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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-01-040-52977

Office: Vermont Service Center

Date: 14 FEB 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business engaged in the wholesale and retail sale of soccer clothing, equipment, and supplies and in coaching. It has 34 employees and an approximate gross annual income of \$1.1 million. The petitioner seeks to employ the beneficiary as a communications executive for a period of three years. The director determined the petitioner had not established that the proffered is a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation.

Pursuant to 8 C.F.R. 214.2(h)(4)(ii), a "specialty occupation" is defined 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 determined that the petitioner had failed to establish that the duties of the proffered position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specialized area. On appeal, counsel argues in part that the duties of the proffered position are 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 specialized area. Counsel further argues that the degree requirement is normal to the industry in parallel positions and also that the petitioner normally requires a baccalaureate degree for the proffered position.

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 proffered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. The petitioner runs approximately 150 to 200 soccer camps and coaching clinics in all the New England states on a yearly basis, provides coaches to school systems,

recreation facilities, community education programs and youth soccer. It also sells soccer clothing, equipment and supplies. In the initial I-129 petition, the petitioner described the duties of the proffered position as follows:

[The beneficiary] is responsible for planning, designing, producing, implementing PLAY SOCCER advertising, published materials (brochures), marketing flyers, newsletter, etc, coach curriculum, implementing increased circulation, sales in zones 3 and 4, and camp scheduling and reports.

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 Service does not agree with counsel's argument that a baccalaureate degree in a specialized area is a minimum requirement for the proffered position. In these proceedings, the duties of the position are dispositive and not the job title. The offered position combines the duties of a general manager or executive with those of a marketing manager. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 50-51, the Department of Labor does not state that a baccalaureate or higher degree in a specialized area is required for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in company training programs are often considered as important as a specific formal academic background.

The Handbook at pages 25-26 also lists no requirement of a baccalaureate degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are

considered suitable for entry into marketing managerial positions.

Counsel, on appeal, cites the portion of the Handbook at page 26 which discusses the training qualifications for marketing managers as follows: "...[f]or advertising management positions, some employers prefer a bachelor's degree in advertising or journalism." While some employers may prefer a bachelor's degree in advertising or journalism, the record does not support a conclusion that a baccalaureate degree in a specialized area is a minimum requirement for entry into the field. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Here again, certain personal qualities and participation in company training programs are often considered as significant as the beneficiary's specific educational background. It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Counsel asserts that the proffered position is comparable to that of an advertising manager and argues that the Department of Labor has determined in its Dictionary of Occupational Titles (DOT) that the position of advertising manager requires a baccalaureate degree. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that 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 DOL 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.

The petitioner states that during the winter it employs seven managerial persons, but during the other nine months it employs in excess of one hundred additional persons as managers, coaches, sales representatives, etc. The petitioner further states that, although it prefers to employ individuals with at least a baccalaureate degree for managerial positions, it does hire individuals who have extensive experience in the field. The record contains a list of the petitioner's year-round managerial employees and their educational credentials. The list includes individuals with a bachelor's degree in sociology, electronic engineering, avionics, sports studies, sports development, economic history and

politics, and environmental science. While the petitioner may prefer to hire individuals with a baccalaureate degree, it clearly does not require that the degree be in a specialized area.

Counsel submits on appeal a letter from [REDACTED] Vice-President of Challenger Sports Corporation, an organization which runs soccer camps in the State of Kansas. [REDACTED] states that his organization requires that its Supervisory Athletic Instructor hold at least a bachelor's degree in the field of sports science/education. However, that position is different from the proffered position in that the duties of the position of Supervisory Athletic Instructor are managerial, whereas the duties of the proffered position combine aspects of both management and marketing. Furthermore, one letter is not sufficient to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner has not demonstrated that the specific duties of the proffered position 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 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.