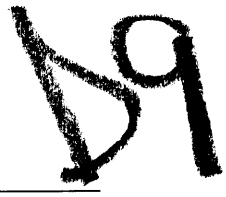
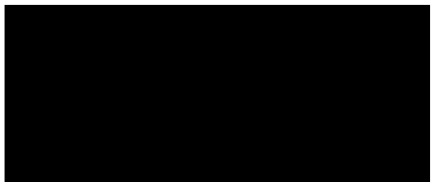
U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: LIN-99-168-50894 Office: Nebraska Service Center Date: FEB 28 2001

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to § 101(a)(15)(P)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(P)(i)

IN BEHALF OF PETITIONER:

identification, deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a professional hockey club and a member of the National Hockey League ("NHL"). The beneficiary is its Director of Community Relations. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking extension of the beneficiary's classification under section 101(a)(15)(P)(i) of the Immigration and Nationality Act ("the Act"), as an essential support alien. The petitioner seeks to continue to employ the beneficiary temporarily in the United States as Director of Community Relations for a period of one year.

The director denied the petition finding that the beneficiary's position does not qualify for P-1 nonimmigrant classification as an essential support alien under the pertinent regulations.

On appeal, counsel for the petitioner argued, in pertinent part, that the beneficiary qualifies for the classification and that the center director applied an overly narrow interpretation of the regulations.

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) of the Act, 8 U.S.C. 1184(c)(4)(A), provides that section 101(a)(15)(P)(i) of the Act applies to an alien who:

> (i) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance, and
>
> (ii) seeks to enter the United States temporarily and solely for the purpose of performing as such an athlete with respect to a specific athletic competition.

8 C.F.R. 214.2(p)(4)(iv) provides for P-1 classification of an alien as an essential support alien:

> (A) *General*. An essential support alien as defined in paragraph (p)(3) of this section may be granted P-1 classification based on a support relationship with an individual P-1 athlete, P-1 athletic team, or a P-1 entertainment group.

8 C.F.R. 214.2(p)(3) states in pertinent part:

> *Essential support alien* means a highly skilled, essential person determined by the Director to be an integral part of the performance of a P-1, P-2, or P-3 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P-1, P-2, or P-3 alien.

At issue in this matter is whether the beneficiary's services may be considered those of an essential support alien to the hockey organization.

With the petition, it was explained that the club was originally a Canadian team that moved to the United States in 1996. Many of the players for the team were stated to have entered the United States in P-1 classification and it was stated that the beneficiary was one of a very few administrative personnel who were brought to the United States to continue their employment with the team.

On appeal, counsel argued that the beneficiary has seventeen years of experience with the team and that her services are essential to the team's athletes in P-1 classification. It was stated that part of the beneficiary's duties include coordinating the athletes' community appearances which they are contractually obligated to perform and that she assists them and their families in adjusting to the relocation to Phoenix.

On review, the record does not establish that the duties of a community relations director are an "integral part of the performance of a P-1" athlete or that such services could not be "readily performed by a United States worker." The value of the beneficiary's services to the petitioning team and the desirability to continue the employment of a long-standing employee is not questioned. However, the scheduling of community appearances and providing relocation support are essentially administrative functions that cannot be considered either "highly skilled" or "essential to the successful performance" of the athletes' play. After careful consideration, it must be concluded that the director properly denied the petition under the regulations and that the original grant of P-1 classification to the beneficiary was in error. The petitioner has not overcome this determination on appeal.

Furthermore, it must be noted that the above regulations provide for P-1 classification of an essential support alien based on his or her "support relationship with an individual P-1 athlete or P-1 athletic team." In this case, the petition is based on the beneficiary's services performed for the entire team not an individual athlete. In this case, the petitioner is the Phoenix Coyotes, a United States member of the NHL. While the petitioner did not submit copies of its incorporation documents, there is no

evidence that the petitioner is a "P-1 athletic team." Even though many, or even all, of the athletes in the organization may be in P-1 classification, the petitioner failed to establish that the [redacted] are a foreign team admitted in P-1 classification, rather than a United States team, as contemplated in the pertinent nonimmigrant regulations. P-1 classification as an essential support alien is not available to a United States athletic team. For this reason as well, the petition may not be approved.

The denial of this petition is without prejudice to the filing of a petition for any other immigration benefit for which the beneficiary may be eligible.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.