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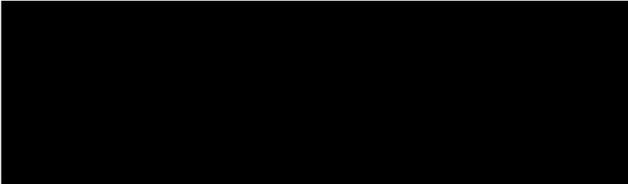
U.S. Department of Homeland Security
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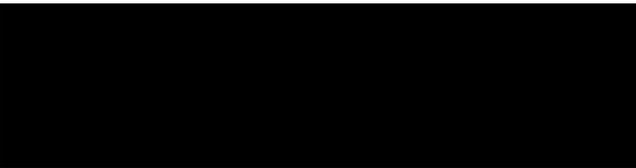
FILE: LIN 04 206 51459 Office: NEBRASKA SERVICE CENTER Date: JUN 25 2007

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.

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

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition. 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 non-profit soccer organization. It seeks to employ the beneficiary as a recreation specialist. Accordingly, 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 record includes: (1) the July 12, 2004 Form I-129 and supporting documents; (2) the director's December 15, 2004 request for further evidence (RFE); (3) the petitioner's February 28, 2005 response to the director's RFE; (4) the director's June 23, 2005 RFE; (5) the petitioner's September 9, 2005 response to the director's RFE; (6) the director's October 11, 2005 denial decision; and (7) the Form I-290B and documents in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On October 11, 2005, the director denied the petition determining that the petitioner had failed to establish that the proffered position is a specialty occupation and that the petitioner had failed to provide evidence of the beneficiary's eligibility to perform the duties of a specialty occupation. Counsel for the petitioner submits a brief and documentation on appeal.

The first issue in this matter is whether the petitioner has established that the proffered position is that of a specialty occupation. Section 214(i)(1) of the Immigration and Nationality Act (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)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 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.

In a May 26, 2004 letter appended to the Form I-129, the petitioner provided the following description of the proffered position:

As Recreation Specialist, [the beneficiary] will coordinate and manage the activities of professional soccer coaches, trainers and unpaid community resources (volunteer coaches). All of the coach/trainers and many of the volunteer coaches have at least bachelor's degrees.

[The beneficiary] will liaise with our Board to set the program's goals and objectives and structure and revise programs for all ESA [ELA Soccer Association] teams. He will recruit and designate compensation for all paid coaches/trainers in these programs. [The beneficiary] will contribute to the ESA Professional Trainer Curriculum and will participate in the direction of, and serve on, our Professional Trainer Board.

[The beneficiary] will manage the above-referenced team managers involved with training and coach development, and will oversee the teams traveling outside the area. He will perform player and coach evaluations twice per year. [The beneficiary] will set and manage the attainment of ESA's goals and objectives for all trainers and training programs and will develop related training manuals.

[The beneficiary] will direct and train all tournament and special soccer teams (for the U.S.A. Cup, Europe World Cup, etc.). He will liaise with community groups and outside health-, teaching-, and social work-related professionals, organizations and institutions.

[The beneficiary] also will provide player evaluations for each of the teams he trains and coaches while assisting ESA's Director in tryout evaluations for the whole club. He also will participate in the training and play of ESA teams who travel nationally to sanctioned tournaments. [The beneficiary] will direct and train special teams which participate in overseas tournaments in England.

In response to the director's December 15, 2004 RFE, the petitioner provided four letters/job advertisements to demonstrate the proffered position satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In an undated letter, the vice-president of Challenger/British Soccer Camps (Challenger Camps) indicated that his company required all its employees in a physical education instructor role to hold a minimum of a four-year degree in a Sports Exercise or Sports Science discipline. The Challenger Camps vice-president indicated that each of its 20 offices nationwide is staffed by a physical education instructor whose typical duties included: developing and teaching curriculum for soccer clubs, soccer camps, schools and all other youth organizations; and organizing and teaching courses and seminars to coaches ranging from recreation coaches to college coaches, to develop and upgrade their own skills and understanding of the physiological and psychological components of teaching/coaching.

In a second undated letter, the director of coaching of the Illinois Youth Soccer organization (IYS) indicated that he was looking forward to having the beneficiary work with the Olympic Development Program which specialized in identifying the top players in Illinois and putting them forward for national recognition. This coaching director also indicated that the beneficiary was one of a select group of coaches with a special youth coaching certification. The coaching director also stated that a bachelor's degree in the sports/physical education area served as a minimum requirement for hiring top-level youth soccer coaches and that in most organizations these qualifications are the minimum criteria for working with children in a soccer environment.

The petitioner also provided two advertisements for the position of: (1) a director of coaching to develop and refine curricula for a European soccer training program for an Illinois club and who must have a four-year degree in physical education; and (2) a program director for a travel soccer club who would establish a soccer curricula for all age groups, enhance a European-based coaching model, recruit players and staff, and would have at least five years experience as a director of coaching, and at least a four-year college degree preferably a sports science or physical education related qualification.

In a September 9, 2005 response to the director's second RFE, the petitioner noted that the beneficiary had been approved in H-1B classification for a different employer in a similar position, thus the petitioner believed the proffered position had been established as a specialty occupation. The petitioner also noted that several of the beneficiary's subordinates have master's degrees and that a college-trained professional was required to direct those professionals.¹ The petitioner indicated that it had never hired a recreation specialist who did not have at least a bachelor's degree and due to the inherent complexity and sophistication of the position it was offering the beneficiary double the wage for most recreation specialist positions. The petitioner referenced the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the Department of Labor's *Dictionary of Occupational Titles (DOT)* which listed a Specific Vocational Preparedness (SVP) rating of 8 for the position and the Department of Labor's *O*NET* report that a job zone classification of "four" was needed for the position. The petitioner also submitted three letters from soccer organizations and copies of six job announcements to establish that recreation specialists are recruited at a bachelor's level.

¹ The petitioner provided copies of the beneficiary's subordinates' diplomas including diplomas for a bachelor's of art degree, a bachelor's of science degree, a bachelor's in business administration degree, and a registered certified public accountant.

The Barrington Area Soccer Association, Ltd., (the beneficiary's previous employer) (Barrington) through one of its representatives stated: "[g]iven the daily interactions with children, it is a prerequisite for this position [recreational specialist] to have a minimum of a bachelor's degree with an emphasis on education." The representative also noted that teaching experience is required and a complete understanding of the components of soccer. The president of Euro SC (Euro SC) noted that his organization required a baccalaureate or higher degree in education as a minimum requirement, along with a minimum of three years of soccer specific teaching and a minimum of five years of interaction with community organizations and private sector institutions. The representative of the Palatine Celtic Soccer Club (Palatine) submitted its job announcement for recreational specialist which indicated that the recreational specialist is responsible for the day-to-day activity of the club, working with the assistant director to set and implement club policy and procedures and coaching education, for programming, and for providing general office work assistance. The Palatine job announcement indicated that a bachelor's degree from an accredited four-year college, experience, and a license was required for its recreational specialist.

The six job announcements submitted by the petitioner included job announcements for the positions of: (1) a recreation specialist II who develops, administers and directs recreation programs for residents at a state hospital or institution that required a bachelor's degree in physical education, recreation or a related field; (2) an adult recreation specialist who plans, organizes and coordinates a community recreation program for adults, including cultural arts, physical activities, and special interest classes and programs that desired graduation from a four-year college or university with a degree in recreation or a closely related field; (3) a recreation specialist I who, under direction, conducts recreation activities in a specialized area, such as performing arts, sports, hobbies, playground activities, etc. that listed a combination of education, experience, and training equivalent to graduation from an accredited four-year college or university with a degree in recreation; (4) a recreation specialist II who, under general supervision, plans, develops, and implements athletic programs provided to the citizens of Beaufort County that required a bachelor's degree or equivalent from a secondary educational institute in recreation or related field and any combination of education, training, and experience to perform the position; (5) a recreation specialist (youth/sports) responsible for planning and implementing on-going athletic activities and sports programs that strongly preferred a four-year degree in recreation, physical education, fitness, or closely related field from an accredited college or university; and, (6) a recreation program specialist for a city parks and recreation department who coordinates and manages parks and special events, classes, and programs that required a bachelor's degree in recreation or related field and two years experience in recreation management or an associates degree in recreation or related field and five years recreation management experience.

On October 11, 2005, the director denied the petition determining that the petitioner had not explained why the incumbent in the proffered position would require a degree in a specialized area and had not provided documentary evidence that it had always employed an individual with at least a bachelor's degree in education, physical education, or recreation. The director also determined that the *Handbook* did not report that a bachelor's degree in a specialized area is a minimum requirement for a social and recreation worker. The director noted the petitioner's reference to the *O*NET* but determined that the *O*NET* did not provide information about the type of education needed for the position of recreation worker. The director acknowledged the letters and job announcements submitted but noted that only 60 percent (six out of ten) required a specialized degree and that 40 percent did not. The director further acknowledged that the

beneficiary had obtained a H-1B classification for a previous employer but noted that CIS was not required to approve applications or petitions where eligibility had not been demonstrated, citing *Matter of Khan*, 14 I&N Dec. 397 (BIA 1973) and *Matter of M-*, 4 I&N Dec. 532 (BIA 1951; BIA, A.G. 1952). The director concluded that the petitioner had not provided sufficient evidence to satisfy any of the four criteria for a specialty occupation.

On appeal, counsel for the petitioner asserts that the petitioner has never hired a recreational specialist who did not have at least a bachelor's degree in a small cluster of fields. Counsel submits the petitioner's November 22, 2005 letter, wherein the petitioner indicates it has hired only three individuals for the position of recreation specialist in the past. To support its claim, the petitioner provided: (1) a transcript for one individual showing the individual was seeking a master of arts in teaching and the individual's major was secondary education with a concentration in mathematics and the individual had a master's degree in business administration; (2) an Illinois teacher's credential for an individual that showed the individual had a bachelor's degree with no specific discipline mentioned and a transcript for the same individual showing a bachelor's of arts degree with a major in physical education; and (3) a transcript for an individual indicating the individual had a bachelor's of education degree. The petitioner also provided information regarding its soccer trainers showing the individuals held bachelor's degrees and noting these individuals were under the supervision of the recreation specialist.

Counsel takes issue with the director's references to *Matter of Khan* and *Matter of M-* to support the director's determination that CIS is not required to approve applications or petitions where eligibility has not been demonstrated. Counsel notes that the director did not make a determination that the previous decision according the beneficiary H-1B classification was erroneous and that *Matter of M-* stands for the proposition that CIS has authority in deportation proceedings to review the facts *de novo*. Counsel contends that the director in this matter has not found that the previous fact finder erred. Counsel observes that the petitioner submitted the beneficiary's previous approval not to question the director's ability to make a different determination in this matter but only to request that some weight be given to the prior decision.

Counsel further observes that the proffered position is a full-time career professional position and that the *Handbook* indicates that full-time career professional positions usually require a college degree with a major in parks and recreation or leisure studies but that a bachelor's degree in liberal arts may be sufficient. Counsel also references the *O*NET* and contends that the type of education required for a particular position may be inferred from the classifications provided. Counsel asserts that the recruitment announcements demonstrate how widely the requirement is found in the field. Counsel contends that the petitioner has established eligibility based on a preponderance of the evidence.

Preliminarily, the AAO observes that it does not find the approval of the beneficiary's classification as an H-1B nonimmigrant for a different petitioner probative in this matter. The record of the prior petition is not before the AAO. In the absence of all of the corroborating evidence contained in the record of previous proceedings, the AAO cannot conclude that the petitions were parallel to the proffered position. The AAO observes further, that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When 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).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With reference to recreation supervisors, the *Handbook* 2006-2007 edition states:

Recreation Supervisors oversee recreation leaders and plan, organize, and manage recreational activities to meet the needs of a variety of populations. These workers often serve as liaisons between the director of the park or recreation center and the recreation leaders. Recreation supervisors with more specialized responsibilities also may direct special activities or events or oversee a major activities, such as aquatics, gymnastics, or performing arts.

Regarding the education and training for a recreational worker, the *Handbook* states:

Educational requirements for recreation workers range from a high school diploma – or sometimes less for those seeking many summer jobs – to graduate degrees for some administrative positions in large public recreation systems. 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.

* * *

Graduates of associate's degree programs in parks and recreation, social work, and other human services disciplines also enter some career recreation positions. High school graduates occasionally enter career positions, but this is not common.

* * *

A bachelor's degree in a recreation-related discipline and experience are preferred for most recreation supervisor jobs and are required for higher-level administrative jobs.

The *Handbook* references a variety of avenues available to obtain a position as a recreation supervisor/specialist. The *Handbook* notes that several different degrees, including a general degree in liberal arts, are appropriate for gaining entry into this field. The *Handbook* also acknowledges that some employers prefer a bachelor's degree in a recreation-related discipline for recreation supervisor jobs. The information in the *Handbook* does not report the necessity of a bachelor's degree in a specific discipline for a recreation specialist/supervisor. The *Handbook* recognizes that a range of disciplines may be sufficient to gain entry into this occupation. The AAO observes that when an occupation requires a degree of generalized title, like that of a liberal arts degree, or requires a range of degrees, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The record does not contain particular evidence establishing that a recreation specialist is an occupation that requires the attainment of a bachelor's degree in a specialized field of study.

The AAO acknowledges the petitioner's reference to the *O*NET*, and its report that a JobZone classification of four was needed for the position of recreational specialist and the *DOT's* SVP rating level of 8. The AAO, however, does not find the *O*NET* or *DOT* to be a persuasive source when determining the formal educational requirements of a particular occupation. Both the *O*NET* and *DOT* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. These sources do not describe how those years are to be divided among training, formal education, and experience, and do not specify the particular type of degree, if any, that a position would require. The record does not demonstrate that the occupation of recreation specialist would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The record contains insufficient information regarding the occupation of recreation specialist to conclude that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether 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. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers 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)). In this matter as observed above, the *Handbook* does not report that a recreational specialist/supervisor requires a baccalaureate degree in a specific discipline.

Preliminarily, the AAO observes the director's conclusion, that only 60 percent of the letters and job announcements required a specialized degree while 40 percent did not, is flawed and thus is withdrawn. The AAO has reviewed the five letters submitted by organizations within the industry and the eight job announcements for positions within the recreational industry. Upon review, the AAO finds that two of the job announcements submitted (1) for a recreational specialist II for a hospital and (2) for a recreational specialist for city parks are for organizations unlike the petitioner, a non-profit soccer organization; thus, these two job announcements are not probative. In addition, upon review of an additional two job announcements (1) an adult recreational specialist who plans, organizes and coordinates a community recreation program for adults in cultural arts, physical activities, and special interest classes; and (2) a recreational specialist I who conducts recreation activities in a specialized area, such as performing arts, sports, hobbies, playground activities, the duties are dissimilar to the duties of the proffered position; thus these two job announcements are not probative.

In addition, upon review of the industry letters submitted, the AAO notes the letter submitted by ILS is a testament to the beneficiary's skills as well as containing the author's opinion that most organizations hiring top level soccer coaches require a bachelor's degree in sports/physical education as a minimum. However, the ILS author does not support his opinion with objective information taken from surveys, published training materials, organizations granting degrees, certifications, or licenses, and does not otherwise provide a factual

foundation for his conclusory opinion. The AAO does not find the ILS letter probative in establishing an industry standard for positions parallel to the proffered position in similar organizations.

The AAO observes that the Challenger Camps' letter lists duties similar to the duties of the proffered position for its physical education instructors and the author states that it requires a minimum of a four-year degree in a Sports Exercise or Sports Science discipline. The author of the Barrington letter (the beneficiary's previous employer) indicates: "it is a prerequisite for this position [recreational specialist] to have a minimum of a bachelor's degree with an emphasis on education," as well as a complete understanding of the components of soccer. Likewise, the Euro SC president noted that his organization required a baccalaureate or higher degree in education as a minimum requirement along with a minimum of three years of soccer-specific teaching and a minimum of five years of interaction with community organizations and private sector institutions. The Euro SC letter does not describe the nature of its organization in the letter.² It is unclear from these three letters whether the industry routinely requires a degree in education or a degree in sports exercise/physical education. The AAO declines to speculate on why these organizations require degrees in different disciplines for their employees who may perform duties similar to the duties of the proffered position. The AAO notes further, that the organizations do not provide documentary evidence of their employees' educational levels, detailed descriptions of the duties of the positions posited as parallel to the proffered position, the history of their requirements for parallel positions, or in some instances sufficient detail of the nature of the organizations. The AAO cannot conclude from the industry letters submitted that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations.

Turning to the several remaining job announcements submitted including the job announcement from Palatine Soccer Club, the AAO does not find that the organizations hiring routinely require the successful applicants to have degrees in specific disciplines. For example, the Palatine Soccer Club requires its recreational specialist to have a bachelor's degree in an unspecified discipline plus experience; the Exodus Soccer Club requires that its director of coaching have a four-year degree in physical education; and the Euro Soccer Club, a travel soccer club, requires its club director to have a four-year college degree and indicates a preference for the degree to be in sports science or physical education. In addition, Beaufort Country in South Carolina advertises for a recreation specialists II and requires the individual in the position have a bachelor's degree or equivalent from a secondary educational institution in recreation or related field but will accept any combination of education, training, and experience which provides the requisite knowledge, skills, and abilities. Further, a government advertisement for a youth recreation specialist position strongly prefers a four-year degree in recreation, physical education, fitness, or closely related field from an accredited college or university but indicates equivalent education, training and specific work experience may be substituted. These organizations advertising for positions similar to the proffered position accept a range of academic qualifications, including anything from significant experience to a four-year degree in an unspecified discipline to a preference for a degree in a specific discipline or a requirement for a four-year degree in a specific discipline. The petitioner has not established, based on the submitted advertisements for positions

² The AAO notes that the record contains a job advertisement from Euro Soccer Club, a travel soccer club, that seeks to hire a club director who must have a four-year college degree preferably in sports science or physical education plus five years of coaching experience. It is unclear from the record whether the industry letter and the job advertisement are from the same organization.

similar to the proffered position, that a degree requirement in a specific discipline is common to the industry. The petitioner has not established that similar organizations routinely employ and recruit only degreed individuals with a major in a specific discipline.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not presented evidence that demonstrates its position of recreation specialist is so complex or unique that only an individual with a degree can perform the work associated with the position. The AAO is not persuaded that the nature of the specific duties of the proposed position is more complex and unique than that of a typical recreation specialist, a position that does not normally require a degree in a specific discipline or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific discipline. The petitioner has not identified which skills listed in the petitioner's description are complex or unique to the position of the proffered position and thus would require a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO considers the petitioner's past hiring practices when evaluating the third criterion; that is whether the petitioner normally requires a bachelor's degree in a specific discipline for the proffered position. In this matter the petitioner initially indicated that it had never hired a recreation specialist who did not have at least a bachelor's degree. In response to the director's RFE, the petitioner noted that it had never hired an individual for recreation specialist who did not have at least a bachelor's degree in education, physical education, or recreation. On appeal, counsel for the petitioner reiterates that the petitioner had never hired a recreation specialist who did not have at least a bachelor's degree in a small cluster of fields. The record contains some documentation relating to the petitioner's prior employees in the proffered position. The record includes information that one individual has a degree in secondary education, one individual has a bachelor's degree with a major in physical education, and one individual has a bachelor's degree in education.

The petitioner has not adequately explained whether the proffered position requires a bachelor's level degree in physical education or in the more general field of education. The AAO notes that the *Handbook* when discussing a recreation specialist position identifies a range of disciplines that would be sufficient to gain entry into the occupation. The AAO observes that the advertisements submitted when discussing a particular discipline referred to degrees relating to physical education. It is not clear that the petitioner requires the individual in the proffered position to have a degree in a specific discipline. Again, when a job can be performed by a degree of generalized title or a range of degrees, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. Moreover, the AAO does not find substantiating evidence, such as payroll records and the like, establishing the past employment of individuals identified as employed in the position of recreation specialist. Further, the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. 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 a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Turning now to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO finds that the petitioner has not provided evidence sufficient to demonstrate that the individual in the proffered position will be required to apply a body of highly specialized knowledge in its role of recreation specialist. The petitioner has not provided examples of specific duties that require the performance of specialized and complex duties. The AAO notes the petitioner's claim that it will pay the beneficiary double the salary of a regular recreational specialist due to the inherent complexity and sophistication of the proffered position; however, the amount of salary does not establish a position as a specialty occupation. The petitioner must identify the elements pertinent to the proffered position that are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find the nature of the duties described in this matter sufficient to elevate the position to one that can only be performed by an individual with a degree in a specific discipline. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

The next issue in this matter is whether the petitioner has established that the beneficiary is eligible to perform the duties of a specialty occupation. The record includes a January 9, 1998 evaluation prepared by The Knowledge Company. The evaluator indicates that the beneficiary received a bachelor's of arts degree in 1990 from Victoria University of Manchester in the United Kingdom, after pursuing a three-year full-time course of study. The evaluator also notes that the beneficiary received a letter from Brunel University in December 1997 confirming a postgraduate certificate in education from the West London Institute of Higher Education (currently Brunel University College) after completing studies in 1991. The evaluator notes that the beneficiary pursued a one-year full-time course of study with a specialization in secondary education resulting in the postgraduate certificate. The evaluator concludes that the combination of the three-year degree from Victoria University and the one-year postgraduate degree are equivalent to a bachelor's degree from an accredited university in the United States. The evaluator indicates the closest equivalent major appears to be that of physical education. The record does not include a copy of the beneficiary's foreign diploma from Victoria University and does not include the transcripts of the beneficiary's study at either Victoria University or Brunel University College. The evaluation references those documents but they are not included in the record. The AAO cannot accept the evaluation without the evidence substantiating the evaluation. The evaluator does not document the conclusion that the beneficiary's foreign major is in physical education. As the record is unclear regarding the beneficiary's foreign education and the specific discipline studied by the beneficiary, the petitioner has not established the beneficiary's eligibility to perform the duties of a specialty occupation.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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