

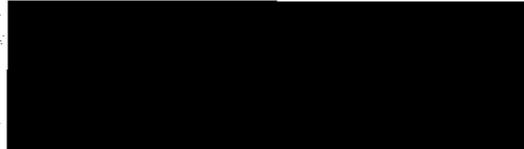


DR

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

File: SRC 00 108 53075

Office: Texas Service Center

Date: DEC 08 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary as a parks and recreation program supervisor for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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, the 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 beneficiary attained a Bachelor of Arts with a major in English and a minor in Journalism from Ball State University in May 1997 in Muncie, Indiana. She earned a Master of Sport Management degree from the United States Sports Academy in May 1999 in Daphne, Alabama. It is concluded that the beneficiary qualifies to perform the duties of the offered position.

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

an 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the offered position are listed as:

Major Functions

Special Event and major activity planning, organizing, directing and implementing all areas of community and countrywide events. Responsibilities include, but are not limited to, development and administration of special event budgets, comprehensive management of special events in a variety of settings. Extensive responsibility with community and government agencies and representatives. Development and contract negotiation with community service providers and vendors.

Illustrative Duties

Plans, develops, implements and directs a broad range of special recreational events, programs and activities.

Coaches, leads and administers instruction in variety of leisure and recreational activities, including tennis, theatre, dance, art and crafts, games and sports.

Responsible for preparation and administration of special event budgets, contracting of performers, artists, and vendors.

Responsible for the receipt and recording of funds, evaluation and financial reports for special event programming.

Prepares a variety of special reports related to event programming and facility usage and associated special events.

Responsible for the promotion and public relations of recreational events and leisure activities.

Development and implementation of guidelines and job duties for subordinates, employee selection process and training of staff.

Responsible for the discipline and adherence to county wide regulations of subordinates and public.

Communication with a wide variety of agencies, vendors and provides public relations to a variety of institutions.

Responsible for the planning, organization and implementation of fund-raising efforts for special events.

The petitioner states that a Bachelor's Degree from an accredited university or college in Education, Public Administration, Business Administration, Recreation or closely related field meet the organization's minimum qualifications for the position. The petitioner also states that progressively responsible professional experience in recreation can substitute on a year-for-year basis

for the required college education. The petitioner emphasizes that out of the 22 employees it has listed as Program Supervisors for the record, 15 have Bachelor's Degrees, 4 have Associate Degrees plus required experience, and 3 have high school diplomas plus required experience. Although the petitioner indicates that 66% of its program supervisors have bachelor's degrees, the petitioner has not provided sufficient evidence to establish that the organization requires a degree or its equivalent for the offered position.

The petitioner also provided a table listing employees that work for the county and for other organizations in what it considers to be similar positions and outlines the educational level and work experience for the employees listed on the table. It is determined that this showing of the level of education and experience attained in a small number of similar and somewhat related jobs does not provide sufficient evidence to establish an industry standard.

In these proceedings, the duties of the position are dispositive and not the job title. The offered position combine duties of a general manager, recreation worker and athletic instructor or coach. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in training programs are often considered as important as a specific formal academic background.

The Handbook at page 160 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a recreation worker. Some recreation workers hold high school diplomas. Others hold baccalaureate or higher degrees in a specialized area, while others hold baccalaureate degrees in various fields of study. The Handbook also indicates at page 179 that education and training requirements for instructors and coaches vary greatly by type of employer, area of expertise, and level of responsibilities. Some entry-level positions only require experience derived as a participant in the sport or activity, while others require substantial education or experience. Additionally, certification is highly desirable for those interested in becoming a fitness, aerobics, tennis, karate, golf, or other kind of instructor. Often one must be at least 18 years old and CPR certified. It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.