



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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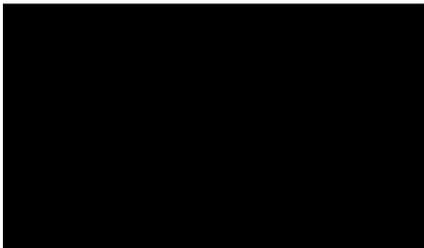
Public Copy

File: EAC-99-267-51311 Office: Vermont Service Center Date: OCT 25 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a tennis and health club with 25 employees and a gross annual income of \$588,000. It seeks to employ the beneficiary as a tennis coach and assistant director of tennis operations for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, each counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the record contained no documentary evidence that the proffered position would normally require a baccalaureate degree in a specific field of study. On appeal, one counsel states in part that a review of the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) finds that the proffered position is a specialty occupation. She also submits copies of job advertisements for similar positions that demonstrate that a bachelor's degree is required. The petitioner's second counsel states in part that the petitioner's general manager, director of tennis, assistant tennis director, league program coordinator and sports management director all have baccalaureate degrees.

Counsels' statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Work with Director in planning and administering clinics, adult groups, junior development programs, etc. Supervise

all certified professional staff. Create new programs. Oversee US Tennis Association (USTA) Junior Team, including travel to competitions when necessary. Plans & directs training of amateur and professional tennis players. Directs conditioning of athletes to achieve maximum athletic performance. Assesses athletes skills. Evaluates physical condition and advises athlete on proper exercises to maintain maximum physical fitness for participation in athletic competition. Prescribes routine and corrective exercises to strengthen muscles. Explains and demonstrates use of equipment. Coaches athletes in technique. Analyzes performance & prepares athletes for competition. Observes athletes while they perform to determine need for individual or team improvement. Coaches athletes individually, in pairs & groups. Explains, demonstrates & teaches techniques & methods of regulating movement of body, hands & feet to achieve proficiency. Oversees daily practice of players to instruct them in areas of deficiency. Directs & corrects mistakes. Organizes competitions & exhibitions.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsels' arguments that the proffered position would normally require a bachelor's degree in leisure studies or a related field. One counsel asserts that the DOL has determined that the proffered position is a specialty occupation. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish an occupation is

a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

A review of the DOL's Handbook, 2000-2001 edition, at page 179 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a sports and physical training instructor and coach. The usual requirement is experience as a player/participant or coach. A baccalaureate degree is required for coaches and sports instructors in schools but there is no indication that a degree in a specialized area is required. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as leisure studies, for the offered position. Evidence in the record indicates that the petitioner's tennis director holds a baccalaureate degree in business administration, its assistant tennis director holds a baccalaureate degree in economics, and its league program coordinator holds a baccalaureate degree in science.

Third, the petitioner did not present any convincing documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. The record contains four job advertisements for positions similar to the proffered position. Although all four require a baccalaureate degree, only one of the four requires a baccalaureate degree in a specific specialty. The record also contains four letters from industry experts. All state that the usual requirement for positions such as the proffered position is a baccalaureate degree in leisure studies or an equivalent. Four letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, none of the writers have indicated the number or percentage of tennis

coaches/assistant directors of tennis operations who hold such degrees.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is 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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, 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.