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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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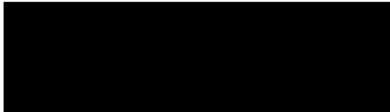


File: SRC-00-044-50206

Office: Texas Service Center

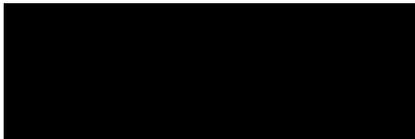
Date: 22 JAN 2002

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

The petitioner is a gymnastics training facility with eight employees and a gross annual income of \$323,000. It seeks to employ the beneficiary as an assistant team coach/recreation 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, the petitioner's former counsel submits a statement and declares that he will submit a brief and additional evidence in support of the appeal by August 16, 2000. The record shows that the petitioner's former counsel subsequently failed to submit any additional material to supplement the appeal. The record further shows that the petitioner later retained different legal representation, but that current counsel has failed to submit any statement, brief, or documentation to supplement the appeal as of the date of this decision. Therefore, the record must be considered complete.

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 the proffered position was not a specialty occupation requiring at least a baccalaureate degree. On appeal, counsel asserts that a baccalaureate degree is a common employment requirement within the industry for parallel positions among similar organizations. Counsel contends that the petitioner normally requires at least a baccalaureate degree or its equivalent for other individuals filling similar positions. Counsel finally argues that the nature of the proposed duties is so complex as to require a baccalaureate degree.

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

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:

Providing gymnastics training for preschool-teenage children. Both recreational and team instruction.

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 position of assistant team coach/recreation coach would require at least a baccalaureate degree or its equivalent. A review of the Department of Labor's Occupational Outlook Handbook, (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.

While counsel contends that the petitioner normally requires at least a baccalaureate degree or its equivalent for other individuals filling similar positions, the record contains no evidence reflecting how many of the petitioner's eight total employees hold the position of assistant team coach/recreation

coach and how many of them possess such degrees. Although counsel asserts that a baccalaureate degree is a common employment requirement within the industry for parallel positions among similar organizations, the record does not contain 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 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.

Beyond the decision of the director, it must be noted that the record contains transcripts and a diploma reflecting that the beneficiary holds a Bachelor of Science degree in Physical Education and Athletics from the Red Banner Leshaft Institute of Physical Education in Russia. However, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.