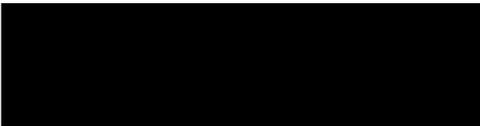


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: LIN 01 244 54096 Office: NEBRASKA SERVICE CENTER Date:

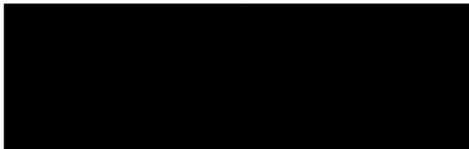
MAY 19 2003

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:



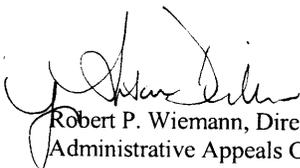
INSTRUCTIONS:

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 with three employees and a gross annual income of \$300,000. It seeks to employ the beneficiary as a taekwondo instructor 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.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (The Act), 8 U.S.C. § 1184(i)(1), 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 the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the petitioner hires only individuals with four-year university degrees in Taekwondo or the equivalent.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will instruct classes of children and adults, as well as will provide individual instructions, from beginner level to advanced level in Tae Kwon Do, the ancient martial art form;

[The beneficiary] will also coach a school competition team in Tae Kwon Do and prepare the team for participation in intraschool tournaments;

[The beneficiary] will conduct referee clinics for Black Belt students.

The director found the initial evidence insufficient to show that the proffered position qualifies as a specialty occupation and requested additional evidence in support of the petition.

In response to the director's notice, the petitioner provided the following, expanded description of the job's duties:

- Open and prepare school for class instruction each morning
- Teach Tiny Tiger's Taekwondo classes for children ages 4-6 years old
- Teach Children's Beginner, Intermediate and Advanced Taekwondo classes for children ages 7-11 years old
- Teach Adult Beginner, Intermediate and Advanced Taekwondo classes
- Develop curriculum and train assistant instructors in proper implementation of curriculum

- Train and coach school competition team
- Teach Introductory Lessons to new students
- Teach Private Lessons
- Upon students passing test, make and certify students for rank earned
- Perform demonstrations
- Conduct self-defense seminars as a public service
- Run sparring seminars, clinics and classes
- Order and maintain martial arts supplies in school
- Teach classes to current 1, 2, and 3rd Degree Black Belt
- Head examination board for conduction of color belt testing
- Run all facets of business from opening to closing

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.

The petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

On appeal, counsel asserts that the petitioner hires only individuals with four-year university degrees or individuals with training and experience that are equivalent to a bachelor's degree in taekwondo. In support of this assertion, counsel submits a letter from [REDACTED] School Director of Richards Taekwondo, Inc. Mr. [REDACTED] states:

In the past, we have hired Korean nationals and others with a minimum rank of 5th Degree Black Belt issued by the Kukkiwon (World Taekwondo Headquarters) and that hold bachelor's degrees in Taekwondo issued from an accredited University or in the alternative, who have the equivalent of a bachelor's degree through requisite experience.

Mr. [REDACTED] states that he has prepared a list of his current and former taekwondo instructors and their degrees and experience in the field of Taekwondo. No such list is contained in the record of proceeding. Mr. [REDACTED] did provide the credentials of one of his current taekwondo instructors, [REDACTED] along with photocopies of her diploma and transcripts from Yong-In University in Korea. According to these documents, Ms. [REDACTED] holds a Bachelor of Physical Education degree in Taekwondo. Mr. [REDACTED] did not, however, provide an evaluation of Ms. [REDACTED] foreign education to establish that Ms. [REDACTED] bachelor's degree from Yong-In University is equivalent to a bachelor's degree in a specific specialty from an accredited college or university in the United States. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to show that it required a baccalaureate degree in a specific specialty or its equivalent as part of the hiring process for the taekwondo instructor 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 beneficiary's duties do not appear to be any more specialized and complex than those normally performed by taekwondo instructors at private martial arts schools. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as a taekwondo instructor.

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.

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.