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

Date: **MAR 04 2015** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiaries: [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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a horizontal line extending to the right.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition, and reaffirmed that decision on motion. 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 beneficiaries as athletes under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(P)(i). The petitioner is a professional ice hockey league. The petitioner requests that the beneficiaries be granted P-1 status so that they may accept employment as professional ice hockey players with the [REDACTED] hockey teams for a period of approximately 10 months.

The acting director denied the petition citing three independent and alternative grounds for the decision. First, the acting director determined that the petitioner did not properly file the petition as a sponsoring organization on behalf of the beneficiaries, since the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(B) requires that “[i]f the beneficiary or beneficiaries will work for more than one employer within the same time period, each employer must file a separate petition unless an agent files the petition pursuant to paragraph (p)(2)(iv)(E) of this section.” The acting director also determined that the petitioner did not establish that it qualifies as a U.S. agent, within the meaning of 8 C.F.R. § 214.2(p)(2)(iv)(E), because the petitioner has not shown that professional ice hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers. The acting director further determined that the petitioner had not submitted a complete itinerary for the beneficiaries to establish that it qualifies as an agent, in accordance with 8 C.F.R. § 214.2(p)(2)(iv)(E).

The petitioner subsequently filed a combined motion to reopen/reconsider. The director granted the petitioner’s motion to reopen, but denied the petition. In the director’s motion decision, the director reaffirmed the determinations from the denial and also noted that the beneficiaries had their own sports agents, concluding that the petitioner had not demonstrated that the petitioner was serving as their agent. The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us for review.

On appeal, the petitioner does not contest or address the acting director’s finding that the petitioner did not properly file the petition as a sponsoring organization, and therefore we consider this issue to be abandoned.² The petitioner submits a brief asserting that it has demonstrated that it qualifies as a U.S. agent, within the meaning of 8 C.F.R. § 214.2(p)(2)(iv)(E), and that it has submitted an itinerary that satisfies the requirements set forth

² See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO). Upon review, the record supports the acting director’s determination that the petitioner did not properly file the petition as a sponsoring organization on behalf of the beneficiaries.

in the regulations. Upon review, and for the reasons discussed below, we will dismiss the appeal.

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, 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).”³

The regulation at 8 C.F.R. § 214.2(p)(2)(i) provides that a P-1 petition for an athlete or entertainment group “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.”⁴

The regulation at 8 C.F.R. § 214.2(p)(2)(ii) states that all petitions for P classification shall be accompanied by:

- (A) The evidence specified in the specific section of this part for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written consultation from a labor organization.

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.

⁴ In the context of employment-based immigration law, in the H (excluding H-1B1), L, O, and P-1 visa categories, a visa petition must be filed by the “importing employer” of the alien worker. Sec. 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1) (2012). While the statute requires that P petitions be filed by an “importing employer,” the legacy Immigration and Naturalization Service (INS) interpreted the statute to include agents as importing employers under specific circumstances. 59 Fed. Reg. 41818, 41829 (Aug. 15, 1994) (stating that “section 214(c)(5)(B) indicates that agents may, in fact, file a petition, by discussing the issue of the joint liability of the petitioner and employer with respect to the alien’s return transportation”)

The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (2) A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 15, 2013. The petitioner stated that the beneficiaries will serve as professional ice hockey players. The record reveals that both beneficiaries play in the position of goaltender. Where asked to indicate the address where the beneficiaries will work, the petitioner stated "Various hockey arenas throughout the United States." The petitioner indicated that the beneficiaries will receive a weekly wage of \$500. On the O and P Classification Supplement to Form I-129, where asked to indicate the nature of the event, the petitioner indicated "[the petitioner's] 2013-2014 season."

In a letter dated November 6, 2013, the petitioner stated that the beneficiaries are "professional hockey players," and the petitioner is a professional hockey league acting as an agent on behalf of the [REDACTED] professional minor ice hockey teams, to secure the beneficiaries' services. The record establishes that the [REDACTED]

are a member team of the petitioner's ice hockey league, while the [REDACTED] are a member team of a different professional ice hockey league, the [REDACTED]. The petitioner submitted a copy of letters dated November 1, 2013, from the [REDACTED] authorizing the petitioner to serve as their agent in filing the petition. The petitioner also submitted copies of the teams' contracts with each beneficiary for a term commencing in November 2013, and running until the end of the 2013-2014 minor ice hockey league season. The beneficiaries did not sign the contracts. Pursuant to the terms of the contracts, the beneficiaries will play professional ice hockey for both teams, with each player receiving a weekly wage of \$175 from the [REDACTED] \$500 from the [REDACTED].

The acting director issued a notice of intent to deny the petition, requesting additional evidence. The acting director requested that the petitioner submit evidence to establish that professional ice hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers. The acting director determined that the evidence of record did not support the petitioner's assertion that the beneficiaries' employment in the United States would be short-term employment, since the terms of the beneficiaries' player contracts were for the entire 2013-2014 minor league ice hockey season.

In addition, the acting director noted that the player contracts did not indicate the specific services or engagements the beneficiaries would perform for each team. As noted by the acting director, the 2013-2014 league schedules for the [REDACTED] and the [REDACTED] indicated that there are 29 dates on which both teams have a scheduled game. The acting director emphasized that it is unclear from the player contracts for which team each of the beneficiaries would be playing on those dates. The acting director therefore requested that the petitioner submit an itinerary of service dates and locations, to include "letters from both teams explaining in detail how they intend to share the services of both beneficiaries during the course of their seasons, including any playoff games."

In response to the NOID, the petitioner provided documentation in support of its assertion that professional ice hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers. Specifically, the petitioner provided a screenshot from [REDACTED] (accessed December 11, 2013), reflecting the professional services provided to professional athletes by [REDACTED] a company which the petitioner asserts represents the beneficiary [REDACTED]. The documents state that "[REDACTED] is recognized as an industry leader in contract negotiation strategies . . . professional athlete contracts . . . [and] merger and acquisition contracts" The petitioner also submitted a screenshot from [REDACTED] (accessed December 11, 2013), highlighting agent [REDACTED] and an article dated August [REDACTED], from [REDACTED], indicating that Mr. [REDACTED] was the sports agent for the beneficiary [REDACTED]. These documents do not establish that professional hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers, or that these agents traditionally arrange such short-term employment on behalf of the beneficiaries.

The petitioner also submitted amended letters from each team dated December 12, 2013, stating that “. . . we are in agreement with [the other team] that the employment of the beneficiaries is on a short-term basis with our team.” 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. at 1108.

The petitioner additionally asserted through counsel that the player contracts by their terms are short-term contracts because the beneficiaries may be terminated at will. The petitioner refers to the player contracts as “daily contracts” that “require that the players be paid on a pro rata basis.” The petitioner, through counsel, further explained on motion:

Minor hockey league players are typically employed by several teams . . . over the course of a season. For example, players may be hired by a team and spend the first month of the season playing hockey for that team. The player then terminates employment with that team when he is “called up,” or hired by a higher level league for a weekend series (3 games). After the weekend series, he terminates his employment with the higher level league team to return to the previous team the following Monday where he is rehired. Accordingly, during the nine (9) month minor league hockey season, hockey players are engaged in “short-term” or temporary employment with several minor league teams.

However, the petitioner has not submitted expert opinion testimony regarding the employment practices of professional hockey players. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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)).

Further, the petitioner’s brief relies in part on regulations pertaining to H-2A seasonal agricultural guest workers, specifically the definition of employment of a “temporary or seasonal nature” contained in the regulations at 20 C.F.R. § 655.103(d). The entire P-1 classification authorizes beneficiaries to come to the United States to perform services for an employer or a sponsor “temporarily.” 8 C.F.R. § 214.2(p)(1)(i). Within that context, the regulation at 8 C.F.R. § 214.2(p)(2)(iv)(E) uses the term “short-term.” The petitioner has not sufficiently explained the relevance of the definition of “temporary” in the H-2A regulations to the definition of “short-term” in 8 C.F.R. § 214.2(p)(2)(iv)(E), a subparagraph of 8 C.F.R. § 214.2(p), which elsewhere utilizes the term “temporarily.” Similarly, the petitioner has not sufficiently explained the relevance of the Department of Labor’s general definition of “temporary” to the definition of “short-term.”

The acting director determined that the petitioner did not establish that professional ice hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers. The evidence of record supports the director's determination. The petitioner did not provide corroborative evidence to support its contention that professional hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers. Moreover, the plain language of the beneficiaries' player contracts, which are each titled a "Standard Player Contract," indicates that they will work for the teams for the entire minor hockey league season and, therefore, does not support the petitioner's contention either that the beneficiaries' employment in the United States would be short-term or that professional ice hockey players traditionally use agents to arrange short-term employment on their behalf with numerous employers. Therefore, the petition will be denied on this basis.

In addition, as noted by the acting director, the petitioner has not provided a copy of any written contract between it and the beneficiaries or a summary of the terms of an oral agreement. On appeal, the petitioner acknowledges that both beneficiaries have their own agents, but asserts that it represents the beneficiaries "solely for the purpose of filing this P-1 petition." The petitioner then quotes from *Requirements for Agents and Sponsors Filing as Petitioners for the O and P Visa Classifications*, HQ70/6.2.18/19 (Nov. 20, 2009), which explains that a petitioner need not demonstrate that "it normally serves as an agent outside the context of this petition." Finally, the petitioner asserts that the petitioner's authorization to act as the beneficiaries' agent is apparent from their willingness to provide their personal data and documentation to support the petition. The memorandum discusses the petitioner's relationship with the employers for purposes of determining if the petitioner "is in business as an agent." It remains that the regulation at 8 C.F.R. § 214.2(p)(2)(ii)(B), which as noted above applies to all P petitions, requires a copy of any written contract between the petitioner and the beneficiary or, if a written contract does not exist, evidence summarizing the terms of an oral agreement under which the beneficiary will be employed. Since the petitioner has not provided this required evidence, the petition will be denied on this additional basis.

In response to the acting director's request for additional evidence pertaining to the beneficiaries' itinerary or the nature of the proposed events or activities, the petitioner submitted the above amended letters from each team dated December 12, 2013, stating that ". . . we are in agreement with [the other team] that the employment of the beneficiaries . . . with our team . . . is not concurrent with the [other team]." The petitioner also asserted "[a]s it relates to the contract and itineraries, [the teams] have mutually agreed that the players will not play concurrently for both clubs, but rather change employers based on need under the executed 'short term' daily contracts." As stated above, while the contracts have termination provisions, they cover a season, rather than providing for employment on a day by day basis. The petitioner did not provide an itinerary of the beneficiaries' service dates and locations, as requested by the acting director.

The acting director determined that the petitioner did not comply with the regulatory requirement to provide a complete itinerary. As discussed above, three types of United States agents may file petitions for P-1 workers: (1) agents who perform the function of an employer for aliens who are traditionally self-employed; (2) agents who arrange short-term employment with numerous employers as the representative of both the alien and the employers; and (3) agents who act on behalf of foreign employers. *See generally* 8 C.F.R. § 214.2(p)(2)(iv)(E).

The question of whether a petitioner is required to submit an itinerary is dictated entirely by regulation, which requires a petitioner to show that a P-1 beneficiary is entering the United States for definite, non-speculative, employment by submitting an itinerary or a specific explanation of the events or activities scheduled for the beneficiary. 8 C.F.R. § 214.2(p)(2)(ii)(C). This requirement exists because “P classification may not be granted to an alien merely to enter the United States to freelance and seek employment,” but must only be admitted “to perform in specific events as detailed on the initial petition.” 59 Fed. Reg. at 41828.

The itinerary requirement applicable to agents filing a P-1 petition as the representative of both the beneficiary and multiple employers requires such agents to submit “a complete itinerary of the services or engagements” which must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. 8 C.F.R. § 214.2(p)(2)(iv)(E)(2).

The evidence of record supports the acting director’s determination that the petitioner has not complied with the regulatory requirements for an agent, in that it has not submitted an itinerary of the beneficiaries’ services or engagements. The beneficiaries’ hockey player agreements with the [REDACTED] are noted. While the beneficiaries may have employment commitments with the teams, the petitioner is not relieved of its regulatory obligation as the agent on a P-1 petition to submit a detailed itinerary of the beneficiaries’ services or engagements with the dates and locations of the work. The petitioner did not submit any itineraries at the time of filing.

In the NOID, the acting director specifically advised the petitioner, after reviewing the initial evidence, that a complete itinerary would be required to adjudicate the petition, explaining in detail how the [REDACTED] intend to share the services of the beneficiaries during the course of the season. The petitioner did not submit a response to this specific inquiry and instead provided the 2013-14 season schedules for the [REDACTED] without an explanation of the dates of each of the beneficiaries’ services or engagements and the locations where the services will be performed. These schedules do not contain sufficient detail to meet the regulatory requirements for an itinerary. The regulatory requirements for an agent of a P-1 petition involving multiple employers include a complete itinerary, as part of the initial evidence in this matter and, because the petitioner did not provide a sufficiently detailed itinerary, the petition may not be approved. The petition will be denied on this additional basis.

III. Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that we abused our discretion with respect to all of our enumerated grounds. *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).

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.