U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: LIN 02 266 53442 Office: NEBRASKA SERVICE CENTER Date: [illegible]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a youth soccer club that seeks to employ the beneficiary as a training director. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the

denial of the petition; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a training director. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 26, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: establishing and implementing regional courses in advanced goal-keeping soccer theory and practice; directing and training volunteer coaches; developing and teaching soccer skill sessions; designing player development programs; analyzing and modifying the petitioner's current training strategy and methodology; and ensuring that safety requirements are fulfilled by coaches and staff. The program serves 1000 youth soccer players on more than 60 teams, and has more than 100 volunteers and 40 contractors. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in physical education or a related field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, under the heading "Athletes, Coaches, Umpires, and Related Workers," he found that there is no minimum requirement of a baccalaureate degree or its equivalent in a specific specialty for entry into the proffered position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director overlooked the two expert opinions provided to establish the position as a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As part of the petitioner's motion to reconsider, counsel supplied copies of both the Athletes, Coaches, Umpires, and Related Workers entry and the Recreation and Fitness Workers entry from the *Handbook*. The AAO finds that the position is primarily that of a coach; recreation workers plan and direct organized recreational activities, while coaches work in organized sports settings. No evidence in the *Handbook*

indicates that a baccalaureate or higher degree, or its equivalent, is required for a coaching position outside of a public secondary school environment.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for program directors of gym and fitness programs geared towards children. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

Counsel has submitted letters from two professors at different universities regarding the professional nature of the proffered position. The first, from [redacted] of Nova Southeastern University, states that an individual filling the proffered position would normally possess a bachelor's degree in sports management, and that possessing such a degree would be typical of the requirements of youth sports organizations. The second letter, from [redacted] of Hofstra University, states that in order to competently perform the proffered position, an individual would need to demonstrate academic training and/or professional experience in sports management or a related area. On appeal, counsel states that these two letters are the only probative evidence of value regarding the position, and the director's reliance on the *Handbook* rather than on the expert opinion letters was arbitrary and capricious. However, CIS has long recognized the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this case, the opinions are not in accord with the information in the *Handbook*. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.