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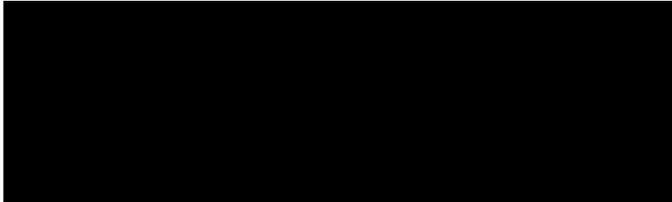


U.S. Citizenship
and Immigration
Services

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APR 25 2007



FILE: LIN 02 279 53818 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a non-profit organization whose stated mission is "to promote amateur rugby in the Kansas City metropolitan area, to enhance and help young men and women travel internationally, and to host international teams and their member[s]." It seeks to employ the beneficiary as an instructional coordinator. The petitioner 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 issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; and (3) the petitioner's response to the director's request. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an instructional coordinator. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Research, evaluate and prepare recommendations on curricula, instructional methods and materials for teams, schools and school systems;
- Develop tests and procedures to measure the effectiveness of curriculum and determine if program objectives are being met;
- Prepare or approve manuals and guidelines for rugby programs to conform with educational policies and practices of school systems for distribution to schools, school systems or districts;
- Develop methodologies for coaches, educators and instructors to adequately confer with school officials regarding guidelines for rugby programs;
- Confer with educational committees and advisory groups to develop instructional methods related to coaching, managing, developing safety plans and fitness programs in conjunction with the rugby program;
- Advise coaches, managers and referees in the assessment, curriculum development, student-athlete management and use of the latest technology such as video and computer technology;
- Observe, evaluate, and recommend techniques of coaches, educators, managers and administrators in coaching, management, fundraising, safety training, fitness training, refereeing or other skill sets to strengthen skills;
- Plan, conduct and evaluate seminars, clinics, courses and conferences for coaches, managers, educators, instructors, referees and players to study new techniques, procedures, drill work, technology and materials;

- Advise school officials on the implementation of state, federal or governing body laws that affect the health and safety of the student-athlete;
- Conduct or participate in workshops, seminars, clinics, courses and conferences designed to promote the development of the sport of rugby and the physical welfare of students;
- Coordinate activities and oversee workers engaged in developing, distributing and maintaining materials for teams, school and school systems;
- Prepare materials and conduct seminars or programs related to the preparation of budgets and rugby program policies and goals; and
- Address public audiences to explain and elicit support for the development of school sponsored rugby programs and development of the sport in general.

The petitioner finds the beneficiary to be qualified for the proffered position by virtue of his foreign education and past experience. The beneficiary's foreign education was determined by Professor [REDACTED] University of Oklahoma, to be equivalent to a bachelor's degree in education from an accredited institution of higher education in the United States.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner states that the duties of the proffered position are those of an instructional coordinator who would develop instructional material, coordinate educational content, and incorporate current technology in the field that provides guidelines to educators and instructors for developing curricula and conducting courses. These positions are normally found in school systems and other formal educational settings. While it is the petitioner's stated goal to establish, support and develop greater Kansas City area high school rugby, and many of the stated duties are related to services/duties to be performed in a formal educational setting, the record does not establish that the petitioner has any formal connection with any school system whereby the petitioner would coordinate and/or develop educational material or provide other instructional services for the development of a school-based rugby program. Thus, the record does not establish that the beneficiary would be performing the services of an instructional coordinator.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The duties of the proffered position appear to be those noted for recreation and fitness workers at a supervisory/administrative level. The *Handbook* notes that full-time career professional positions usually require a college degree with a major in parks and recreation or leisure studies, but a bachelor's degree in any liberal arts field may be sufficient for some jobs in the private sector. Thus, a degree in a specific specialty is not an industry requirement for the position and the petitioner has failed to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner states that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submitted the following:

- [REDACTED] opinion letter dated September 6, 2002 (This opinion letter was submitted in an unrelated case supporting the request of Rugby Imports for H-1B approval of an instructional coordinator) - [REDACTED] is a rugby analyst with the Irish National Television Service and a writer on the game of rugby for the Sunday Independent, an Irish newspaper. [REDACTED] holds coaching accreditations in Ireland and has coached on both the amateur and professional levels internationally, served as National Technical Director for USA Rugby in the United States, and was the USA national rugby team coach in the inaugural world cup in Australia in 1987. [REDACTED]'s letter is essentially a recommendation for an individual to be employed as an instructional coordinator for another petitioner in an unrelated case requesting H-1B approval. [REDACTED] states in his opinion letter that the position of instructional coordinator in the unrelated petition would require a degree from a university to adequately handle the management of the personnel necessary to develop materials and put on clinics, interact with top level coaches as well as coaches attending clinics and interact with school officials. He does not state, however, that a degree in a specific specialty is required for the position. Further, [REDACTED] does not reference any labor market survey or other authoritative labor market material as the basis of his opinion. His opinion, therefore, is of little evidentiary value. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).
- [REDACTED] - [REDACTED] is a youth development officer for the Ozark Union of the United States Rugby Football Union. He states that the duties of the proffered position, which involve multiple management level tasks, mandate the use of skills someone would obtain with a degree from a university. [REDACTED] does not, however, state that a degree in a specific specialty is required for the position. Further, he does not provide any basis for his opinion such as a labor market survey or any other authoritative labor market material to support his conclusion. His opinion is of little evidentiary value. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).
- [REDACTED] (This opinion letter was written for an unrelated entity in a separate H-1B proceeding) - [REDACTED] is president and CEO of Try Rugby, a rugby merchandise and development company. [REDACTED] also states that he acts as a consultant to ensure that schools and clubs have relevant rugby equipment and the knowledge to use it safely. He states that the proffered position requires a university degree due to the numerous managerial tasks associated with the position as well as the position's interaction with educational officials and the understanding required to instruct and teach in regard to the sport and its development. [REDACTED] does not, however, state that a degree in a specific specialty is required for the position. Further, he does not provide any basis for his opinion such as a labor market survey or any other authoritative labor market material to support his conclusion. His opinion is of little evidentiary value. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).
- [REDACTED] (This opinion letter was written for an unrelated entity in a separate H-1B proceeding) - [REDACTED] is chairman of the Lisburn Rugby Club in Northern Ireland. He states that the proffered position requires a university degree due to the numerous managerial tasks associated with the position as well as the position's interaction with educational officials, and the understanding of

educational concepts. [REDACTED] does not, however, state that a degree in a specific specialty is required for the position. Further, he does not provide any basis for his opinion such as a labor market survey or any other authoritative labor market material to support his conclusion. His opinion is of little evidentiary value. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

- [REDACTED] (This opinion letter was written for an unrelated entity in a separate H-1B proceeding) - [REDACTED] is president and CEO of Paul Ziert & Associates, Inc., an umbrella company for several smaller companies, all of which are related to gymnastics. He states that similar positions to instructional coordinators in the sport of rugby exist in gymnastics, and that those positions require a university degree due to the numerous managerial tasks associated with the position as well as the position's interaction with educational officials and the understanding of educational concepts. [REDACTED] does not, however, state that a degree in a specific specialty is required for the position. Further, he does not provide any basis for his opinion such as a labor market survey or any other authoritative labor market material to support his conclusion. His opinion is of little evidentiary value. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). [REDACTED] notes that his company has initiated a program (Team IG) with similar organizational and developmental goals to that of the petitioner. He notes that the leader of his team and consultants working with the team in obtaining its goals hold degrees in the following disciplines: business; engineering; physical education; and other workers who are pursuing degrees in early childhood development. The individuals taking leadership roles in [REDACTED]'s organization have education in unrelated fields of study, which indicates that a degree in a specific specialty is not common to the industry for parallel or similar positions.

The petitioner also states that a degree requirement is common to the industry in parallel positions among similar organizations as evidenced by a decision from the Vermont Service Center which approved a similar case. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an instructional coordinator. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard as the position is new with the petitioner's organization. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties to be performed by the beneficiary are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor does the record establish that the duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has generally described the duties to be performed by the beneficiary. Without a more specific description of the tasks to be performed, however, it cannot be determined that the duties are so complex or unique that their performance requires a degree in a specific specialty. For example, the petitioner states that the beneficiary will:

- Research, evaluate and prepare recommendations on curricula, instructional methods and materials for teams, schools, and school systems - The record does not establish the nature of any curricula to be taught, nor does it establish that the curricula will be accepted into any school system for instructional purposes. The record does not establish the nature of the instructional methods or materials to be used. Without a more detailed description, it cannot be determined that the duties are so unique or complex that their performance requires a baccalaureate level education in a specific specialty;
- Prepare or approve manuals and guidelines for rugby programs to conform with educational policies and practices of school systems for distribution to schools - The record does not establish that the petitioner has any formal relationship with any school whereby the petitioner would provide school sponsored instruction in rugby. Thus, it cannot be determined what skills and/or knowledge is required to produce manuals or what, if any, educational policies must be complied with. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Without a more detailed description, it cannot be determined that the duties are so unique or complex that their performance requires a baccalaureate level education in a specific specialty; and
- Plan, conduct and evaluate seminars, clinics, courses and conferences for coaches, managers, educators, instructors, referees and players to study new techniques, procedures, drill work, technology and materials - The record does not establish the knowledge or skill level required to evaluate seminars, clinics, courses, etc., nor does it demonstrate what specific tasks are required to conduct/evaluate seminars, clinics, courses and conferences, etc. Without a more detailed description of the tasks to be accomplished, it cannot be determined that the duties are so unique or complex that their performance requires a baccalaureate level education in a specific specialty.

As described by the petitioner, the enumerated tasks appear to be tasks performed by recreation and fitness workers at a supervisory/administrative level who are not normally required to have a baccalaureate level education in a specific discipline. The record does not establish that the specific tasks to be performed in this

instance require a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position.

Finally, the petitioner makes reference to the O*Net and *Dictionary of Occupational Titles (DOT)* to establish that the offered position normally requires a baccalaureate level education. The petitioner's assertions in this regard are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. The petitioner has failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 and the appeal shall accordingly be dismissed.

ORDER: The director's decision is affirmed. The petition is denied.