

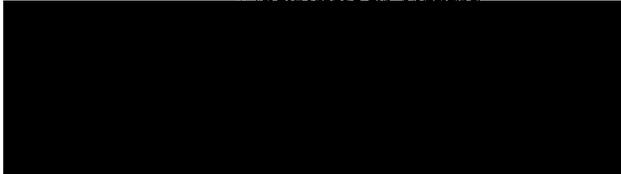


DR

U.S. Department of Justice

Immigration and Naturalization Service

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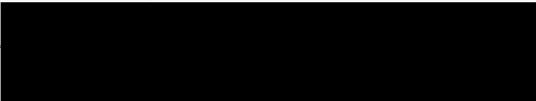


OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-02-050-52863 Office: Vermont Service Center

Date: FEB 10 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)

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
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 sustained.

The petitioner is a soccer education company with 25 employees and a gross annual income of \$1,200,000. It seeks to employ the beneficiary as a regional director 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 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the positions of instructors and coaches of non-professional individual and team sports require a baccalaureate in a specific specialty. On appeal, counsel states, in part, that the proffered position is not that of a coach or instructor, but, rather, it is a regional director, whose duties entail supervision of the coaches and instructors, the development of age-specific curriculum, liaison efforts with physical education and recreational departments of area schools, as well as market analysis and reporting to executives at United Soccer Academy. Counsel further states that the record contains letters from industry experts in support of his claim that the proffered position is a specialty occupation, and that the petitioner normally requires a baccalaureate degree in the field of physical education or an equivalent thereof for the proffered position.

The term "specialty occupation" is 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.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

A. DEVELOPMENT OF MARKET AND IMPLEMENTATION OF SPECIALIZED PROGRAMMING IN AREA SCHOOL SYSTEMS, MUNICIPAL/COUNTY RECREATION DEPARTMENTS AND AREA SOCCER ORGANIZATIONS

1. Development of Market.

The Regional Director, from the first telephone contract, is responsible to develop and negotiate specific age/ability appropriate contracts for the diverse entities, which make up its client base, and he/she must possess the professional expertise and abilities such analysis and negotiations require. For these reasons, a Bachelor's degree and

experience with soccer/sports programming and instruction are minimum requirements for performance of the duties of the position.

2. Implementation of Specialized Programming.

Once the program contract is in place, the Regional Director is responsible for the delivery of the program to the client. He/she will assure the appropriateness of the facility and the provision of an appropriate number of qualified instructors to assure the quality of services. In addition, the Regional Director will perform follow-up analysis on the success of the program.

B. TRAINING, DEVELOPMENT AND OVERSIGHT OF PROFESSIONAL CAMP STAFF

As noted earlier, USA, Inc. provides educational programs on a year-round basis, with major revenues generated in the Spring, Summer and Fall programs. At this time the company employs part-time instructors to deliver its programs, due to the fact that participant numbers increase in these months, particularly in the summer months. It is an industry standard and company policy to recruit, train and employ only individuals who are highly qualified, both academically and professionally, in their own right for these part-time positions. In the past, of the interested applicants who responded, nearly 80 percent of them were employed at the university level or above in their full-time careers. The Regional Director is responsible for recruiting and training these part-time staff members in the intricacies [sic] of the programming developed by USA, Inc...

C. QUALITY CONTROL OF PROGRAMMING

As noted earlier, USA, Inc. specializes in the provision of educationally based programming to its participants. It has built its reputation and has grown its business on the successful delivery of its services as evidenced by increasing enrollments and community/club contacts. Such programming requires continuous evaluation through customer contact and surveys. To accomplish this, the Regional Director is responsible to perform quality control surveys and make frequent contacts with the professionals in the schools, at the municipalities and on the club boards to assure that the services being rendered are of the highest quality, are customer oriented

and technically sound. In addition he/she is responsible for assuring that each staff member under his/her control is delivering the age/ability appropriate program as developed by the company to each participant...

The record contains a letter from an industry expert who states, in part, as follows:

Regional Directors at the United Soccer Academy are responsible for maintaining, expanding, and developing new soccer programs for all those served by the Academy...

Moreover, Regional Directors must be educated in appropriate pedagogy which requires expertise in teaching methodology. Additionally, Directors must have learned the management skills needed to develop relationships with schools, community recreation programs, and other regional organizations...

The record contains a letter from another industry expert who states, in part, as follows:

...The position of Regional Director with demands in the fields of administration, curriculum development and coaching education in youth sports demands an understanding of healthy child development and professional levels of risk management. In my professional opinion, such a position clearly requires a baccalaureate degree in Physical Education or related field.

The proffered position is similar to that of an instructional coordinator. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 187 finds that the minimum educational requirement for instructional coordinators is a bachelor's degree, usually in education. Here, the petitioner is requiring a bachelor's degree in physical education. The petitioner's requirement for a degree in this specific specialty is reasonable, given the complex proposed duties, such as developing curriculums for youth sports. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.