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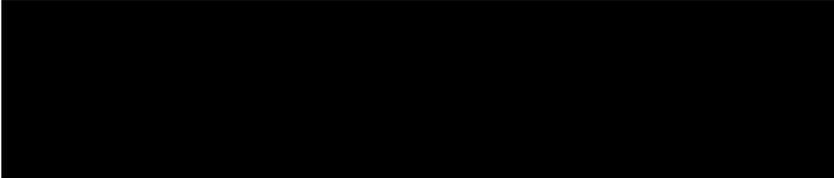
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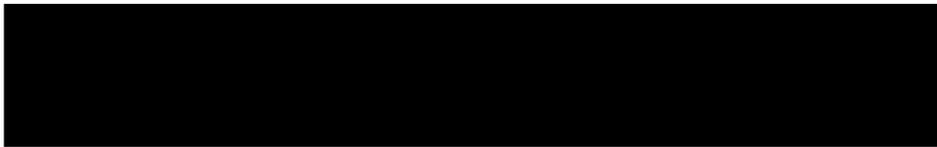


FILE: EAC 05 223 51763 Office: VERMONT SERVICE CENTER Date: JUL 30 2007

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 gymnastics school, and seeks to employ the beneficiary as a gymnastics coach. 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 director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

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; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a gymnastics coach. 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:

- Teach gymnastics to students;
- Coordinate the practices and training of gymnastic teams, demonstrating techniques and methods of participation, evaluating student’s strengths and weaknesses to improve their technique to prepare for competition;
- Teach several classes a day to groups of students at 10 different levels; and
- Take students to local, state, regional and national competitions.

The petitioner requires a minimum of a bachelor’s degree in physical education for entry into the proffered position.

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 duties of the proffered position are essentially those provided by “athletes, coaches, umpires, and related workers” as detailed in the *Handbook*. The *Handbook* notes that the education and training requirements for coaches vary greatly by the level and type of sport. Public and secondary school coaches and sports instructors must have a bachelor’s degree to meet state licensure requirements for public school teachers. There is no standard degree requirement, however, for coaches in the industry outside of a formal educational environment. Many individuals enter into the coaching profession based upon personal experience and athletic training without any education at the baccalaureate level. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree in a specific specialty for the proffered position. In support of that assertion, the petitioner submits copies of diplomas for three of its gymnastics coaches. Two coaches hold degrees from accredited universities in the United States with one coach holding a master's degree in education, and the other a doctor of philosophy degree. A third coach has a diploma from the Omsk State Institute of Physical Training indicating that the coach completed a course of training with a major in physical training and sport. The record does not establish that this foreign degree is equivalent to a bachelor's degree from an accredited college or university in the United States. A fourth coach does not hold a bachelor's degree, but is a former national champion and Olympic silver medalist. The evidence does not establish that the petitioner normally requires a degree in a specific specialty which is closely related to the duties of the offered position, for entry into that position. Of the two degrees established, one is in philosophy and the second is in education, two fields of academic study which are not closely related. Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The evidence submitted does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the nature of the specific duties of the proffered position are so specialized or complex that knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty, or that the duties of the position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. As described by the petitioner, the enumerated tasks to be performed by the beneficiary appear to be regularly and routinely performed by coaches or gymnastic instructors in the private sector who hold less than a baccalaureate degree, and have education in a wide range of educational disciplines. The tasks to be performed by the beneficiary are described by the petitioner in very general terms. For example, the petitioner states that the beneficiary will:

- Teach gymnastics to students;
- Coordinate practices and training of gymnastic teams;
- Demonstrate techniques and methods of participation;
- Evaluate students' strengths and weaknesses; and
- Take students to competitions.

These tasks represent the types of duties normally performed by gymnastics coaches in a nonacademic setting. The petitioner has not provided evidence to establish that those duties require the petitioner to perform tasks that require the petitioner to have specialized knowledge that can only be obtained through a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

Finally, the petitioner references a prior CIS approval for similar positions to establish that the duties of the position are so complex or unique that their performance requires a degree in a specific specialty. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the referenced cases. In the absence of all of the corroborating evidence contained in those records of proceedings, the present record is deemed insufficient to enable the AAO to determine whether the position offered in the prior cases are substantially similar to the position in the instant petition. 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, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

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 failed to sustain that burden.

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