U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 07123503

Date: MAY 16, 2022

Certification of Vermont Service Center Decision

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

The Petitioner, an arena soccer team in the [redacted], seeks to classify the Beneficiaries, soccer players, as internationally recognized athletes or professional athletes. *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-1A 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 Vermont Service Center Director denied the Petitioner's Form I-129, Petition for a Nonimmigrant Worker, and certified the denial to us for review. In the denial, the Director concluded that the record did not show: (1) the Petitioner qualified as a team in "a major United States sports league," as referenced in 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*) and (*2*)(i); (2) the Beneficiaries intended to perform in the United States "services which require an internationally recognized" athlete, as specified under 8 C.F.R. § 214.2(p)(4)(i)(A) and (B); (3) the Beneficiaries were coming to the United States temporarily and "solely for the purpose of performing . . . as such an athlete with respect to a specific athletic competition," as required under Section 214(c)(4)(A)(ii) of the Act; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (3) (defining "competition, event, or performance"); (4) the Beneficiaries qualified as "internationally recognized athlete[s]" by satisfying at least two of the seven criteria listed under 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(i)-(vii); and (5) the Beneficiaries qualified as "professional athlete[s]," as defined under Section 204(i)(2) of the Act.

After the Director certified the Form I-129 petition denial to us, U.S. Citizenship and Immigration Services (USCIS) issued guidance to update and clarify adjudication guidance for P-1A petitions. USCIS Policy Alert PA-2021-04, *Additional Guidance Relating to P-1A Internationally Recognized Athletes* 1 (Mar. 26, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210326-Athletes.pdf. The guidance provided more detailed guidance regarding the required prospective level of performance and USCIS' interpretation of the undefined regulatory phrase "major United States sports league or team." *See* 2 *USCIS Policy Manual* N.2(A), N.4(A), https://www.uscis.gov/policy-manual/volume-2-part-n. The updated guidance, however, does not relate to the issue of whether a beneficiary is coming to the United States "solely for the purpose of performing . . . as such an athlete with respect to a specific athletic competition," Section 214(c)(4)(A)(ii) of the Act; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (3), or the issue of whether the

beneficiary qualifies as a "professional athlete," as the term is defined under Section 204(i)(2) of the Act.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Upon review, we will deny the petition.[1]

I. LAW

Under Section 101(a)(15)(P)(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 services for an employer, agent, or sponsor. *See also* Section 214(c)(4)(A) of the Act. The relevant portion of Section 214(c)(4)(A)(i)(I) of the Act provides that Section 101(a)(15)(P)(i)(a) of the Act applies to a foreign national who performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance.

In addition, the Act specifies that a petitioner must show a beneficiary is coming to the United States temporarily and "solely for the purpose of performing . . . as such an athlete with respect to a specific athletic competition." Section 214(c)(4)(A)(ii) of the Act; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*). The regulation provides the following definition:

> Competition, event, or performance means an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement. Such activity could include short vacations, promotional appearances for the petitioning employer relating to the competition, event, or performance, and stopovers which are incidental and/or related to the activity. An athletic competition or entertainment event could include an entire season of performances. A group of related activities will also be considered an event . . . . In the case of a P-1 athlete, the event may be the duration of the alien's contract.

8 C.F.R. § 214.2(p)(3)(defining "competition, event, or performance").

Furthermore, Section 214(c)(4)(A)(i)(II) of the Act provides that a foreign national may be classified as a P-1A nonimmigrant if he or she "is a professional athlete." Sections 204(i)(2) of the Act defines the term "professional athlete" as "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

[1] If a petitioner submits relevant, probative, and credible evidence that leads USCIS to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(B) any minor league team that is affiliated with such an association.

II. ANALYSIS

The Petitioner has not sufficiently shown that the Beneficiaries may be classified as P-1A internationally recognized athletes, because it has not demonstrated that the Beneficiaries are coming to the United States temporarily and "solely for the purpose of performing . . . as such an athlete with respect to a specific athletic competition," as required under Section 214(c)(4)(A)(ii) of the Act. *See also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (3) (defining "competition, event, or performance"). Page 26 of the petition states that the Beneficiaries' duties will be "Indoor Soccer Player. Training, Games, Promotions." According to the players' contracts, the Beneficiaries, in addition to playing soccer, will "provid[e] other services to the [redacted]." In an August 2019 affidavit, the senior vice president of [redacted], which owns the team [redacted], explained that the players have a contract with the team to play professional indoor soccer, as well as a contract with [redacted] which owns [redacted] to provide services to "help increase community awareness with the desired goal of increasing [redacted] ticket sales, sponsorships, and ultimately [redacted] revenue and recognition." On page 13 of its brief in response to the Director's certification, the Petitioner provides that the Beneficiaries will "provide other services, such as marketing/promotional appearances for and on behalf of the team and participation in local communities and outreach programs which support and promote the sport." The brief further states that under the [redacted] contract, the Beneficiaries will provide "sales and marketing services, including assistance with ticket sales, appearances, special events, social media, networking, sponsorship fulfillment, public relations, advertising, marketing, and local youth soccer outreach."

The Petitioner argues on page 14 of its brief that the Beneficiaries' "ancillary services [of] promot[ing] community awareness with the desired goal of increasing [redacted] ticket sales, sponsorship, and ultimately [redacted] revenue and recognition" are permissible. On page 2 of its June 2019 letter submitted in response to the Director's request for evidence (RFE), the Petitioner claimed that the "[B]eneficiaries' activities[, including promotional duties,] are related to their employment as professional arena soccer players." The Act and relevant regulation, however, do not support the Petitioner's contention that all of the Beneficiaries' intended duties are permissible. As mentioned, while "short vacations, promotional appearances for [the Petitioner] relating to the competition [or] event . . . which are incidental and/or related to" a specific athletic competition, are permissible, general promotional duties for the employer that are not incidental and/or related to a specific athletic competition are not similarly permissible. Section 214(c)(4)(A)(ii) of the Act; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (3). As some of the Beneficiaries' intended duties appear to be activities that promote the team [redacted] and the sport of indoor soccer as a whole, which are not incidental

or related to a specific competition, the Petitioner has not demonstrated that the Beneficiaries may be classified as P-1A internationally recognized athletes.[2]

In addition, the Petitioner has not shown that the Beneficiaries qualify as professional athletes under Sections 204(i)(2) of the Act. Specifically, as discussed on page 11 of the Director's decision, the record is insufficient to confirm that the Beneficiaries are professional athletes. The evidence fails to show that the Beneficiaries are employed 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." Section 204(i)(2) of the Act. In an October 2018 letter, the [redacted]'s commissioner listed 26 teams as members of the league and alleged that "[d]uring the 2017/2018 season, the [redacted] and its member teams amassed approximately $11,136,695 U.S. dollars in gross revenue." The letter states that "[redacted] teams generally do not have their financial statements prepared by third party auditors, so we [the [redacted]'s commissioner] do not have independently prepared financial stats to share."

Other than the unsubstantiated figure noted in the [redacted]'s commissioner's October 2018 letter, the record lacks evidence, such as financial reports or tax documents, corroborating the assertion that the [redacted] teams' combined revenues exceed $10,000,000 per year. *See* Section 204(i)(2) of the Act. Moreover, in its brief in response to the Director's certification, the Petitioner does not challenge the Director's adverse finding on this issue. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). As such, the Petitioner has not established that the Beneficiaries are professional athletes as the term is defined under Section 204(i)(2) of the Act, or that they may be classified as P-1A professional athletes under Section 214(c)(4)(A)(i)(II) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated its eligibility to classify the Beneficiaries as P-1A internationally recognized athletes or professional athletes. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The petition is denied.

[2] In light of this finding, we need not consider the Director's other grounds for denial, including the finding that: (1) the Petitioner did not qualify as a team in "a major United States sports league," as referenced in 8 C.F.R. § 214.2(p)(4)(ii)(B)(*1*) and (*2*)(i); (2) the Beneficiaries did not intend to perform in the United States "services which require an internationally recognized" athlete or athletic team, as specified under 8 C.F.R. § 214.2(p)(4)(i)(A) and (B); and (3) the Beneficiaries did not qualify as "internationally recognized athlete[s]" by satisfying at least two of the seven criteria listed under 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(i)-(vii).