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Immigration and Naturalization Service

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

[redacted]

File: LIN 99 083 51135 Office: NEBRASKA SERVICE CENTER Date: JAN 21 2003

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]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Nebraska Service Center director, who then revoked the approval. The petitioner appealed the director's decision to revoke the approval of the petition, and the Associate Commissioner for Examinations, through the Administrative Appeals Office ("AAO"), sustained the appeal. The director certified the decision to the AAO for review, and requested the AAO to reconsider its decision. The prior decision of the Associate Commissioner will be withdrawn and the director's decision to revoke the approval of the petition will be affirmed.

The petitioner is a semi-professional rugby club.[1] The beneficiary is described as a professional[2] rugby player. The petitioner filed a Form I-129, Petition for a Nonimmigrant Worker, seeking 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 rugby player.

The director revoked approval of the petition finding that the record was insufficient to show that the petitioner would compete at an internationally recognized level. The director determined that rugby does not qualify as a major league sport in the United States.

On appeal, counsel for the petitioner submitted a brief arguing that the director's decision was not in accordance with the appropriate regulations.

In sustaining the appeal, the AAO found that the beneficiary is an internationally recognized athlete and that the petitioner may be considered a major league team.

The director certified the decision to the AAO for review specifically to reconsider its determination that the petitioner is a major league team for P-1 purposes.

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:

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[1] The petitioner is semi-professional in that it compensates at least one player.

[2] The term professional when applied to P-1 athletes means a person who derives his livelihood from athletic activity. The term *professional athlete* as defined at section 204(i)(2) of the Act and the term *professional* set forth at section 203(b)(3)(A)(ii) and 101(a)(32) of the Act are not applicable in the P-1 context.

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

> *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country 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 a sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(i) of the Act as an alien who is coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team...

8 C.F.R. 214.2(p)(1)(ii)(A) 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)(2)(ii) requires, in part, that a petition for an internationally recognized athlete include:

> (A) The evidence specified in the specific section of this part for the classification;
>
> (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.

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)(4)(i)(A) provides, in pertinent part, that:

> *P-1 classification as an athlete in an individual capacity.* A P-1 classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

8 C.F.R. 214.2(p)(4)(ii) sets forth the documentary requirements for P-1 athletes as:

> (A) *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.
>
> (B) *Evidentiary requirements for an internationally recognized athlete or athletic team.* . . . A petition for an athlete who will compete individually or as a member of a U.S. team must be accompanied by evidence that the athlete has achieved international recognition in the sport based on his or her reputation. A petition for a P-1 athlete or athletic team shall include:
>
> > (1) A tendered contract with a major United States sports league or team, or a tendered contract in an individual sport commensurate with international recognition in that sport, if such contracts are normally executed in the sport, and
> >
> > (2) Documentation of at least two of the following:
> >
> > > (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 a major U.S. sports league or 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.

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.

The director determined and the AAO concurred that the beneficiary is an internationally recognized athlete. The two issues in this matter are whether the petitioner is a major United States sports league or team as required by 8 C.F.R. 214.2(p)(4)(ii)(B)(1) and whether the beneficiary is coming to the United States to compete at an internationally recognized level as required by 8 C.F.R. 214.2(p)(1)(ii)(A).

After careful review of the record, the AAO affirms the director's decision revoking approval of the petition.

The petitioner failed to establish that the beneficiary has a contract with a major United States sports league or team. The term major United States sports league or team is not defined in the Act or regulations, but the common every-day usage of the term is a team or league of principal importance in professional sports.[3] The term professional when applied to P-1 athletes means a person who derives his livelihood from the profession of

[3] Webster's New College Dictionary, (2nd ed. 2001).

athletics.[4] In the instant case, the beneficiary would be paid a monthly stipend of $1,000 a month.[5] The record does not establish that all members of the petitioner's club are compensated or that they derive their livelihood from rugby. The record is silent as to whether or not the beneficiary would be the only member of the petitioner's club to receive compensation. The preponderance of the evidence on the record indicates that the team is an amateur club. The Eagles[6] website describes all United States club players as amateur. The petitioner, the Chicago Lions Rugby Football Club, is an organization open to rugby enthusiasts. The petitioner offers open training to club members on Tuesday and Thursday evenings. Members pay dues and the club solicits donations. Anyone wishing to come to Chicago to play with the club can ask for assistance in finding a job or a place to stay. The club owns and operates a bar called the North Park Tap, using the profits to offset costs to players for travel and other club expenses. The club owns and maintains at least six two-bedroom apartments where some players can live free or at a reduced cost. There is a social component of the club, which includes an alumni organization. Three of the petitioner's players list their occupations as student, contractor and sales representative. See www.usa-eagles.org (Meet the Team). The evidence on the record shows that the petitioner's players play rugby for pleasure rather than as an occupation.

According to the record, rugby in the United States is governed by the United States of America Rugby Football Union (USA Rugby). USA Rugby oversees the national team (the Eagles) as well as more than 1,500 rugby clubs (men's, women's, collegiate and youth). The U.S. Men's Club rugby is divided into three divisions consisting of approximately 450 clubs. 200 clubs compete within Division I. The petitioning team is a Division I team. Division I teams compete for a National Championship. Although Division I teams have greater stature than a team in Division II or III, they do not have the highest ranking. The national team, the Eagles, is at the very top of the ranking in the United States and

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[4] As stated in footnote 2, the terms "professional athlete" and "professional" as defined elsewhere in the Act are not applicable in the P-1 context.

[5] The petition indicated that the beneficiary would be paid a monthly retainer of $1000. In a request for additional evidence, the petitioner was informed that the Service considered the small monthly stipend to be inconsistent with a major league sport. In response, the petitioner indicated that the beneficiary would be paid $25,000 a year. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izummi, 22 I & N Dec. 169 (Comm. 1998).

[6] The "Eagles" team is the United States "all-star" national men's rugby team, and it is comprised of players who play professional rugby overseas and amateur club players from within the United States. See www.usa-eagles.org.

competes at an international level. The petitioner falls below the Eagles in ranking, and may not be considered as a team of principal importance in U.S. rugby.

In the instant case, the petitioner attempted to amend the petition in response to a request for additional evidence. Even if the petitioner compensated the beneficiary at the revised salary of $25,000, this is not an amount indicative of athletic competition at the highest professional level in the United States. The contracts of major league players in more popular sports in the United States offer salaries of up to several million dollars. Division I rugby players are, for the most part, offered no salary at all.

Other indicia of a major league team might include significant television contracts, a presence in major metropolitan markets, commercial sponsorships from athletic equipment companies, and teams comprised of internationally recognized players. This is not an exhaustive or exclusive list of indicia of a major league team. In any event, the petitioner failed to meet the threshold requirement that the team be a professional, rather than an amateur, team.

In the instant case, counsel for the petitioner indicated that the petitioner team competes in the Super League Rugby League that has several agreements providing television coverage of Super League Rugby results and championship matches. The petitioner team or club does not have significant television contracts. Only if the petitioner club wins the Super League Rugby championship would it receive television coverage. The petitioner asserts that all of the Super League Rugby players are internationally recognized. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence on the record indicates that rugby is at a developmental stage in this country. There are no professional rugby teams that compensate all of their players. USA Rugby has engaged the services of a former major league soccer commissioner to establish a professional rugby league in the United States to begin play in April 2003. *See* Paul Verdon, "Kiwi Connection to United States Professional Rugby Bid," *The National Business Review* (New Zealand), March 28, 2002, 2002 WL 10425873.

Finally, the evidence on the record indicates that the petitioner club is a minor league team. The petitioner provided the Service with a letter from the chief executive officer of Major League Rugby[7] that states that the Division I teams (such as the petitioner club) serve as farm clubs or essentially minor league

[7] Major League Rugby is another alliance within Division I.

teams to the National Team. The petitioner provided the Service with another letter from the USA National Rugby Team's Director stating that clubs are "affiliated minor league teams to the U.S. National Team."

The next issue in this proceeding is whether the petitioner has established that the beneficiary will compete at an internationally recognized level. The petitioner failed to provide evidence such as news articles in foreign publications about the petitioner club's performance. There is no indication that the petitioner club competes in internationally recognized tournaments. The evidence shows that the petitioner club does not compete on an international level with foreign national teams. There is only one rugby team in the U.S. that competes against other international teams, and that is the U.S. national team, the Eagles. The record is insufficient to establish that the beneficiary is coming to the United States to perform at an internationally recognized level.

In review, the petitioner failed to overcome the director's objections.

ORDER: The decision of the Associate Commissioner sustaining the appeal from the revocation of approval is withdrawn. The decision of the director dated June 15, 2001 revoking approval of the petition is affirmed.