



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 12 2015** Office: CALIFORNIA 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 Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed the nonimmigrant petition seeking to classify the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i), for a period of five years. The petitioner, which is self-described on the petition as a thoroughbred training facility, seeks to employ the beneficiary in the position of “Professional Exercise Rider.”¹

The director denied the petition, concluding that the petitioner did not establish that the beneficiary seeks to enter the United States temporarily and solely for the purpose of performing as an athlete with respect to specific athletic competition under Section 214(c)(4)(A)(ii)(I) of the Act. The director observed that the petitioner has asserted that an exercise rider “is the person, whose primary duty is to ride racehorses during their workouts,” and “exercise riders do not compete in the actual race.” The director also determined that the beneficiary does not qualify as a “professional athlete” as defined at section 204(i)(2) of the Act, based in part on the fact that the beneficiary would not be performing as part of a team as defined at 8 C.F.R § 214.2(p)(3).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner asserts that all requirements for P-1 classification have been met, and that it has provided ample documentation to substantiate its claim that the beneficiary qualifies as a professional rider/athlete. The petitioner asserts that the evidence of record establishes that “the petitioner is internationally recognized as a Racing Horse Trainer and would only employ an exercise rider of equal caliber in the essential role of exercise rider on the trainer’s team.” The petitioner submits a brief in support of the appeal.² As discussed below, the record supports the director’s determination that the beneficiary would not be performing as an athlete or, most significantly, would not be performing as a

¹ At the time of filing, the beneficiary was in the United States in P-1S nonimmigrant status pursuant to a petition approved on August 29, 2011, and valid until December 15, 2013.

² On appeal, the petitioner relies in part on regulations and policy pertaining to entertainers. In support of the appeal, the petitioner submits a brief in which it characterizes some of the submitted evidence as meeting the language of regulatory criteria found at 8 C.F.R. § 214.2(p)(4)(iii), pertaining to aliens coming to the United States as part of an internationally recognized entertainment group. For example, the petitioner states that “[t]o be qualified as an exercise rider the rider athlete must have participated for more than a year of exercise riding/team competition prior to coming to the United States; fulfilling item one of the Services’ list of six evidentiary criteria. . . .” The petitioner has not sufficiently explained the relevance of regulations and policy pertaining to entertainers.

professional athlete given the regulatory definition of “team,” which requires that team members “perform together as a competitive unit in a competitive event.”

I. The Law

Under section 101(a)(15)(P)(i) of the Act, an alien 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,³ 8 U.S.C. § 1184(c)(4)(A)(i), provides that section 101(a)(15)(P)(i)(a)(II) of the Act applies to an alien who “is a professional athlete, as defined in section 204(i)(2).”

In relevant part, a “professional athlete,” as defined at section 204(i)(2) of the Act, 8 U.S.C. § 1154(i)(2), is an individual who is employed as an athlete by:

- (A) A team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage.

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.”

Section 214(c)(4)(A)(ii)(I) of the Act, 8 U.S.C. § 1184(c)(4)(A)(ii)(I) provides that the alien 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.

II. The Issues on Appeal

A. Services to Be Performed in the United States

The initial issue the director addressed is whether the petitioner established that the beneficiary is coming to the United States solely for the purpose of performing as an athlete at a specific competition or competitions which require participation of an athlete, individually or as part of a group or team, which has an international reputation. *See* section 214(c)(4)(A)(ii)(I) of the Act ; 8 C.F.R. 214.2(p)(1)(ii)(A)(I).

³ In 2006 Congress passed Public Law 109-463, “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.

The regulation at 8 C.F.R. § 214.2(p)(3) defines “competition” as follows:

Competition, event or performance means an activity such as an athletic competition, athletic season, tournament, tour exhibit, project, entertainment event or engagement An athletic competition or entertainment event could include an entire season of performances.

The petitioner stated on the Form I-129, Petition for a Nonimmigrant Worker, that the petitioner will employ the beneficiary as a “Professional Exercise Rider.” The petitioner provided its contract of employment with the beneficiary, in which it described the beneficiary’s position as a “skilled exercise rider,” a position requiring “exceptional and unique knowledge, skill, ability, and experience as a thoroughbred horse rider.”

In the initial cover letter, the petitioner described the general composition of a “horse racing team” as consisting of a trainer, an assistant trainer, a jockey, an exercise rider, and grooms. The petitioner provided brief descriptions of each position. The petitioner asserted that “[a]lthough exercise riders do not compete in the actual race, they are athletes riding the horse in training that is crucial to the successful preparation of the horse” and that “[l]ike other athletes, exercise riders must possess skill not common to the general public.”

In support of the petition the petitioner initially provided the following:

- The petitioner’s Thoroughbred Rider Contract with the beneficiary;
- An [REDACTED] Profile for the petitioning entity’s owner, [REDACTED], for the years 2000 through 2012, and information pertaining to several horses owned by her;
- Pictures of the beneficiary working with horses;
- A letter from [REDACTED] Executive Director, [REDACTED];
- The Index of Minnesota Administrative Rules pertaining to horse racing;
- A paystub for the beneficiary.

The director issued a request for additional evidence (“RFE”) on January 22, 2014, in which she instructed the petitioner to submit documentary evidence to establish that the beneficiary qualifies under section 214(c)(4)(A)(i)(II) of the Act as a professional athlete.

In its response, the petitioner provided the following:

- An [REDACTED] report for [REDACTED] – Trainer for [REDACTED] in Minnesota;
- A [REDACTED] Class “C” License Application 2014;
- The [REDACTED] Annual Report;
- A letter from [REDACTED], Latino Liaison, [REDACTED];

- Media reports, blog entries and press releases from websites for [REDACTED]

The director denied the petition, noting the beneficiary does not race horses in competitive athletic events, like a jockey, but rather is a rider responsible for thoroughbred training and conditioning. On appeal, the petitioner asserts that the beneficiary is nevertheless eligible based on his role as a professional rider of horses that compete in national competitions.

Section 214(c)(4)(A)(ii) specifically states that section 101(a)(15)(P)(i)(a) refers to an alien who “seeks to enter the United States. . . for the purpose of performing as . . . an athlete with respect to a specific athletic competition.” On appeal, the petitioner discusses public policy issues. 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). Upon review, the evidence of record supports the director’s determination that the petitioner has not established that the beneficiary seeks to enter the United States “solely for the purpose of performing” as an athlete with respect to a specific athletic competition. As noted by the director, the only individuals who provide services as athletes with respect to thoroughbred horse races are jockeys.

While the petitioner has stated that the beneficiary will be employed as a “professional exercise rider” the evidence of record supports the director’s finding that the beneficiary’s duties as described at the time of filing are those typically performed by a trainer rather than a competitive athlete in the sport of thoroughbred horseracing. The beneficiary’s duties as an exercise rider may require athletic abilities not held by all horse trainers, but he is nevertheless a member of the training team and not an athlete who will compete in athletic events for P-1 purposes. Accordingly, the petitioner has not established that the beneficiary would be coming to the United States solely for the purpose of competing in athletic competitions. See section 214(c)(4)(A)(ii)(I) of the Act ; 8 C.F.R. 214.2(p)(1)(ii)(A)(I).

B. Professional Athlete

The next issue the director addressed is whether the petitioner has established that the beneficiary is a “professional athlete” pursuant to section 214(c)(4)(A)(i)(II) of the Act. Here, the petitioner claims that the beneficiary qualifies as a “professional athlete,” as defined in section 204(i)(2) of the Act.

As noted above, a professional athlete for purposes of this classification, is an individual who is employed as an athlete by a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage. See section 204(i)(2)(A) of the Act.

The petitioner stated on Form I-129, Petition for a Nonimmigrant Worker, that it is doing business as a “Thoroughbred Training Facility,” rather than as a professional athletic team. In the cover letter, the petitioner stated that it “meets the regulatory definition of team as it is a group of

two or more persons organized together as a competitive unit in a competitive event” and its owner is “one of the industry’s top owners and team leader of [the petitioning entity]” In this letter, and again on appeal, the petitioner, through counsel, omits two significant words from the definition of “team,” which actually reads as follows: “two or more persons organized *to perform* together as a competitive unit in a competitive event.” (Emphasis added.) The petitioner also asserted that “[c]urrently there are 90 teams licensed by the [redacted] to race in Minnesota. Revenues for 2013 were \$22,000,000.” (Emphasis in original.)

In the same document, the petitioner described the general composition of a “horse racing team” as consisting of a trainer, an assistant trainer, a jockey, an exercise rider, and grooms. The petitioner provided brief descriptions of each position. The petitioner asserted that “[a]lthough exercise riders do not compete in the actual race, they are athletes riding the horse in training that is crucial to the successful preparation of the horse” and that “[l]ike other athletes, exercise riders must possess skill not common to the general public.”

In support of the petition the petitioner initially provided the evidence discussed above. The letter from [redacted], Executive Director, [redacted] states that she has “been asked to discuss Minnesota thoroughbred racing.” She states that thoroughbred racing in Minnesota is governed by the [redacted] Ms. [redacted] uses the terms “teams,” “trainer teams” and “Minnesota racing teams” to describe thoroughbred racing competitors. She also states that her organization has “approximately thirty thousand (30,000) owner and trainer members” and “represents the interest of owners and trainers and provides benevolent services to workers on the backside of the track.”

The director issued a request for additional evidence (“RFE”) on January 22, 2014, in which she instructed the petitioner to submit documentary evidence to establish that the beneficiary qualifies under section 214(c)(4)(A)(i)(II) of the Act as a professional athlete.

In a letter dated April 15, 2014, submitted in response to the director’s request for additional evidence, the petitioner asserted as follows:

According to the [redacted] regulations, each trainer who wishes to compete on a Minnesota racetrack must apply for an individual ‘Trainer’ or ‘Owner/Trainer’ license Exercise riders, grooms and hotwalkers also apply for a license through the [redacted] but they must report an employer. . . . The grooms and exercise riders must apply as part of a “trainer team.”

In its response, the petitioner provided the evidence listed above. The petitioner asserted that the [redacted] report showed “the independent teams competing in Minnesota.” However, the [redacted] report lists rankings by trainer, making no mention of competing teams or of the petitioning entity. Additionally, the remaining documentation does not state that there are any teams or “horse teams” or “trainer teams” that compete in the sport of thoroughbred racing, or

corroborate the petitioner's statement that grooms and exercise riders must apply as part of a "trainer team" for occupational licenses with the [REDACTED]. Rather, Mr. [REDACTED] asserts that applications for grooms require an employer's endorsement.

The letter from [REDACTED] Latino Liaison, [REDACTED], while acknowledging that the [REDACTED] report for [REDACTED] lists race results by trainer states that, "the result is the product of many team members working together" and that "a group working together as a competitive [sic] to achieve a win are almost by definition what makes a team."

In denying the petition, the director observed that the petitioner provided no evidence to establish that the beneficiary will be employed by a sports team that is a member of an association of six or more professional teams. Referring to the regulatory definition of "team" at 8 C.F.R. § 214.2(p)(3), and noting the petitioner's own statement that "exercise riders do not compete in the actual race" the director found that "the evidence of record does not show that there is another person performing together with the jockey (as a competitive unit) in the actual competitive event."

On appeal, counsel asserts that the beneficiary qualifies under the COMPETE Act as a "professional athlete," explaining as follows:

Horse racing far exceeds the six teams and \$10,000,000 threshold. Organizations having direct supervisory authority over the conduct of trainer teams' competition include, but are not limited to, state racing commissions These groups all govern the conduct of racing teams and regulate the contests and exhibitions in which the racing teams regularly engage.

The petitioner has submitted extensive information regarding the [REDACTED], including its 2013 Annual Report containing its mission statement, and a statement of commission activities, duties and related legislation. The evidence submitted demonstrates that [REDACTED] is the state governing body for horse racing in Minnesota, and that [REDACTED] does regulate contests in the sport and issue racetrack owner, operator, and occupational licenses. However, the petitioner did not submit evidence that the sport of thoroughbred horse racing is comprised of "6 or more professional sports teams."

In addition, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795. Furthermore, 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). Although the letters from Ms. [REDACTED] and Mr. [REDACTED] use the terms “teams,” “trainer teams,” “Minnesota racing teams” and “horse team members” to describe thoroughbred racing competitors, based on the evidence submitted it is evident that [REDACTED] issues licenses to individuals, not to teams, and that thoroughbred racing competition occurs on an individual level, with jockeys performing individually in competitive events.

The evidence of record also supports the director’s determination that the petitioner has not established that the petitioning organization is a professional sports team. Although the petitioner claims that it is internationally recognized as a [REDACTED] and that it meets the regulatory definition of “team,” there is no corroborating evidence in the record to support the claim that the petitioner has been recognized in any capacity as a “team” competing in the sport of horseracing.

Again, 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.” (Emphasis added.) The petitioner has not provided any detailed information about its claimed “horse racing team” such as the team’s name, the names of all the team’s players, their positions, 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 and provided brief descriptions of the positions of trainer, assistant trainer, jockey, exercise rider, and groom, the petitioner did not provide any further information about which specific “team” they play for, or how they are organized to perform together as a competitive unit. Moreover, the petitioner did not establish that it has been recognized in any capacity as a “team.” Evidence of a “sports team” would include documentation of the team’s organization, performance, and results performing together as a competitive unit in actual team events. The petitioner has submitted no such evidence. The petitioner provided the individual results of the petitioning entity’s owner in equestrian events, but such results are not evidence that the petitioner is competing as a professional sports team in a league or association comprised of professional sports teams. To the contrary, the records for the petitioner’s owner list her individual accomplishments, and make no reference to any “team” or to the petitioning entity.

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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The evidence of record does not establish that the petitioning horse training facility is a “team” when there is no evidence that it participates in a team sport or that it is recognized in the industry as a professional sports team that performs together. Accordingly, the petitioner has not established that the beneficiary will be employed by the petitioner as a “professional athlete” as defined in section 204(i)(2) of the Act.

III. Conclusion

In summary, as discussed above, the petitioner has not established that the beneficiary seeks to enter the United States temporarily and solely for the purpose of performing as an athlete with respect to a specific athletic competition as required under Section 214(c)(4)(A)(ii)(I) of the Act. Further, the evidence submitted by the petitioner does not establish that the beneficiary qualifies as a “professional athlete” as defined at section 204(i)(2) of the Act. Accordingly, the appeal will be dismissed.

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.