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**U.S. Citizenship  
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Services**

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FEB 24 2004

FILE: EAC 02 062 52609 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

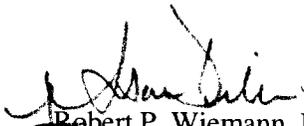
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 New Jersey gym that seeks to employ the beneficiary as a gymnastics coach. The petitioner, therefore, 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 further documentation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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; and (5) Form I-290B and supporting documentation. Among the documentation submitted is a work experience evaluation document from [REDACTED] a consultant with Josef Silny & Associates, Inc, Coral Gables, Florida. The petitioner also submitted numerous copies of certificates of attendance for the beneficiary at gymnast tournaments in Colombia. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a head gymnastics coach. Evidence of the beneficiary's duties includes: the I-129 petition; and the petitioner's response to the director's request for evidence, dated March 3, 2002. According to this evidence, the beneficiary would perform duties that primarily entail: formulating lesson plans, goals, physical preparation, and the direction of the team program or athletes; and training gymnasts, teaching basic skills, planning drills and progressions for individuals and groups. These two duties would occupy eighty per cent of the beneficiary's time. The petitioner indicated that the proffered position is actually a teaching position and the petitioner requires at least a bachelor's degree for head coaching positions.

The director found that the proffered position was not a specialty occupation because the petitioner had not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director did not find the documentation submitted by the petitioner as to the academic credentials of other coaches in the petitioner's employ to be persuasive evidence of the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is a specialty occupation because the position requires a baccalaureate degree. The petitioner refers to the coaches and scouts classification in a Department of Labor (DOL) report and states that such a classification establishes that the proffered position requires a baccalaureate degree for entry. The petitioner submits the academic credentials for [REDACTED] an employee, to establish that he has a baccalaureate degree in physical education. The petitioner resubmits the diploma for [REDACTED] that indicates [REDACTED] earned a baccalaureate degree in physical education in Cuba. The petitioner also submits a work evaluation document for [REDACTED] another employee listed as a head coach by the petitioner, along with documentation that he earned a baccalaureate degree in electrical engineering in Colombia.

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. With regard to athletes, coaches, umpires and related workers, the *Handbook* on page 128 states:

Education and training requirements for athletes, coaches, and sports officials vary greatly by the level and type of sport. Regardless of the sport or occupation, jobs require immense overall knowledge of the game, usually acquired through years of experience at lower levels.

Some entry-level positions for coaches or instructors only require experience derived as a participant in the sport or activity.

Although the *Handbook* states that public secondary school coaches and sports instructors at all levels must have a bachelor's degree and meet State requirements for licensure as a teacher, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for the proffered position, which is at a private gym.

The petitioner's reference to and assertions about the relevance of information from the Department of Labor's publications are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, in its response to the director's request for further evidence, the petitioner referred to two gyms in New Jersey and alleged that these two gyms also require baccalaureate degrees for individuals working as coaches. The petitioner's personal observations do not constitute evidence in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). More probative evidence would be documentation on the academic credentials of the gymnastic coaches working at these sports facilities. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Furthermore, although the petitioner referred to a document from the U.S. Elite Coaches Association (USECA) that addressed the academic qualifications for a gymnastics coach, no such documentation was found in the record. 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 petitioner, in its response to the director's request for further evidence, provided a list of seven individuals that it identified as its head coaching staff. While the petitioner provided documentation on the baccalaureate degrees of employees, these documents only clearly identified [REDACTED] and [REDACTED] as having baccalaureate degrees in a specific specialty that appears relevant to the proffered position, namely, physical education. On appeal, the petitioner submits documentation that establishes that Luis Villegas, also identified as a coach, has a baccalaureate degree in physical education and recreation. The documentation provided on the academic credentials for [REDACTED] another employee identified as a coach, is viewed as problematic. First, [REDACTED] does not have a baccalaureate degree in an academic area relevant to the proffered position. He possesses a bachelor's degree in electrical engineering. Second, [REDACTED] the evaluator of [REDACTED] work experience, stated that based on his education and work experiences, [REDACTED] had the equivalent of a bachelor's degree in physical education. This assessment appears based on a letter from the Vallecuna Gymnastics League in Colombia that states [REDACTED] has worked as a trainer for this gymnastics league since 1986. The Vallecuna letter is not found dispositive of whether [REDACTED] training and work experience is the equivalent of a baccalaureate degree in a specific specialty given by an accredited U.S. educational institution. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The academic credentials of the remaining coaches remain unclarified as to specific baccalaureate degrees in a subject relevant to the proffered position. Without more persuasive evidence, the petitioner has not established this criterion.

Finally, the AAO turns to the criterion 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. In addition, the record is devoid of any documentation as to the caliber of athletes trained at the petitioner's gym, or the level of amateur or professional competitions for which athletes are trained that would add to the specialized nature of the duties of the proffered position. Although the petitioner stated in its response to the director's request for further evidence, that it had emphasized providing professional-level individualized training for professional athletes since 1976, it submitted no further documentation to establish this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. The petitioner submitted numerous awards or certificates of attendance for the beneficiary at various sports tournaments, either as a judge or gymnast. These events appear to have taken place in the mid to late 1980s, when the beneficiary was a teenager. The record indicates that the beneficiary, similar to ██████████ possesses a baccalaureate degree in engineering. Without further documentation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the beneficiary does not appear qualified to perform the duties of the proffered position, if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.