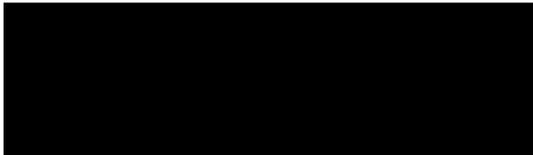


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

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



File: WAC-01-061-51240 Office: California Service Center

Date:

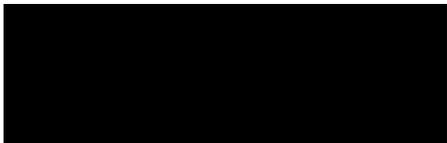
MAR 19 2003

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**

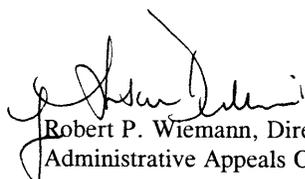
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a not for profit synchronized swimming team with 23 employees. It seeks to employ the beneficiary as a synchronized swimming 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, counsel submits a brief and additional documentation.

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 term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii), as follows:

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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree in a specific specialty. On appeal, counsel

argues that the Service (now the Bureau) has already determined that the proffered position is a specialty occupation since the Bureau approved another H-1B visa petition submitted by the petitioner on behalf of another beneficiary employed in an identical synchronized swimming coach position.

Counsel's arguments on appeal are not persuasive. The Bureau 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 Bureau considers. The duties of the offered position have been described as follows:

- * Analyzes performance of pupils and instructs in strategy and techniques to prepare for Olympic level athletic competition;
- * Observes pupils while they perform to determine need for individual and team improvement, demonstrates techniques required;
- * Determines routines and strategy based on pupil's strengths, weaknesses, and knowledge of what other competitors [are] expected to perform;
- * Evaluates physical condition of pupils and advises and treats athletes to maintain maximum physical fitness;
- * Prescribes routine and corrective exercises to strengthen muscles, recommends special diets to build up health and reduce risk of injury;
- * Treats chronic, minor injuries and serves as liaison with physicians should major injury occur.

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.

Counsel contends that the proffered position is a specialty occupation because it has been assigned a particular Specific Vocational Preparation (SVP) code in the Department of Labor's, (DOL) *Dictionary of Occupational Titles*, (DOT) (4th Ed., Rev. 1991). However, the Bureau does not consider the DOT a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the DOT with the *Occupational Information Network* (O*Net). Both the DOT and O*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the offered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the DOT.

Counsel argues that the beneficiary's twenty-six years of experience in synchronized swimming and the fact that she won a bronze medal in this discipline in the 1996 Olympics more than qualify her for the offered job. Counsel contends that the beneficiary's experience is the equivalent of a bachelor's degree. However, the issue to be examined in these proceedings is whether the proffered position of synchronized swimming coach meets the statutory definition of specialty occupation, rather than a determination of whether the beneficiary's experience is the equivalent of a particular degree.

The proffered position is that of a coach or sports instructor as described by the DOL in its *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition. A review of the *Handbook* at pages 128-129, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a sports instructor or coach. 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. Certification is highly desirable for those interested in becoming tennis, golf, karate, or any other kind of sports instructor. Employers often require that a sports instructor be at least 18 years old and CPR certified. Participation in a camp, clinic, or school usually is required for certification. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for the position being offered to the beneficiary.

The petitioner has failed to submit any evidence demonstrating that the requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations.

With respect to counsel's objection to denial of this petition in view of the previous approval of another petition filed by the petitioner for the identical position, this Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the approved visa petition and its supporting documents. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions are the same in the two petitions. Determinations of eligibility are based on the totality of evidence available to this Bureau at this time. The Administrative Appeals Office is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 51 (U.S. 2001). Therefore, the petitioner cannot be considered to have persuasively demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

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 in a specific specialty.

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.