U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24605382

Date: JAN. 31, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a Tex-Mex restaurant chain, seeks to classify the Beneficiary, a polo player, 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-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 Director of the Vermont Service Center denied the petition on two independent and separate grounds. First, the Director concluded that the Petitioner did not submit sufficient evidence showing that the Beneficiary was entering the United States to solely perform services as an internationally recognized athlete. *See* Section 214(c)(4)(A)(ii)(I). Second, the Director determined that the Petitioner did not sufficiently establish that the Beneficiary was coming to the United States to perform services that required an internationally recognized athlete. *See* Section 214(c)(4)(A)(i)(I); *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (4)(i)(A) (2021).

The Petitioner appeals, noting on page 2 of the Form I-290B, Notice of Appeal or Motion, that it is "filing an appeal to the AAO [Administrative Appeals Office]" and that it "will submit [its] brief and/or additional evidence to the AAO within 30 calendar days of filing the appeal." To date, the Petitioner has not submitted a brief or additional materials on appeal. Instead, the record contains an "Additional Information Statement" that the Petitioner presented when it filed the Form I-290B. The Petitioner maintains in the appellate statement that it has established eligibility to classify the Beneficiary as a P-1A internationally recognized athlete.

In these proceedings, the Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Under Section 101(a)(15)(P)(i) of the Act, a noncitizen 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 noncitizen 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 that 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*) (stating that the P-1A classification applies to a noncitizen who is coming to the United States temporarily "[t]o perform at specific athletic competition as an athlete . . . at an internationally recognized level of performance").

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

> . . . [T]he relevant statutory and regulatory provisions do not require that an athlete or team be coming to participate in a competition that is limited to internationally recognized participants. Rather, it is sufficient for the petitioner to show that the competition is at an internationally recognized level of performance such that it requires that caliber of athlete or team to be among its participants or that some level of participation by internationally recognized athletes is required to maintain its current distinguished reputation in the sport.

See generally 2 *USCIS Policy Manual* N.2(A)(1), https://www.uscis.gov/policy-manual/volume-2-part-n-chapter-2.

II. ANALYSIS

The Petitioner has not established eligibility to classify the Beneficiary as a P-1A internationally recognized athlete. The record includes documents entitled "2021 Polo Season Schedule," "2021/2022 Winter Season @ [redacted] Florida," and "2022 Summer Polo Season @ Virginia," listing the Beneficiary's intended events in the United States. The Director discussed on pages 9 and 10 of the decision that the Petitioner did not demonstrate the Beneficiary was coming to the United States to perform services that require an internationally recognized athlete. Specifically, the Director determined that the record did not establish that the Beneficiary would participate in an athletic competition that had a distinguished reputation and that required participation of an athlete that had an international reputation. *See* Section 214(c)(4)(A)(i)(I), (ii)(I); *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (4)(i)(A). In its appellate statement submitted with its Form I-290B, the Petitioner does not specifically reference or challenge the Director's adverse finding relating to the nature of the Beneficiary's intended events in the United States.

When dismissing an appeal, we generally do not address issues that are not raised with specificity on appeal. Issues or claims that are not raised on appeal are deemed to be "waived." *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). As the Petitioner does not address the issue concerning the nature of the Beneficiary's intended events with specificity on appeal, we deem the issue waived and find that the Petitioner has not demonstrated, by a preponderance of the evidence, that the Beneficiary is coming to the United States to perform as an athlete at an internationally recognized

level of performance and to perform services that require an internationally recognized athlete. *See* Section 214(c)(4)(A)(i)(I), (ii)(I); *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (4)(i)(A); 2 *USCIS Policy Manual*, *supra*, N.2(A)(1).

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the 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)(I) of the Act.[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner indicates that USCIS has approved another P-1A petition it previously filed on behalf of the Beneficiary. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

III. CONCLUSION

The Petitioner has not demonstrated its eligibility to classify the Beneficiary as a P-1A internationally recognized athlete. *See* Section 214(c)(4)(A) of the Act. Specifically, it has failed to establish, by a preponderance of the evidence, that the Beneficiary is coming to the United States to participate in an athletic competition that has a distinguished reputation and that requires participation of an athlete that has an international reputation. *See* Section 214(c)(4)(A)(i)(I), (ii)(I); *see also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*), (4)(i)(A).

ORDER: The appeal is dismissed.

[1] We note that the record contains evidence indicating that the Beneficiary's intended duties in the United States include those not associated with being a polo player. For example, page 26 of the petition states that his duties will include "provid[ing] riding and stick and ball training." An "Employment Agreement" provides that the Beneficiary will "train and lead the members of [the Petitioner's] Polo Team," "care for, maintain, and train the string of polo horses owned by [the Petitioner]," and "organize donations and sponsorships for polo tournaments." The owner of the petitioning entity stated in a November 2021 letter that while in the United States, the Beneficiary has "been coordinating [its] team, donations and sponsorships, as well as maintaining and training [its] string of horses."