



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 21164002

Date: JUL. 21, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Athlete, Artist, or Entertainer – P)

The Petitioner, a horse training facility, seeks to classify the Beneficiary 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. Sections 204(i)(2) and 214(c)(4)(A) of the Act, 8 U.S.C. §§ 1154(i)(2), 1184(c)(4)(A).

The Director of the Vermont Service Center denied the petition on two grounds. First, the Director concluded that the Petitioner failed to submit sufficient evidence establishing that the Beneficiary intended to perform in the United States “services which require an internationally recognized” athlete. *See* 8 C.F.R. § 214.2(p)(4)(i)(A)-(B) (2020). Second, the Director determined that the Petitioner did not demonstrate that the Beneficiary qualified as an internationally recognized athlete, because it did not present sufficient documentary evidence satisfying at least two of the seven evidentiary criteria specified in 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(i)-(vii).

The Petitioner appeals, maintaining that it has established eligibility to classify the Beneficiary as an internationally recognized athlete. In these proceedings, it is the Petitioner’s burden to establish, by a preponderance of the evidence, its eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).¹ Upon *de novo* review, we will dismiss the appeal.

I. LAW

Under Sections 101(a)(15)(P)(i) and 214(c)(4)(A)(i)(I) of the Act, a foreign national 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 as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. *See also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(I). Section 214(c)(4)(A)(ii)(I) of the Act specifies that a petitioner seeking to classify a foreign national as an internationally recognized athlete must show that the foreign national is entering the United States

¹ If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is “more likely than not” or “probably” true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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) (stating the P-1 classification applies to a foreign national who is coming to the United States temporarily “[t]o perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance”).

The U.S. Citizenship and Immigration Services (USCIS) Policy Manual specifies:

Relevant considerations for determining whether competitions are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete or team include, but are not limited to:

- The level of viewership, attendance, revenue, and major media coverage of the events;
- The extent of past participation by internationally recognized athletes or teams;
- The international ranking of athletes competing; or
- Documented merits requirements for participants.

If the record shows the participation of internationally recognized caliber competitors is currently unusual or uncommon, this may indicate that the event may not currently be at an internationally recognized level of performance. In addition, while not necessarily determinative, the fact that a competition is open to competitors at all skill levels may be a relevant negative factor in analyzing whether it is at an internationally recognized level of performance. If the event includes differentiated categories of competition based on skill level, the focus should be on the reputation and level of recognition of the specific category of competition in which the athlete or team seeks to participate.

2 *USCIS Policy Manual* N.2(A)(1), <https://www.uscis.gov/policy-manual/volume-2-part-n-chapter-2>; *see also* USCIS Policy Alert PA-2021-04, *Additional Guidance Relating to P-1A Internationally Recognized Athletes* 1-2 (Mar. 26, 2021), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210326-Athletes.pdf>.

Moreover, the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2) requires that a petitioner submit documentation satisfying at least two of the following seven evidentiary criteria regarding the beneficiary:

- (i) Evidence of having participated to a significant extent in a prior season with a major United States sports league;
- (ii) Evidence of having participated in international competition with a national team;

- (iii) Evidence of having participated to a significant extent in a prior season for a U.S. college or university in intercollegiate competition;
- (iv) A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized;
- (v) 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;
- (vi) Evidence that the individual or team is ranked if the sport has international rankings; or
- (vii) Evidence that the alien or team has received a significant honor or award in the sport.

II. ANALYSIS

According to pages 4-5 of the petition, the Petitioner seeks to hire the Beneficiary as a jockey, intending to compensate him with \$40,000 a year in wages. The employment contract in the record indicates that the “Proposed Salary Offered” is “\$40,000 per year (depending upon the number of races).”

The Petitioner has not established eligibility to classify the Beneficiary as an internationally recognized athlete because it has not submitted documentation regarding the Beneficiary that satisfies at least two of the seven evidentiary criteria. *See* 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). On page 9 of its appellate brief, the Petitioner states that “[s]ince [it] must meet evidentiary requirements of only two of the 7 criteria, [it will] limit [its] discussion to two criteria.” Our decision will therefore address the following two criteria that the Petitioner claims it meets.

A written statement from an official of the governing body of the sport which details how the alien or team is internationally recognized. 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(iv).

On appeal, the Petitioner maintains that it satisfies this criterion because it has “submitted several letters, including from [redacted] Executive Director of [redacted] [redacted], and [redacted] General Secretary of [redacted] [redacted].” The Petitioner alleges that the two individuals “are head of the thoroughbred association in the United States and [redacted]” the Beneficiary’s country of citizenship. The Petitioner further claims that [redacted] “is an official of the Sport’s Governing Body in [redacted].”

The record is insufficient to support a finding that the [redacted] or the [redacted] is the governing body of the sport of horse racing. According to the evidence, including online printouts from [redacted] website, an online article in which [redacted] discussed the passing of a colleague, as well as [redacted] September 2020 letter, [redacted] represents horse owners and trainers in Kentucky and is affiliated with the [redacted] which represents horse owners and trainers in the United States and Canada. While the documents establish that the [redacted] is a racing organization,

they do not sufficiently confirm that it is “the governing body of the sport,” as required under the criterion.

Similarly, the evidence in the record is insufficient to substantiate the Petitioner’s claim that the [redacted] is the governing body of horse racing in [redacted]. The Petitioner has offered documents from 2017, showing that the organization elected [redacted] as its general secretary. Neither these nor other documents in the record establish or allege that the [redacted] is the governing body of horse racing in [redacted].

Moreover, the letters from [redacted] and [redacted] do not “detail[] how the [Beneficiary] is internationally recognized” as a jockey. [redacted] states that the Beneficiary will work for the Petitioner, which “is a prominent trainer who has participated in races of national and international scope,” and that he “will race and school horses” in the United States. [redacted] further states that the Beneficiary “possesses the skills to develop young and older horses of varying temperaments in races and training workouts, [] has achieved international recognition, and has won important awards and prizes as a Professional Jockey.” The letter does not provide sufficient details about the bases of [redacted] knowledge or opinion of the Beneficiary, point to evidence of his international recognition as a jockey, or adequately explain the significance of the “awards or prizes” he has won. The conclusionary statements are insufficient to satisfy this criterion.

In addition, the letter from [redacted] does not “detail[] how the [Beneficiary] is internationally recognized” as a jockey. The January 2021 letter indicates that the Beneficiary is a member of the [redacted] and “his development as a [redacted] and affiliate of this Association was with great performance and commitment to the activity.” The letter does not point to any evidence, or even allege, that the Beneficiary is an internationally recognized jockey.

On appeal, the Petitioner argues for us to consider other letters in the record and to conclude that the Beneficiary qualifies “as a Professional Jockey with an internationally recognized level” of qualifications. The Petitioner, however, has not demonstrated that the authors of these letters are “official[s] of the governing body of the sport.” In short, the Petitioner has not presented evidence explicitly required under this criterion, specifically, “[a] written statement from an official of the governing body of the sport which details how the [Beneficiary] is internationally recognized.” As such, the Petitioner has not satisfied this 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).

On appeal, the Petitioner asserts that it meets this criterion because it has offered “testimonies . . . from internationally recognized [j]ockeys, members of the sports media, and recognized experts in the sport[.]” The Petitioner submits for the first time on appeal, letters from individuals it claims to qualify as “member[s] of the sports media or [] recognized expert[s]” in horse racing. The letters include those from [redacted] of the *Palermo Magazine*; [redacted] who claims to be an [redacted] thoroughbred journalist”; and [redacted] of [redacted] Jockey Club’s School of Jockeys. We will not consider the additional evidence because the Director had issued a request for evidence (RFE), specifying on pages 7 and 8 of the RFE that the Petitioner “may [] submit evidence

to satisfy this criterion.” As the Petitioner had an opportunity to supplement the record before the Director concerning this criterion, we will not consider for the first time on appeal evidence that it should have presented to the Director. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Additionally, the remaining letters in the record do not satisfy this criterion. Assuming *arguendo* that the authors of the letters qualify as members of the sports media or recognized experts in the sport of horse racing, their letters do not detail how the Beneficiary is internationally recognized. Specifically, while the letters list the Beneficiary’s competitive successes, claiming he has won races and monetary awards, and praise him as a skilled jockey, they do not explain how he has achieved international recognition based on his competitive successes and skills as a jockey. For example, a September 2020 letter from the general manager of the petitioning organization lists the Beneficiary’s race victories and indicates that “he has demonstrated his skills to compete, prepare, maintain, challenge and train valuable racehorses for the rigors of competition.” A letter from [REDACTED] a jockey, states that the Beneficiary “has the desired skills, abilities and all the sufficient requirements to be a successfully jockey in the U.S.” A letter from [REDACTED], a jockey, states that the Beneficiary “has always stood out in the [REDACTED] for his excellent behavior, . . . obtaining first places of Grades 1, 2 and 3 and Handicaps.”² A letter from [REDACTED], a jockey, states that the Beneficiary “is a trained professional to carry out his position anywhere in the world.” A letter from [REDACTED] a jockey, states that the Beneficiary “has competed in numerous races in [REDACTED] since 2011” and has “become a winner of 203 victories.” A letter from [REDACTED], a thoroughbred coach, states that the Beneficiary “worked for [him] and always demonstrated compliance, responsibility and professionalism in the performance of his duties as a [j]ockey.” A letter from [REDACTED] a journalist, states that the Beneficiary “is a professional with vast experience and honesty” and “is very capable of compet[ing] anywhere in the world.”

The letters in the record, including those not specifically mentioned above, contain general praises and conclusory statements that the Beneficiary is internationally recognized. They, however, do not discuss the Beneficiary’s level of recognition, and they are insufficient to establish that he is internationally recognized as a jockey. As explained in the Director’s decision, the letters are “insufficient to show that the [B]eneficiary’s level of achievement is substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well known in more than one country.” *See* 8 C.F.R. § 214.2(p)(3) (defining “internationally recognized”).

The Petitioner has also presented articles that document the Beneficiary’s participation in races and his results. These articles, however, do not indicate that he is an internationally recognized jockey. The Petitioner has also failed to offer additional information relating to the publications in which the articles appeared, explaining the potential reach or readership of the articles. Even if we were to accept that the articles constituted “written statement[s] from [] member[s] of the sports media,” we would not conclude that they satisfy this criterion, because they do not “detail[] how the [Beneficiary] is

² On pages 10 and 11 of its appellate brief, the Petitioner claims: “[t]he thoroughbred horse racing races have different ranges or divisions from regular races to stake races, including U.S. Triple Crowns events . . . and others G-1, G-2, and G-3 races” and that “[s]uch levels or divisions require the participation of [j]ockeys with a high level and professionalism.”

internationally recognized.” 8 C.F.R. § 214.2(p)(4)(ii)(B)(2)(v). As such, the Petitioner has not satisfied this criterion.

Based on the reasons we have discussed above, the Petitioner has not met the requirements under 8 C.F.R. § 214.2(p)(4)(ii)(B)(2). Specifically, it has not submitted documentation satisfying at least two of the seven listed evidentiary criteria.

III. CONCLUSION

The Petitioner has not established its eligibility to classify the Beneficiary as an internationally recognized athlete because it has not met the requirements under 8 C.F.R. § 214.2(p)(4)(ii)(B)(2).³ The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the Petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The appeal is dismissed.

³ In light of our findings, we need not consider the Director’s alternate ground of denial: the Petitioner did not submit sufficient evidence showing that the Beneficiary intended to perform in the United States “services which require an internationally recognized” athlete. *See* 8 C.F.R. § 214.2(p)(4)(i)(A)-(B). We reserve this and other eligibility issues for consideration if the need arises.