U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19992496

Date: MAY 18, 2022

Appeal of California Service Center Decision

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

The Petitioner, a gym that offers martial arts classes, 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 California Service Center denied the petition on multiple grounds. First, the Director concluded that the Petitioner failed to submit sufficient evidence concerning the specific athletic competitions in which the Beneficiary intended to participate in the United States. *See* 8 C.F.R. § 214.2(p)(2)(ii)(C), (iv)(A) (2021). Next, the Director found that the Petitioner did not show it may file a petition for the Beneficiary, because it did not demonstrate that it was "a United States employer, a United States sponsoring organization, a United States agent, or a foreign employer through a United States agent." 8 C.F.R. § 214.2(p)(2)(i); *see also* 8 C.F.R. § 214.2(p)(2)(iv)(E). Finally, the Director determined that the Petitioner did not establish that the Beneficiary qualified as an internationally recognized athlete, because it did not submit sufficient documentary evidence satisfying at least two of the seven criteria listed under 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(i)-(vii).

The Petitioner appeals the Director's denial of the petition, 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

[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.

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)(*1*). The regulation at 8 C.F.R. § 214.2(p)(2)(i) specifies that a P-1 petition must 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 addition, the regulation requires a petitioner to submit, among other evidence, "[a]n 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." 8 C.F.R. § 214.2(p)(2)(ii)(C). The regulation also states that "[a] petition which requires the alien to work in more than one location (e.g., a tour) must include an itinerary with the dates and locations of the performances." 8 C.F.R. § 214.2(p)(2)(iv)(A).

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 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 a 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 page 4 of the petition, the Petitioner seeks to have the Beneficiary work as a "professional mixed martial arts fighter." According to a June 2021 document that the Petitioner claims to be "a breakdown of the verbal employment agreement between the Beneficiary and [the Petitioner]," the Beneficiary "is required to train exclusive at [the Petitioner's facility] when preparing for a professional bout" and when he is not under contractual obligations to training at another gym; the Petitioner "recruited the Beneficiary to not only fight under [its] team, but to help instruct [its martial arts] classes; and the Beneficiary "will earn twenty-five (25) dollars an hour for each instructional class he is scheduled to teach" and that he "will be instructed to teach anywhere between four (4) to five (5) hours daily." The record includes a "Bout Agreement" and a "Promotional Agreement" between the Beneficiary and [redacted], as well as an "Exclusive Representation Agreement" between the Beneficiary and [redacted]. In a June 2021 letter, the owner of [redacted] explained that his company secures professional bouts with [redacted]

[redacted][2] for the Beneficiary and the Beneficiary pays the company a percentage of his "Fight Related Gross Income" and "Non-Fight Gross Income." The letter further states that under the "Exclusive Representation Agreement," "one (1) month prior to each professional bout, [the Beneficiary] is required to train [at the gym][redacted]"

The Petitioner has not established eligibility to classify the Beneficiary as an internationally recognized athlete for the following reasons. First, as noted, 8 C.F.R. § 214.2(p)(2)(ii)(C) requires the Petitioner to submit "[a]n 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." The regulation at 8 C.F.R. § 214.2(p)(2)(iv)(A) specifies that "[a] petition which requires the alien to work in more than one location (e.g., a tour) must include an itinerary with the dates and locations of the performances." As discussed in the Director's decision, the record lacks a list of fights in which the Beneficiary intends to participate in the United States. On appeal, the Petitioner claims that "an itinerary of scheduled events with specific dates is somewhat difficult, given that the COVID-19 pandemic crippled the fight industry significantly in a near somewhat global level." Notwithstanding the Petitioner's claim, it has not submitted regulatorily required documents, and thus, it has not demonstrated eligibility for the petition.

Second, the Petitioner has not shown that the Beneficiary is entering the United States temporarily to perform as an athlete at an internationally recognized level of performance, *see* Section 214(c)(4)(A)(i)(I) of the Act, and solely for the purpose of performing "as such an athlete with respect to a specific athletic competition." Section 214(c)(4)(A)(ii)(I) of the Act; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*). The evidence in the record, including the June 2021 "verbal employment agreement," shows that the Petitioner intends to employ the Beneficiary as an instructor at its gym. Specifically, the "verbal employment agreement" provides that the Petitioner intends to pay the Beneficiary $25 an hour to teach four to five hours of martial arts classes daily,[3] and that the Petitioner is allowing the Beneficiary to use its gym for training when he is not contractually obligated to train at the [redacted] gym. The "verbal employment agreement" also states that the Beneficiary "will not receive an income [from the Petitioner] for time preparing for [] fights [arranged by [redacted] and [redacted]]" because his "income will derive directly from his professional bouts." A document entitled "O and P Classifications Supplement to Form I-129" similarly indicates that the Beneficiary "will be required to coach students [of the petitioning entity], along with training and preparing for fights." Based on the documents in the record, specifically those concerning the Beneficiary working as a martial arts instructor, the Petitioner has failed to show that he is entering the United States temporarily to perform as an athlete at an internationally recognized level of performance, and solely for the purpose of performing "as such an athlete with respect to a specific athletic competition." *See* Section 214(c)(4)(A)(i)(I), (ii)(I) of the Act; *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*). As such, the Petitioner has not demonstrated eligibility to classify the Beneficiary as an internationally recognized athlete.

Finally, even if we were to find that the Beneficiary is coming to the United States solely to compete in specific athletic competitions, the Petitioner has not sufficiently shown that the professional fights

[2] [redacted] and [redacted] appear to be the same entity or associated entities, because the title of the promotional agreement is [redacted] Promotional Agreement," bearing a [redacted] logo, but the body of the agreement references [redacted]

[3] Page 5 of the petition indicates that the Beneficiary will work full-time, earning $25 per hour in wages.

arranged by [redacted] and [redacted] qualify as events that "require an internationally recognized athlete." 8 C.F.R. § 214.2(p)(4)(i)(A). The Petitioner has not offered sufficient evidence showing that the intended professional fights are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete. The record includes a copy of the Beneficiary's "MMA Participant" license issued by the State of Florida, and an online printout from www.sherdog.com listing the Beneficiary's biographical information and competitive results in seven events (three losses and four wins). The record, however, does not include evidence regarding the requirements that the Beneficiary must satisfy to obtain the "MMA Participant" license or evidence regarding the caliber of events in which the Beneficiary participated. Without additional corroboration, these documents are insufficient to confirm his status as an internationally recognized athlete.

Moreover, the record lacks evidence concerning the caliber of the Beneficiary's intended professional fights. While a June 2021 letter from the owner of [redacted] claims that the company "recently entered into a deal with [redacted] television network within the United States to televise its events," the Petitioner has not shown that any of the Beneficiary's intended events will be televised. The Petitioner similarly has not presented evidence relating to "[t]he level of viewership, attendance, revenue, and major media coverage of the [Beneficiary's intended events]"; "[t]he extent of past participation by internationally recognized athletes" in the events; "[t]he international ranking of athletes competing;" or "[d]ocumented merits requirements for participants." *See* 2 *USCIS Policy Manual*, *supra*, at N.2(A)(1); *see also* USCIS Policy Alert PA-2021-04, *supra*, at 1-2. Furthermore, according to page 5 of the "Promotional Agreement," the Beneficiary might not participate in any fights at all because the contract ends "on the earlier of (i) twenty-four (24) months after the Effective Date, or (ii) the date on which [the Beneficiary] has participated in at least five (5) Bouts . . . ."

Based on the insufficient information concerning the Beneficiary's intended professional fights, including the lack of an itinerary, the Petitioner has not demonstrated that he is entering the United States to participate at an internationally recognized level of performance that requires the participation of an internationally recognized athlete. *See* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (4)(i)(A); *see also* 8 C.F.R. § 214.2(p)(2)(ii)(C), (iv)(A).

III. CONCLUSION

The Petitioner has not demonstrated its eligibility to classify the Beneficiary as an internationally recognized athlete because it has not submitted an itinerary of his professional fights, which is required under the regulation; it has not shown that the Beneficiary is entering the United States solely for the purpose of performing as an internationally recognized athlete with respect to specific athletic competitions; and it has not established that the Beneficiary is coming to the United States to participate at an internationally recognized level of performance that requires the participation of an

internationally recognized athlete. *See* Section 214(c)(4)(A)(i)(I), (ii)(I) of the Act; 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (4)(i)(A); *see also* 8 C.F.R. § 214.2(p)(2)(ii)(C), (iv)(A).[4]

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; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. at 806. Here, that burden has not been met.

ORDER: The petition is denied.

[4] In light of our findings, we need not consider the Director's alternate grounds of denial: the Petitioner was not eligible to file a petition for the Beneficiary, *see* 8 C.F.R. § 214.2(p)(2)(i), (iv)(E), and the Petitioner did not submit sufficient documentary evidence satisfying at least two of the seven criteria listed under 8 C.F.R. § 214.2(p)(4)(ii)(B)(*2*)(i)-(vii). We reserve these issues for consider if the need arises.