr. [REDACTED]. Mr. [REDACTED] also states that his program, the [REDACTED] is "part of the Thoroughbred racing industry's attempts to solve the labor shortage" and that "[t]op jockeys are still unable to find qualified American grooms to perform the support services that are essential to their success."

In lieu of an itinerary, the petitioner provided a list of [REDACTED] racing dates, in which the petitioner highlighted the venues where Mr. [REDACTED] will compete with the beneficiary's assistance. The highlighted venues are at the following Kentucky race tracks: Turfway Park, Keeneland, Churchill, Ellis Park, The Red Mile and KY Downs. The petitioner asserted that Mr. [REDACTED] will also be competing in Indiana, and submitted a schedule of [REDACTED] thoroughbred and quarter horse race dates from the Indiana Horse Racing Commission.

The petitioner additionally submitted Mr. [REDACTED] jockey profile and the petitioner's owner profile from [REDACTED] both as of [REDACTED] Mr. [REDACTED] jockey profile reflects his racing statistics for [REDACTED] including his first, second and third finishes, showing that in [REDACTED] starts Mr. [REDACTED] is listed to have earned \$1,797,424 for the owners of the horses in races where he was a jockey. The jockey profile also reflects Mr. [REDACTED] racing statistics for the years [REDACTED] The petitioner further submitted documentation establishing that the principal P-1 athlete raced horses for the petitioner in [REDACTED]

The acting director issued a request for additional evidence (RFE) on January 14, 2014, in which she requested a statement describing the beneficiary's prior essentiality, critical skills, and experience with the principal athlete and any additional documentation that would establish the beneficiary's critical knowledge of and prior experience with the principal P nonimmigrant. The acting director also requested that the petitioner provide evidence that the beneficiary performs support services to the P-1 athlete which a United States worker cannot readily perform. Additionally, the acting director further requested "evidence to show that the P-1A, Mr. [REDACTED] is maintaining a valid nonimmigrant status." The acting director also noted that the letter from Mr. [REDACTED] did not satisfy the evidentiary requirement to provide a consultation from a labor organization with expertise in the area of the alien's skill, as set forth at 8 C.F.R. § 214.2(p)(4)(iv)(B).

In response, the petitioner submitted additional documentation to establish "that Mr. [REDACTED] [REDACTED] has been consistently racing across the United States and therefore maintaining his nonimmigrant P-1 status." The petitioner submitted Mr. [REDACTED] jockey profile from [REDACTED] as of [REDACTED], reflecting that in [REDACTED] starts, Mr. [REDACTED] is listed to have earnings of \$307,712. The petitioner also submitted a screenshot from [REDACTED] listing horseraces in which Mr. [REDACTED] competed from [REDACTED] [REDACTED] The petitioner further submitted a no objection letter from Mr. [REDACTED] Executive Director of the [REDACTED] [REDACTED].

The acting director denied the petition on May 19, 2014, concluding that the petitioner did not establish that the beneficiary qualifies as an essential support alien. The acting director found that the petitioner submitted insufficient evidence that the beneficiary possesses prior essentiality, critical skills and experience with the principal athlete. The acting director also concluded that the petitioner did not submit evidence that the P-1 principal has maintained his P-1 status.

On appeal, the petitioner reiterates the need for the beneficiary's services. The petitioner also reiterates that the evidence of record supports its assertion that Mr. [REDACTED] "is still in the United States maintaining his status and working as of the filing date of this petition."

### III. Analysis

Upon review, Mr. [REDACTED] jockey profiles for [REDACTED] from [REDACTED] reflecting his racing statistics from [REDACTED] until the date when the petition was filed, support the petitioner's assertion that the P-1 principal has been maintaining his P-1 visa status. Therefore, we will withdraw the acting director's conclusion to the contrary, as the evidence does not support the

acting director's conclusion regarding this basis for denial. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Upon review, although not addressed by the acting director, the above-referenced letter from Mr. [REDACTED] is lacking in information regarding beneficiary's prior experience with the P-1 athlete. Mr. [REDACTED] letter states as follows:

Based on the information we have reviewed, the [REDACTED] understands that professional horse groom, [the beneficiary], has been working as a groom for many years, giving him the necessary skills and expertise to qualify for this visa. [The beneficiary] has worked with P-1 jockey, Mr. [REDACTED]. Thanks to this working relationship, Mr. [REDACTED] has requested [the beneficiary] to serve as his P-1S support personnel . . . . Jockeys rely on grooms with thorough racing experience and with whom they have worked before. Mr. [REDACTED] has elected [the beneficiary] to work as his groom for preparation of races. Therefore, no American workers can perform the services that [the beneficiary] performs for Mr. [REDACTED]

Simply stating that the beneficiary works with the principal athlete and appears to have worked with the principal athlete in the past is insufficient to meet the evidentiary requirement that the petitioner provide a statement describing the beneficiary's prior essentiality, critical skills or experience with the P-1 alien, as required by 8 C.F.R. § 214.2(p)(7)(vi). Mr. [REDACTED] does not provide any probative details regarding the working relationship between the beneficiary and Mr. [REDACTED]. It is unclear how Mr. [REDACTED] reached this conclusion based on the evidence submitted with the petition, which does not reflect that the beneficiary has ever worked for the principal athlete or that he even has any prior experience as a groom/assistant trainer. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990). Therefore, the letter from Mr. [REDACTED] does not satisfy the petitioner's burden to provide a written consultation from an appropriate labor organization. We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane*, 381 F.3d at 145 (noting that we review appeals on a *de novo* basis). For this reason, the petition may not be approved.

In addition, the "no objection" letter from Mr. [REDACTED] even if it were sufficient to meet the evidentiary requirements of 8 C.F.R. § 214.2(p)(7)(vi), which it is not, does not satisfy the regulatory requirement for the petitioner to submit a statement describing the alien's prior essentiality, critical skills, and experience with the principal alien. 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). Consultations are advisory and are not binding on U.S. Citizenship and Immigration Services (USCIS). *See* 8 C.F.R. 214.2(p)(7)(i)(D).

The acting director specifically advised the petitioner that the initial evidence did not meet its burden of proof and provided the petitioner with an opportunity to provide the required descriptive statement and any other documentation to establish the essential support nonimmigrant's critical knowledge of and prior experience with the P-1 athlete. The regulations require the petitioner to establish that the instant beneficiary has previously worked for the principal P-1 athlete in an essential support capacity. Here, there is no evidence that the beneficiary has ever worked for the principal athlete or that he even has any prior experience as a groom/assistant trainer. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner asserts that the number of races the P-1 athlete races establishes the need for the beneficiary's services; the jockey is on a racehorse multiple times a day such that an inadequately prepared horse endangers the jockey. According to the record, the beneficiary's duties as a groom/assistant trainer include grooming the race horses, acting as an assistant trainer with the horses in preparation for competition, insuring the quality of the living conditions and diet of the horses, and insuring proper exercise of the horses. The petitioner has not established that the knowledge required to perform these duties would be specific to a certain jockey. Moreover, the petitioner does not address the acting director's finding regarding the lack of evidence to establish the essential support nonimmigrant's critical knowledge of and prior experience with the P-1 athlete. For this additional reason, the petition cannot be approved.

Finally, even if it is assumed, *arguendo*, that the beneficiary has previously worked as a groom and exercise rider for the principal athlete, the petitioner has not established that the duties performed by a groom and exercise rider require a "highly skilled, essential person," integral to the performance of the P-1 athlete, or that a groom and exercise rider performs support services that cannot be readily performed by a United States worker. Mr. [REDACTED] states that the duties the beneficiary performs require someone with proper training, and discusses, as an example, a two-year groom-training program he helped develop and implement for American workers. The petitioner has not demonstrated that U.S. stable grooms are unable to meet these qualifications and could not satisfactorily perform the same duties. Notably, in its initial letter, the petitioner indicates that Mr. [REDACTED] only uses the beneficiary when competing for the petitioner. The statistics for Mr. [REDACTED] that the petitioner provided do not reflect how many of his first, second and third finishes were for the petitioner while riding the petitioner's horses, however, the evidence indicates that since 2010 Mr. [REDACTED] has apparently been able to compete successfully in the equestrian field for trainers other than the petitioner, by relying on services provided by local grooms and trainers in the United States.

In sum, the evidence of record does not sufficiently describe the beneficiary's prior essentiality, critical skills and experience with the P-1 athlete, as required by the regulation at 8 C.F.R. § 214.2(p)(4)(iv)(B)(2). In addition, the petitioner has not established that the beneficiary has critical knowledge of the specific services to be performed for, and his experience in providing such support to, the P-1 athlete as required by the regulation at 8 C.F.R. § 214.2(p)(3). Accordingly, the petitioner has not established that the beneficiary qualifies for classification under section 101(a)(15)(P)(i) of the Act as an essential support alien for the principal athlete.

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.