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

[redacted]

Public Copy

File: EAC-01-066-50664 Office: Vermont Service Center Date: OCT 17 2001

IN RE: Petitioner:
Beneficiary: [redacted]

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

IN BEHALF OF PETITIONER: [redacted]

Identifying data 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

Myron L. Rosenberg

for Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is a tennis facility. The beneficiary is a professional tennis player. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking extension of the classification of the beneficiary under section 101(a)(15)(P)(i) of the Immigration and Nationality Act (the "Act") for a period of three years. The petitioner seeks to employ the beneficiary temporarily in the United States as a professional tennis player and as an instructor at one of its facilities.

In the decision, the director denied the petition finding that the petitioner failed to establish that the beneficiary satisfied the regulatory standard as an internationally recognized athlete and found that serving part-time as an instructor was inconsistent with P-1 classification.

On appeal, counsel for the petitioner submitted a brief arguing, in part, that the Service is estopped from reversing its decision in a petition for extension.

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)(1)(ii) provides for P-1 classification of an alien:

> (1) To perform at specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance...

8 C.F.R. 214.2(p)(3) states that:

> *Internationally recognized* means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily

> encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

8 C.F.R. 214.2(p)(2)(ii) requires, in part, that a petition for an internationally recognized athlete must include:

> (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien(s) will be employed; and
>
> (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events and activities, and a copy of any itinerary for the events and activities.

The definition of a contract is at 8 C.F.R. 214.2(p)(3):

> *Contract* means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

8 C.F.R. 214.2(p)(7)(i) requires, in pertinent part:

> (A) Consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for P-1, P-2, or P-3 classification can be approved.

After careful review of the record, it is determined that the petitioner failed to overcome the grounds for denial of the petition.

First, the petitioner has not submitted a copy of its written contract with the beneficiary.

Second, the petitioner submitted a consultation letter from the United States Tennis Association (USTA), Eastern Section, Long Island Region. The USTA is the appropriate peer group in the field of tennis. A consultation from a local chapter of the USTA will be considered, but is insufficient without an opinion from the national body, which is the authorized body for consultations in this type of proceeding.

Third, an alien athlete having an internationally recognized reputation may be granted P-1 classification to perform at a single competition or event or for an athletic season or tour appropriate

to the sport as an individual athlete or member of an athletic team. See 8 C.F.R. 214.2(p)(1). The petitioner in this case seeks to employ the beneficiary as part-time instructor or coach, not solely as an athlete competing in a specific event or events. P-1 classification is not available to aliens seeking employment as coaches or instructors at an academy or school devoted to the sport.

Fourth, as noted by the director, nothing in the record substantiates the petitioner's claim that the beneficiary is an internationally recognized athlete. The letter from the USTA chapter states that the beneficiary is a "proven top tennis professional player," but fails to provide any confirmation of his having competed in specific internationally recognized events.

Fifth, counsel's argument regarding estoppel is not persuasive. Service regulations allow the director to request evidence of eligibility for P-1 classification as a matter of discretion. 8 C.F.R. 214.2(p)(13). Furthermore, an administrative agency is not estopped from changing its legal interpretation of regulations which it later finds to have been erroneous. See Chief Probation Officers of Cal. v. Shalala, 118 F.3d 1327 (9th Cir. 1997); See also, Thomas Jefferson Univ. v. Shalala, 512 U.S. 504, 517-518 (1994). The director in this matter determined that the original petition for P-1 classification was erroneously approved and corrected that error in denying the petition for extension.

For these reasons, it is concluded that the petitioner has failed to overcome the determination that the petitioner failed to establish that the beneficiary is an internationally recognized athlete in the field of tennis who seeks to enter solely for the purpose of performing as such an athlete. Accordingly, the decision denying the extension of stay was properly issued.

The denial of this petition is without prejudice to the filing of a new petition for any employment-based visa 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.