

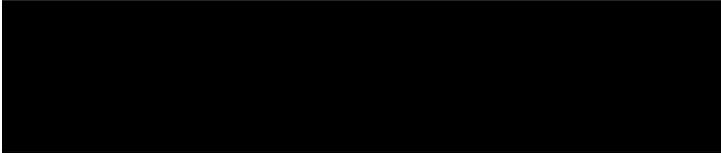
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U.S. Department of Homeland Security
Citizenship and Immigration Services

D2

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, DC 20536



File: WAC 02 204 53166 CALIFORNIA SERVICE CENTER

Date:

NOV 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)(1)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

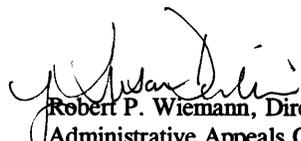
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be denied.

The petitioner is a self-defense academy that employs ten persons and has a gross annual income of \$900,121.67. It seeks to employ the beneficiary as an assistant instructor of G.A.R.D. (Gracie Air Rage Defense), a method of self-defense. The director denied the petition on the basis that the evidence on record failed to demonstrate that proffered position was a specialty occupation or that the beneficiary was qualified to perform a specialty occupation.

On appeal, the petitioner 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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

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.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and

(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In the original petition, received by the service center on June 10, 2002, the petitioner stated that the beneficiary's proposed job would be to instruct flight attendants in self-defense. On June 13, 2002, the director asked for further evidence that the position of self-defense instructor was a specialty occupation and that the beneficiary was qualified to perform a specialty occupation. In response, the petitioner provided additional explanations about the G.A.R.D. method, stating that it is unique and that no one else but the beneficiary can teach this method to female flight attendants. The petitioner also listed the beneficiary's accomplishments in the practice of jiu-jitsu. The record contains certificates attesting to these accomplishments.

On July 8, 2002, the director denied the petition, finding the evidence insufficient to classify the proffered position as a specialty occupation. The director also determined that the petitioner had not established that the beneficiary is qualified to perform a specialty occupation.

On appeal, the petitioner states that the nature of the specific 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 also asserts that the beneficiary's training in the martial arts qualifies her to perform a specialty occupation.

Regarding whether the position of assistant G.A.R.D. instructor qualifies as a specialty occupation, Citizenship and Immigration Services (CIS) is guided by the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. The proffered position is most similar to a sports instructor, as described in the *Handbook* on page 127. According to the *Handbook*, certification is desirable for individuals wishing to work as sports instructors. The *Handbook* does not indicate that a bachelor's degree is a minimum entry requirement into this profession. The evidence does not meet the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record contains no evidence that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner has not provided information regarding its educational requirements for other assistant G.A.R.D. instructors at its facility. The evidence does not meet the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3). Although the petitioner describes the offered position as being complex and unique, the record does not demonstrate that the position meets the criterion found in 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The record, thus, does not demonstrate that the offered position is a specialty occupation.

The second issue to be discussed is whether the beneficiary is qualified to perform the duties of a specialty occupation. The record contains several certificates and letters attesting to the beneficiary's expertise in jiu-jitsu. There is no documentation, though, that she received a bachelor's degree at any time or that her training and experience amounts to the equivalent of a bachelor's degree. The evidence does not meet any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C). Hence, the record does not establish that the beneficiary is qualified to perform a specialty occupation.

The record fails to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform a specialty occupation. 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. The petition is denied.