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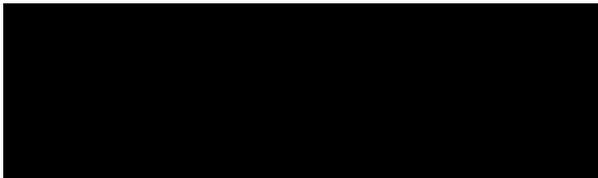


FILE: LIN 04 030 52172 Office: NEBRASKA SERVICE CENTER Date: FEB 25 2005

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 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 youth soccer club that seeks to employ the beneficiary as a head coach/coaching director. 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 is not a specialty occupation. On appeal, the petitioner submits a brief.

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)(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 head coach/coaching director. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 11, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: developing, recommending, implementing and directing the petitioner's progressive and sequential soccer training curriculum for total player development; recruiting, selecting and assigning coaches for competitive boys and girls soccer teams; attending and observing practice sessions and games; evaluating player development; conducting clinics and training sessions for coaches and players; organizing and directing team tryouts for fall and winter competitive teams; organizing and directing summer soccer camps and winter indoor training programs; attending club meetings, representing the club in state, regional and national soccer association meetings; and communicating with and providing clear philosophical guidance to the staff, board, coaches, and players. The program serves 1,500 youth soccer players, and has six paid staff and more than 100 volunteers. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in physical education, exercise and sports science, nutrition and fitness, or another education or sports-related field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, under the heading "Athletes, Coaches, Umpires, and Related Workers," he found that there is no minimum requirement of a baccalaureate degree or its equivalent in a specific specialty for entry into the proffered position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director relied too heavily on the *Handbook* and overlooked evidence provided about the specific position being offered to the beneficiary. In particular, counsel states that the director disregarded the petitioner's previous hiring practices, the industry standard and the specialized and complex nature of the proffered position.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a coaching position outside of a public secondary school environment.

Regarding parallel positions in the petitioner's industry, the petitioner submitted seven Internet job postings for coaching directors of soccer clubs around the country. All of them stated that a bachelor's degree was required, but none of them stated that the degree was required to be in a specific specialty. As noted above, 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 petitioner also submitted printouts from the websites of four soccer clubs, two in California, one in Colorado and one in Michigan. All of the directors had degrees in physical education. This evidence indicates that other clubs do hire individuals with degrees in a specific specialty for positions similar to the proffered position. It does not, however, establish an industry standard. In addition, the petitioner submitted a letter from another soccer club in Oregon stating that it had hired a new head coach in 2002, and had required a bachelor's degree. The person it hired had a bachelor's degree in an unspecified area and a master's degree in sports management. The writer did not state that the club had required a degree in a specific specialty.

Finally, the petitioner submitted a letter from a director of athletics and professor of physical education at Western Oregon University. He stated that the complex duties of the proffered position are usually associated with someone with a bachelor's degree in physical education or a related field. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). This opinion conflicts with the information in the *Handbook* as well as with the other opinion letter submitted by the petitioner.

The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record contains evidence that, since the petitioner's inception in 1995, it has hired five head coaches, three of whom had bachelor's or master's degrees in physical education, one who had a bachelor's degree in educational psychology and child development, and one who had a master's degree in teaching. The petitioner has established that it has always hired individuals with a degree in a specific specialty closely related to the proffered position, and that an organization of its size and type requires an individual with highly specialized knowledge that is usually associated with the attainment of a bachelor's degree in the specialty. Therefore, the petitioner has met its burden of proof in this regard.

The petition still may not be approved, however. Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such

degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner indicated in its November 11, 2003 letter that it wished to hire the beneficiary because he possessed the equivalent of a bachelor's degree in physical education. The petitioner submitted an evaluation of the beneficiary's education and work experience by the evaluation firm of Josef Silny & Associates, Inc. The evaluator found that the beneficiary's educational background was equivalent to the completion of one year of undergraduate study in physical education. The evaluator stated that the beneficiary's education, when combined with his more than nine years of experience in teaching and coaching were equivalent to a bachelor's degree in education with a major in physical education. Although the director stated that the beneficiary has the equivalent of a United States bachelor's degree, the AAO disagrees.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in physical education or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The evaluator stated that in his previous position as Associate Dean in the School of Education at the University of Miami, he "had authority to approve transfer credit . . . as well as course waiver credit for professional and/or work experience." This background does not meet the terms of the regulations which state that the evaluation be from an official who **has** authority to grant credit, not one who has ever had that authority. The petitioner has not established that the beneficiary's credentials are equivalent to a degree in physical education, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3)

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains none of the above-referenced evidence to establish that the beneficiary's education, training and experience are equivalent to a bachelor's degree in a specific specialty required by the specialty occupation. The evaluator cannot be considered a recognized authority for these purposes, as he is not in the same specialty occupation. The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. There are four letters from previous employers, but none of them provide detailed information regarding the beneficiary's duties, daily activities or his level of responsibility. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is physical education. Furthermore, there is no evidence that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Finally, the petitioner did not establish that there was recognition of the beneficiary's expertise.

In addition, Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that a petitioner applying for classification of a beneficiary as an H-1B nonimmigrant worker must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, **and** recognition of expertise in the specialty through progressively responsible positions relating to the specialty. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v) provide guidance within the context of that particular section of the regulation, as to how a "recognition of expertise" is to be determined. As noted above, there is no evidence in the record establishing that the beneficiary has recognition of expertise in the specialty occupation.

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

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.

how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).