



02

U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: LIN-01-230-55191 Office: Lincoln Service Center

Date: 18 DEC 2002

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:



PUBLIC COPY

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

The petitioner is a karate school with fifty employees and an unstated gross annual income. It seeks to employ the beneficiary as the director of professional department for development and promotion for a period of three years. The director determined that the petitioner had failed to establish that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) further 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 the duties and responsibilities of the offered position are so complex that an individual employed in the position required a baccalaureate or higher degree. On appeal, counsel argues that the duties of the proffered position combine the duties of a sports instructor with those of an athletic director. Counsel asserts that the petitioner requires that an individual possess at least a bachelor's degree in physical education, as well as a minimum of a first degree black belt in Karate for employment in the offered job. Counsel contends that the degree requirement is standard in the industry for parallel positions in similar organizations.

Counsel's 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 position of director of professional department for development and promotion as follows:

...coordinate and direct curriculum for the Karate school camps & provide technical assistance to the coaching staff. The individual will interpret and formulate policy and will be responsible for hiring and firing the coaching staff and other Karate school employees. The Director of Professional Department for Development and Promotion will prepare budgets, authorize camp expenditures and select training centers. The individual will also play a key role in international and national public relations, directing the preparation and dissemination of publicity to promote young talented Karate competitors.

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

The Service cannot agree with counsel's argument that the duties of the proffered position combine the duties of a sports instructor with those of an athletic director. The Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook), 2002-2003 edition, groups athletic directors under the general heading "Education Administrators." According to the Handbook at page 43, athletic directors plan and direct intramural and intercollegiate athletic activities, seeing to publicity for athletic events, preparation of budgets, and supervision of coaches.

The Service is not persuaded to classify the offered job as an athletic director because of the type of institution in which the beneficiary would be employed. According to the Handbook:

In the year 2000, about 9 out of 10 jobs in education administration were in educational services, which includes elementary, secondary, and technical schools, and colleges and universities.

The beneficiary's proposed employment is not in an educational institution such as a middle school, high school, or college, but rather in a privately owned karate club and school. In addition, information at page 44 of the Handbook indicates that most education administrators, including athletic directors, begin their careers in related occupations, and prepare for a job in education administration by completing a master's or doctoral degree. Although some of the administrative duties of an athletic director and the director of professional department for development and promotion at a karate club and school may be similar, the proffered position is clearly not comparable to that of an athletic director.

The duties of the proffered position appear to combine the duties of a general manager, marketing and public relations manager, sports and physical training instructor, and coach. A review of the Handbook at pages 86-89 finds no requirement of a baccalaureate or higher degree in a specific specialty 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 in-house training programs are often considered as important as a specific formal academic background.

A further review of the DOL's Handbook at pages 26-29, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a marketing and public relations manager. Rather, most employers prefer a wide range of educational backgrounds or promote individuals from within companies. Again, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

The Handbook does not list any requirement of a baccalaureate or higher degree in a specific specialty for employment as a sports and physical training instructor and coach at page 179. 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 in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Counsel contends that the degree requirement is standard in the industry for parallel positions in similar organizations. On appeal, counsel provides a letter signed by Julius Thiry, Ph.D., president of the U.S.A. National Karate-do Federation. While Mr. Thiry states that the petitioner will hire the beneficiary to fill

the offered job because of his exceptional ability and talent as a karate teacher and athlete, he fails to mention that the proffered position requires a degree of any kind. Counsel notes that the fact that Julius Thiry possesses a doctoral degree is evidence of the existence of a degree requirement for parallel positions in similar organizations. Although Julius Thiry may hold a doctoral degree as claimed, the record contains no evidence to establish that this degree is in a specific specialty such as physical education.

The record contains two letters signed by Warren Palmer, Ph.D., Interim Director of the School of Kinesiology at the University of Illinois, Chicago, and Marty Hickman, Ed.D., Associate Executive Director for the Illinois High School Association. In his letter, Mr. Palmer states that in order to be a public school athletic director in the state of Illinois, an individual needs to have a "Type 75 certification." Mr. Palmer declares that an individual needs to possess a baccalaureate degree from a four year academic institution for acceptance into this certification program. In his letter, Mr. Hickman states that the Illinois High School Association has "no established standards" for the hiring of athletic directors. While Mr. Hickman indicates that some schools within this association hire individuals with a master's or doctoral degree for employment as an athletic director, Mr. Hickman notes that "...athletic directors are still being employed with a bachelor's degree being the highest degree attained." Even if the proffered position was considered comparable to that of an athletic director, the record contains no evidence that the state of Illinois requires athletic directors in the public school system to possess at least a bachelor's degree in a specific specialty.

The record contains seven job advertisements and descriptions for various athletic director, assistant athletic director, director of sports development, and national director of speed skating positions for organizations and universities such as Special Olympics Inc., the University of Wisconsin-Fox Valley, the City University of New York-Hostos Community College, the University of Michigan, the University of Bilkent in Turkey, USA Roller Sports, and the University of North Texas. However, these seven positions cannot be considered to be parallel to the proffered position in that the noted positions are with large public universities or national organizations, whereas the offered job is with a privately owned karate club and school. Additionally, only two of the positions discussed above list a bachelor's degree requirement of any kind, with just one of these positions requiring a bachelor's degree in a specific specialty. Furthermore, the remaining positions list only a preference for degrees in a range of academic areas. Consequently, it cannot be concluded that the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions among similar organizations.

While counsel asserts that the petitioner requires that an individual possess at least a bachelor's degree in physical education, as well as a minimum of a first degree black belt in Karate for employment in the offered job, the petitioner did not submit documentary evidence to demonstrate that the company requires a bachelor's degree as part of the hiring process, such as copies of previous job announcements or public advertising for open positions. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this matter. It was held in Matter of Obaiqbena, 19 I. & N. Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I. & N. Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. In view of the foregoing, it is concluded that the petitioner has failed to establish that it normally requires a bachelor's degree in a specialized area or its equivalent for the proffered position.

The petitioner has failed to establish 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 in a specific specialty.

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.