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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: FEB 25 2015 Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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 Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will summarily dismiss the appeal.

The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking P-1S classification of the beneficiary as essential support personnel pursuant to section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P). The petitioner is the principal P-1 alien, professional jockey [REDACTED] for whom the beneficiary will work. The petitioner seeks to temporarily employ the beneficiary as a jockey valet for a period of approximately eleven months.

On March 19, 2014, the director issued a notice of intent to deny (NOID), advising the petitioner that the evidence of record was deficient as it: (1) did not establish that the petitioner is a U.S. employer for purposes of filing a P classification petition; (2) did not establish the terms under which the beneficiary will be employed; (3) did not include a detailed statement and supporting evidence describing the alien's prior essentiality, critical skills or experience with the principal P-1 alien; and (4) did not provide a consultation from a labor organization with expertise in the area of the alien's skill, as required by 8 C.F.R. § 214.2(p)(4)(iv)(B)(1).

The director ultimately denied the petition determining that the petitioner: (1) did not describe the alien's prior essentiality, critical skills or experience with the principal P-1 alien, and did not establish his eligibility as an essential support worker; and (2) did not establish that it is a U.S. employer, U.S. sponsoring organization, U.S. agent, or a foreign employer through a U.S. agent. The petitioner subsequently filed an appeal. On the Form I-290B, Notice of Appeal or Motion, counsel indicated that she would submit a brief and/or additional evidence to us within 30 days. In response to part 4 of the Form I-290B, which requires a petitioner to provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed, counsel submitted a separate statement as follows:

Counsel is seeking additional time in which to file the brief in support of the instant appeal as the petitioner is riding on the thoroughbred circuit and has not had the opportunity to meet with counsel to discuss the subject appeal. Accordingly, the petitioner respectfully requests an additional 30 days in which to provide a brief in support of this appeal to the AAO.

The appeal was filed on July 10, 2014. As of this date, approximately 7 months later, no additional evidence has been incorporated into the record of proceeding, and the record will be considered complete.

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.

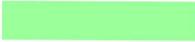
The director denied the petition based upon her determination that the record contains no evidence to establish the beneficiary's prior essentiality, critical skills and prior relationship providing services to the principal athlete. We note that the Form I-129 Supplement O/P instructs the petitioner, at item #6, to list the date of the alien's prior experience with the P alien. The petitioner indicated "Has assisted principal P-1 visa holder, [REDACTED] with various horse races in Mexico." The initial evidence did not include any evidence regarding the beneficiary's prior relationship with the principal athlete, or any other evidence regarding the beneficiary's employment history and qualifications as a jockey valet.

In the NOID, the director requested that the petitioner provide a more detailed statement describing the beneficiary's prior essentiality, critical skills and experience, supported by evidence demonstrating that the beneficiary has worked with the P-1 athlete in the past. In response, the petitioner submitted testimonial letters that did not describe the beneficiary's prior relationship with the principal athlete, or the beneficiary's employment history and qualifications as a jockey valet. The director determined that the petitioner did not submit evidence that the beneficiary has ever worked for the principal athlete or that he even has any prior experience as a jockey valet. 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).

The director also denied the petition based on her determination that the petitioner did not provide evidence that the petitioner qualifies as a U.S. employer eligible to file the petition. Pursuant to 8 C.F.R. § 214.2(p)(2)(i), a P-1 petition for an athlete shall be filed by a United States employer, a United States sponsoring organization, a United States agent, or a foreign employer through a United States agent. In the petition, and in a "Jockey Valet Employment Agreement" dated February 11, 2014, the petitioner indicates that he is a U.S. employer. We note that the Form I-129 instructs the petitioner, at part 5 items 13 through 15, to list information such as his current number of employees in the U.S., gross annual income and net annual income. The petitioner indicated "N/A" in response to those questions.

In the NOID, the director specifically requested documentary evidence to establish that the petitioner in this matter meets the conditions for a U.S. employer eligible to file a P nonimmigrant petition, pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(i). In response, counsel asserted that, "while legally in the United States in order to legally employ the jockey valets he requires to assist him in his race performances, [the petitioner] has formed an employer entity." The petitioner provided a copy of an undated Internal Revenue Service (IRS) Form SS-4, assigning the petitioner an IRS employer identification number. This evidence establishes, at best, that the petitioner is currently a prospective U.S. employer. 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)).

For the above reasons, the petitioner has not established that it is a U.S. employer eligible to file a P nonimmigrant petition, pursuant to the regulation at 8 C.F.R. § 214.2(p)(2)(i).



In denying the petition, the director provided a detailed discussion of the evidence submitted and explained why such evidence did not meet the regulatory requirements for this visa classification.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Based on the foregoing, the evidence of record supports the director's determination that the petitioner failed to establish that the beneficiary qualifies as an essential support alien as defined at 8 C.F.R. § 214.2(p)(3). The petitioner's brief statement on appeal does not address the director's findings and therefore does not identify any erroneous conclusion of law or statement of fact on the part of the director.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.