



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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File: EAC-01-018-54014 Office: Vermont Service Center

Date: 11 APR 2002

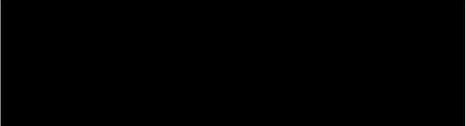
IN RE: Petitioner:  
Beneficiary:



11 APR 2002

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a martial arts academy with four employees and an approximate gross annual income of \$177,000. It seeks to extend its authorization to employ the beneficiary as director of Taekwon-Do for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement.

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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. The director further found that the petitioner's previous petition for the beneficiary had been approved in error. On appeal, counsel states, in part, that the director erroneously compared the proffered position to that of a general director. Counsel also states that the petitioner had sufficiently demonstrated that a baccalaureate degree in physical education or its equivalent was required to perform the proposed duties. Counsel additionally states that the expert opinion letters submitted in support of the petitioner's claim further demonstrate that the proffered position is a specialty occupation.

Counsel's statement on appeal is 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:

Direct a Taekwon-Do school overseeing teaching of the following: (1) philosophy, and moral and disciplinary

principles of Taekwon-Do, (2) movements and techniques of Taekwon-Do and physical training required in preparation therefor, (3) critical parts of a human body and protective movements therefor, (4) physical well-being.

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 counsel's argument that the proffered position would normally require a bachelor's degree in physical education or a related field. The proffered position appears to be that of a sports instructor. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a sports instructor or coach. Certification is highly desirable for those interested in becoming tennis, golf, karate, or any other kind of sports instructor. Employers often require that a sports instructor be at least 18 years old and CPR certified. Participation in a camp, clinic, or school usually is required for certification. 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, other than the beneficiary, 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 physical education, for the offered position. Third, the petitioner did not present any 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. 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 record contains an affidavit dated March 2, 1988, from the secretary general of the U.S. Taekwondo Union who states, in part, that such organization encourages every Taekwondo gymnasium to employ a director with professional academic training or its equivalent.

The record contains another affidavit dated February 26, 1998, from the president of the New Jersey State U.S.T.U. Tae Kwon Do Association, who states, in part, that gymnasiums should have a director with professional qualifications to devise new physical training programs.

The record also contains a letter dated February 11, 1999, from a member of the Physical Education Department at Wayne State University, who states, in part, that the Tae Kwon Do programs taught in many American universities were modeled by the beneficiary.

None of the writers of the above documents demonstrate that a baccalaureate degree in physical education is usually required for positions such as the proffered one. Rather, it appears that gymnasiums prefer, rather than require, to hire directors with a baccalaureate degree in physical education or an equivalent.

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.