



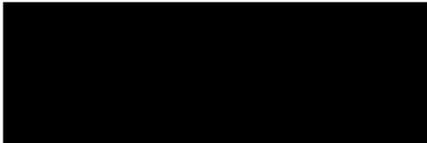
DA

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: WAC-01-070-50235 Office: California Service Center

Date: NOV - 8 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 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a tennis academy with approximately 20 employees and a gross annual income of \$1 million. It seeks to employ the beneficiary as its assistant director of tennis 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.

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 occupation of tennis instructor/assistant director of tennis.

On appeal, counsel asserts that the petitioner has submitted sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsels' assertion 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. On the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- planning, organizing and supervising a comprehensive junior and adult tennis program including the scheduling and administering of both on-court and classroom lessons by staff trainers,
- lecturing and providing structured instructional courses (both on an individual as well as group basis) on principles and techniques of successful tennis competition, physical and mental fitness activities and importance, and on-court strategy to both juniors and adults,
- scheduling and promoting both junior and adult tennis league competition and other promotional activities,
- assisting with promotion of Top Seed's tennis facility programs by recommending policies and goals for further expansion in current facilities and other facilities in Southern California, and
- attending sports conventions and trade association meetings to keep abreast of trends in recreational tennis and sports promotion.

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 combines the duties of a coach and sports instructor with those of a recreation supervisor as those jobs are 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 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.

A review of the Handbook at page 338 also finds no requirement of a baccalaureate degree in a specific specialty for employment as a recreation supervisor. A bachelor's degree and experience are preferred for most recreation supervisor jobs.

Counsel asserted in response to a Service request for additional evidence that the proffered position most closely resembles that of an athletic director. The Handbook 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 Handbook states at page 44 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.

The Service is not persuaded to classify the offered position as that of an athletic director because of the type of institution in which the beneficiary would be employed. According to the Handbook at page 44:

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 tennis academy. Although some of the administrative duties of an education administrator and the assistant director of tennis at a tennis academy may be similar, the proffered position is clearly not comparable to that of an education administrator.

Counsel also asserts that the proffered position resembles that of a program manager as that job is described by the DOL in its Dictionary of Occupational Titles (DOT). Counsel contends that the DOL has determined in the DOT that the occupation of program manager is a specialty occupation. However, a reference in the Department of Labor'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 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. 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, the petitioner did not present any convincing documentary evidence that the degree requirement is an industry standard. The record contains nine letters from tennis professionals. Six of the writers state that a bachelor's degree in physical education is the industry standard for parallel positions among similar organizations. Three writers state that a bachelor's degree is the standard industry requirement for similar positions, but do not specify that the degree must be in physical education or a related field. Six letters are insufficient evidence of an industry standard. Additionally, the writers have not provided any independent evidence to corroborate their statements. Furthermore, none of the writers have indicated the number or percentage of

tennis coaches/assistant directors of tennis who hold such degrees.

Third, the petitioner has not submitted any evidence to show that it requires a bachelor's degree in physical education or a related field as part of the hiring process.

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.