PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice

Immigration and Naturalization Service

D2

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

[redacted]

File: EAC-01-217-52462 Office: Vermont Service Center Date: DEC 16 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a rowing and athletic facility with 12 employees and a gross annual income of $3 million. It seeks to employ the beneficiary as a rowing instructor and coach 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 brief and additional documentation.

Section 214(i)(1) of 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.

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 petitioner had not established that a baccalaureate degree in a specific specialty is normally a minimum requirement for the proffered position of rowing instructor and coach.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to show that it normally requires a baccalaureate degree in a specific specialty for the proffered position and that the degree requirement is standard to the industry in parallel positions among similar organizations.

Counsel's assertions 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. On the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> [The beneficiary] will analyze the performance of, and instruct, rowing athletes in strategies and techniques to prepare them for rowing competition. He will observe rowers to determine the need for individual and/or team improvement. [The beneficiary] will coach rowers individually and in groups, demonstrating rowing techniques. He will oversee daily practice of rower[s] to instruct them in areas of deficiency. He will recommend exercises and workout regimes to improve performance. [The beneficiary] will determine strategy during rowing competitions and will confer with other members of the coaching staff, as well as with nutritionists, as needed.

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 position most closely

parallels that of a coach or sports instructor as that job is described by the Department of Labor in its Occupational Outlook Handbook (Handbook), 2002-2003 edition. A review of the Handbook at page 128 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a sports instructor and coach. Regardless of the sport or occupation, these jobs require immense overall knowledge of the game, usually acquired through years of experience at lower levels. A baccalaureate degree is required for coaches and sports instructors in public schools, but there is no indication that a degree in a specific specialty is required. Additionally, coaches and sports instructors must relate well to others and possess good communication and leadership skills.

Counsel's argument that the Service placed undue reliance on the Handbook in determining whether the proffered position requires a baccalaureate degree in a specific specialty is not persuasive. Counsel asserts erroneously that the Handbook does not differentiate between a "little league coach or the Head Coach of a professional football team or something in between." The DOL specifically states at page 128 of the Handbook that education and training requirements for athletes, coaches, and sports officials vary greatly by the level and type of sport. The DOL gives specific information regarding the educational requirements for professional coaches, public school coaches, coaches in private schools, and sports instructors.

Counsel contends that a baccalaureate or higher degree in physical education, exercise science, or a related field is normally the minimum requirement for entry into the proffered position. In support of this contention, counsel submits an advisory opinion letters from [redacted] women's crew coach at Yale University. [redacted] states that coaching rowing requires a complete understanding of the physical and exercise sciences which can only be obtained through a college education and coaching experience at the club level. [redacted] further states that Saugatuck Rowing Club is a unique rowing club that requires the services of a coach with a college education or the equivalent. [redacted] has not, however, provided any credentials setting forth her ability to give expert testimony regarding the question of whether the proffered position qualifies as a specialty occupation. Furthermore, no evidence has been submitted with this letter to corroborate the opinions and comments contained therein. Such letter is insufficient evidence of an industry standard.

Counsel asserts that the DOL has determined in its Dictionary of Occupational Titles (DOT) that sports instructor and coach positions require a bachelor's degree in a specific field of study. However, a reference in the Department of Labor's DOT, standing alone, is not enough to establish that a particular job 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 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 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. Thus, counsel has not shown that a bachelor's degree in a specific field of study is a minimum requirement for entry into the field.

Additionally, the petitioner has not provided convincing documentary evidence to show that the degree requirement is standard to the industry in parallel positions among similar organizations. The record contains seven job advertisements for rowing coach, assistant rowing coach, and head coach positions. Each of the ads states that a bachelor's degree is required, and one prospective employer prefers a master's degree. However, not one of these prospective employers states that the degree must be in a specific specialty such as physical education or exercise science. Additionally, each one of these advertisements is for a coaching position at a college or university, not at a private rowing club. As such, these advertisements do not show that the degree requirement is standard to the industry in parallel positions among similar organizations. Counsel argues that Saugatuck Rowing Club has the same educational requirements as colleges and universities since its rowers regularly race competitively against university rowing teams in the United States and internationally. Counsel has not, however, submitted any evidence to show that colleges and universities normally require that their rowing coaches have a bachelor's degree in a specific specialty such as physical education or exercise science.

The record also contains a letter from [redacted] the co-owner and director of the Greenwich Independent Rowing Program. [redacted] states that all the coaches she hires have a bachelor's degree in sports or an education related field, as well as previous rowing and coaching experience. [redacted] has not, however, provided any independent evidence to corroborate her statement. Additionally. one letter is insufficient evidence of an industry standard.

Counsel states that the other rowing coaches employed by Saugatuck Rowing Club all have bachelor's degrees in the specific specialty

of physical education or a related field. The petitioner has previously submitted a list of the other full-time coaches employed by Saugatuck Rowing Club and their educational credentials. Three of these individuals hold a bachelor's degree in physical education and exercise science, respectively, and the fourth individual holds a bachelor's degree in communication science. Counsel's assertion that the petitioner normally requires a baccalaureate degree in a specific specialty for the proffered position is problematic when viewed in light of the statutory definition of specialty occupation. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. As with employment agencies as petitioners, the Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F.3d 384 (5th Cir. 2000).

The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if the Service was 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 menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See id. at 388.

In this case, the proffered position of rowing instructor and coach does not meet the statutory definition of specialty occupation. The position does not require the theoretical and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has indicated that it requires a bachelor's degree for employment in the offered job, such a requirement is the petitioner's preference rather than an indication that the position is a specialty occupation requiring a bachelor's degree in a specific specialty.

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.