

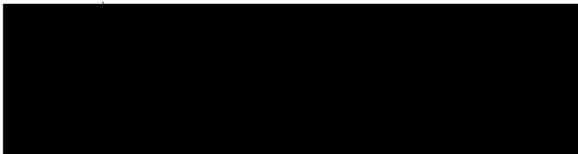
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

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



File: LIN 01 232 56052 Office: NEBRASKA SERVICE CENTER Date:

APR 01 2003

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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

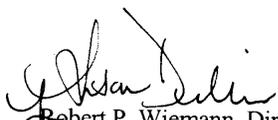
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a martial arts school that seeks to employ the beneficiary as a martial arts consultant for a period of three years. The director determined the petitioner had failed to establish that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

Section 214(i)(1) of the Immigration and Nationality 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) 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 not shown that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

On appeal, counsel asserts that most of the beneficiary's duties are professional in nature and as such require a baccalaureate degree in a specific specialty. Specifically, counsel asserts that the instruction of tae kwon do to physically disabled

individuals requires at least a baccalaureate degree or its equivalent. Counsel further asserts that the advisory opinion letters submitted by the petitioner clearly establish that a baccalaureate degree in a specific specialty is required to successfully perform the duties of the position. Finally, counsel asserts that the degree requirement is an industry standard.

Counsel's assertions on appeal are not persuasive. When determining whether a particular job qualifies as a specialty occupation, the Bureau (formerly the Service) considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Shall provide consultancy in the area of teaching martial arts to varied pupils including adults and children as well as physically handicapped students.

In response to the director's request for additional evidence, the petitioner provided the following, expanded description of the job's duties and the hours to be devoted to each:

1. Actual personal instruction to physically disabled people [of] Martial Arts, specifically Tae Kwon Do, for approximately 2 to 3 hours per day;
2. Consultation and development of a program to teach physically disabled people Martial Arts, which would include teaching methods, and curriculum of specific skills and accomplishment levels for each specific student and/or disability, for approximately 2 hours per day;
3. Consultation on a book about Martial Arts as it relates to the human body, muscles, skeleton, and other physical aspects, for approximately 2 hours per day. This would include explanation of various Martial Arts exercises, stretching techniques, hand and kicking techniques, and execution of other Tae Kwon Do techniques, and how the body's muscles and skeleton play a vital role in the proper execution of these techniques[;]

4. Consultation and development from a physical education standpoint [of] the method to increase the quality of United States Olympic hopefuls for future Olympic games, for approximately 1 hour per day. This would include consultation on the nature of the human body from a physical standpoint, and why proper understanding and development of certain muscles and techniques will increase the quality of Tae Kwon Do practitioners in future Olympic games.

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 petitioner has not met any of the requirements to classify the proffered position as a specialty occupation.

The proffered position appears to combine the duties of a coach with those of a sports instructor. The Department of Labor (DOL) describes the duties of sports instructors and coaches at page 126 of the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, as follows:

*Coaches* organize, instruct, and teach amateur and professional athletes in fundamentals of individual and team sports. In individual sports, *instructors* may

often fill this role. Coaches train athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and conditioning. Using their expertise in the sport, coaches instruct the athlete on proper form and technique in beginning and later in advanced exercises attempting to maximize the players potential. Along with overseeing athletes as they refine their skills, coaches also are responsible for managing the team during both practice sessions and competitions. They may also select, store, issue, and inventory equipment, materials, and supplies.

*Sports instructors* teach professional and nonprofessional athletes on an individual basis. They organize, instruct, train, and lead athletes of indoor and outdoor sports such as bowling, tennis, golf, and swimming. . . . Like a coach, sports instructors may also hold daily practice sessions and be responsible for any needed equipment and supplies. Using their knowledge of their sport, physiology, and corrective techniques, they determine the type and level of difficulty of exercises, prescribe specific drills, and relentlessly correct individuals' techniques.

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 or as a coach. Regardless of the sport or occupation, these jobs require considerable overall knowledge of the game, usually acquired through years of experience at lower levels. A general 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.

On appeal, counsel asserts that the proffered position is not merely that of a tae kwon do instructor as described in the director's decision, but rather that of a consultant who will develop and implement a program to provide instruction in tae kwon do to physically disabled individuals. Counsel contends that this aspect of the job qualifies the position as a specialty occupation. In support of this assertion, counsel submits a letter from the President of Oriental Arts Training Center, [REDACTED]

██████████ explains that well-developed instructional methods for teaching tae kwon do to the physically disabled are not yet available in this country. ██████████ states:

One of the main objectives in offering the position to ██████████ is to incorporate his knowledge and experience into consulting and developing instructional methods and a manual for the disabled so that other instructors can effectively provide the disabled with training of Tae Kwon Do. Also, this manual, once developed, will become a guideline to be followed by other instructors who do not have any experience and knowledge in dealing with disabled persons.

This statement directly contradicts the following statement, also made by ██████████ on appeal:

After working hours, I can not control his activities nor demand any additional work on behalf of the Oriental arts Training Center. However, it is his desire to write a manual for disabled students and management of a training center specially equipped for these students. In addition, he plans to devise training techniques for Special Olympic hopefuls.

If writing a training manual and developing a program to train Olympic athletes are voluntary activities to performed outside of normal working hours, it would appear that the majority of the position's day-to-day responsibilities are those normally performed by a sports instructor or coach. It is noted that tae kwon do is not currently a competitive sport in the Special Olympics, and the record contains no evidence to show that it is even under consideration as a sport in the Special Olympics. Indeed, the petitioner specifically indicates that the beneficiary will spend two to three hours each day personally instructing physically disabled students in tae kwon do.

The petitioner asserts that the development of a program to teach tae kwon do to the physically disabled requires a baccalaureate degree in a specific specialty. In support of this assertion, the petitioner submitted the following evidence:

1. A letter from ██████████ Administrative Director of the United States Taekwondo Union;

2. Two letters from [REDACTED] a professor of physical education in the Department of Health and Human Performance at Iowa State University.

[REDACTED] stated that a bachelor's degree in martial arts/physical education is a minimum requirement for the proffered position. [REDACTED] stated in his letter dated December 14, 2001 that a baccalaureate degree or higher is necessary for the successful performance of the duties of this position.

[REDACTED] stated in his letter dated March 2, 2002:

As a professor of physical education, I know as a fact that one must have at least [a] Bachelor's Degree in Physical Education to develop teaching technique and programs for the disabled.

Neither [REDACTED] nor [REDACTED] however, has provided any independent evidence to corroborate these statements. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the petitioner has not submitted sufficient evidence to show that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

In an attempt to demonstrate that the degree requirement is an industry standard, the petitioner submitted a letter from Sang Park, Executive Director of Martial Arts for Bally Total Fitness Corporation (Bally's). [REDACTED] stated that Bally's requires its martial arts instructors to hold Bachelor's Degrees in Tae Kwon Do and Hap Ki Do and either 4<sup>th</sup> or 5<sup>th</sup> degree Black Belts with [REDACTED] Certificates in Tae Kwon Do and Hap Ki Do. [REDACTED] further stated that similar private institutions within the physical fitness industry require their masters of tae kwon to have both a bachelor's degree and a 4<sup>th</sup> or a 5<sup>th</sup> Black Belt Dan Certificate. [REDACTED] has not, however, provided any evidence to corroborate his assertions. *Matter of Treasure Craft of California, id.*<sup>1</sup> Thus, the petitioner has not shown that the degree requirement is

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<sup>1</sup> The AAO notes that it has subsequently withdrawn several of the director's decisions to approve H-1B petitions filed by Bally's on behalf of other alien beneficiaries for tae kwon do instructor positions.

common to the industry in parallel positions among similar organizations.

The petitioner has not submitted any evidence to show that it required a baccalaureate degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not shown 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 degree in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the proffered position. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations. 8 C.F.R. § 214.2(h)(4)(ii).

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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.