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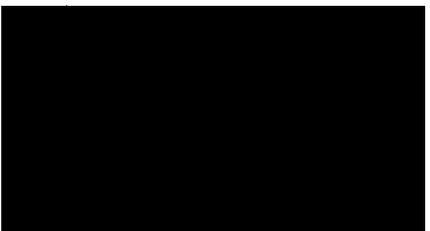


FILE: WAC 04 054 50224 Office: CALIFORNIA SERVICE CENTER Date: JUN 16 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a employee leasing company that seeks to employ the beneficiary as a soccer trainer, coach, and teacher. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation, and the beneficiary is not qualified for a specialty occupation. On appeal, counsel submits additional evidence.

The AAO will first address whether the proposed position is a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a soccer trainer, coach, and teacher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties under the direction of the president of West Valley United Soccer Club and will be a full-time coach and trainer, and will have duties that entail supervising the part-time coaching staff of the youth travel teams, premier instruction program, and summer and Christmas training camps; teaching the fundamentals and advanced skills and tactics of soccer and addressing the physical and psychological aspect of the game; providing coaching education to coaches and players; supervising coaching and training operations; scheduling soccer matches and coordinating officiating and field usage; coaching teams; developing TOP'S soccer program for the disabled; purchasing supplies and equipment and managing the repair of equipment; maintaining records; developing club operational policies, and working with the petitioner's board of directors and volunteers; coaching and training in the youth education training programs and camps; seeking sponsorship of teams and camps; coordinating sponsorship of underprivileged players; and speaking at schools and before community groups and sponsoring companies. The petitioner's response to the request for evidence elaborated on the proposed duties. The petitioner stated that the beneficiary's licensure and work experience qualify him for the proposed position.

As described by the petitioner, the director found that the proffered position resembled a coach, which the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports does not require a baccalaureate-level training. The director stated that the proposed duties and stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field, and that the submitted evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. The director also concluded that the beneficiary was unqualified to perform a specialty occupation.

On appeal, the petitioner states that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified for the position. The petitioner cites an unpublished federal district court decision and states in the case the court indicated that CIS should give deference to an employer's view and consider the employer's evidence, and should not rely simply on standardized government classification systems such as the *Handbook*. The petitioner states that the beneficiary will occupy the highest level of trainer position available, and that he qualifies for such a position based on his licensure and 21 years of experience. The petitioner describes the competitive nature of the soccer industry. The petitioner explains that its job description was written to provide the beneficiary latitude in his duties. The petitioner asserts that the *Handbook* does not accurately reflect the training-level that is required for the proposed position, and that West Valley United Soccer Club has 72 coaches that fall within the *Handbook's* description about the education and training of coaches, and all 72 coaches are volunteers who will be trained by the beneficiary. The petitioner states that it can find lots of coaches that meet the "industry-wide minimum requirement for

entry into the occupation,” but it wishes to “step beyond this practice.” The petitioner asserts that the beneficiary is qualified for the proposed position based on his licensure and his 21 years of work experience.

Upon review of the record, the petitioner has established none of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner cites an unpublished decision of a federal district court to state that CIS should not rely simply on standardized government classification systems such as the *Handbook*, but should give deference to an employer’s view and consider the employer’s evidence. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the duties of the proffered position mirror those performed by coaches; it states:

Coaches organize, instruct, and teach amateur and professional athletes in fundamentals of individual and team sports. In individual sports, *instructors* may sometimes fill this role. Coaches train athletes for competition by holding practice sessions to perform drills and improve the athlete’s skills and stamina. Using their expertise in the sport, coaches instruct the athlete on proper form and technique in beginning and, later, in advanced exercises attempting to maximize the players’ physical potential. Along with overseeing athletes as

they refine their individual skills, coaches also are responsible for managing the team during both practice sessions and competitions, and for instilling good sportsmanship, a competitive spirit, and teamwork. They may also select, store, issue, and inventory equipment, materials, and supplies. During competitions, for example, coaches substitute players for optimum team chemistry and success. In addition, coaches direct team strategy and may call specific plays during competition to surprise or overpower the opponent. To choose the best plays, coaches evaluate or “scout” the opposing team prior to the competition, allowing them to determine game strategies and practice specific plays.

Although the petitioner states that the beneficiary will occupy the highest level of trainer position available, none of the beneficiary’s duties exceed those of a coach as described in the *Handbook*. The *Handbook* relays the following regarding the educational and training requirements for athletes, coaches, umpires, and related workers:

Education and training requirements for athletes, coaches, umpires, and related workers vary greatly by the level and type of sport. Regardless of the sport or occupation, jobs require immense overall knowledge of the game, usually acquired through years of experience at lower levels. . . .

For high school coach and sports instructor jobs, schools usually prefer to hire teachers willing to take on the jobs part time. If no one suitable is found, they hire someone from outside. Some entry-level positions for coaches or instructors require only experience derived as a participant in the sport or activity. Many coaches begin their careers as assistant coaches to gain the necessary knowledge and experience needed to become a head coach. Head coaches at larger schools that strive to compete at the highest levels of a sport require substantial experience as a head coach at another school or as an assistant coach. To reach the ranks of professional coaching, it usually takes years of coaching experience and a winning record in the lower ranks.

Public secondary school head coaches and sports instructors at all levels usually must have a bachelor’s degree.

The *Handbook* indicates that public secondary school head coaches usually must have a bachelor’s degree; however, the beneficiary will not occupy a coach position at a public secondary school. Based on the *Handbook’s* information, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO notes that there are inconsistencies in the evidence in the record. The petitioner states that the beneficiary will be placed with West Valley United Soccer Club for three years; however, the petitioner’s contract with West Valley United Soccer Club does not indicate this. The record contains an unsigned document entitled “Trainer/Coach Agreement,” which shows a salary that is different from the one on the H-1B petition. In the December 15, 2003 letter the petitioner indicates that it does not have a written contract

with the beneficiary; we are unclear as to the purpose of this document. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

No evidence in the record establishes the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner fails to establish that the proffered position is so complex or unique that it can be performed only by an individual with a specific degree because, as already discussed in this decision, the *Handbook* reveals that the proposed position resembles a coach, which is an occupation that does not require baccalaureate-level training.

No evidence establishes that the petitioner normally requires a degree or its equivalent in a specific specialty for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the *Handbook* reports that the proposed position resembles a coach, which is an occupation that does not require baccalaureate-level training.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Because the proposed position is not a specialty occupation, whether or not the beneficiary is qualified for the position is inconsequential in these proceedings.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.