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FILE: LIN 03 253 50208 Office: NEBRASKA SERVICE CENTER Date: **MIL 13 2004**

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.

Mari Jensen

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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. The petition will be denied.

The petitioner is a nonprofit gymnastics training academy that seeks to employ the beneficiary as a gymnastics coach/instructor. 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 states that the proffered position 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.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a gymnastics coach/instructor. Evidence of the beneficiary's duties includes the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail coaching 80 preschool to preteen athletes under the supervision of a senior women's gymnastics coach; developing elementary dance, physical conditioning, and flexibility routines; coaching in tumbling, jumps, vaults, and artistic dance; evaluating performance and correcting technique; assuring the safe use of equipment; motivating students for competition and coaching at competitions; and coordinating instruction with other coaches. The petitioner stated that a candidate must possess a bachelor's degree in physical education, sports science, or equivalent experience as an athlete and coach/instructor of physical conditioning related to gymnastics.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found unpersuasive the submitted biography pages of coaches from competitive gymnastics organizations and the petitioner's claim that similar H-1B petitions had been approved in the past. According to the director, [REDACTED] advisory opinion - that a specific bachelor's degree is required for the proffered position - was undermined by the evidence in the record. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by instructors and coaches, and that these positions do not require a bachelor's degree in a specific specialty. The director found that the information from America's Career Infonet mentioned that coaches and scouts require "long-term on-the-job training." The director concluded that the petitioner does not have a past practice of hiring candidates with bachelor's degrees in a specific specialty, and the director noted that the beneficiary holds a degree in finance with six years of experience in coaching.

On appeal, the petitioner states that the proffered position qualifies as a specialty occupation. Upon review of the record, however, 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 petitioner asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in their record of proceedings, the petitioner's claim is not sufficient to enable the AAO to determine whether the instant H-1B petition is parallel to the prior petitions. Moreover, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO next considers 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 petitioner claims that it satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the proffered position does not entail general physical education; it involves specialized duties of a competitive team coach. According to the petitioner, the beneficiary will participate in the team program, which is part of USA Gymnastics and is a Junior Olympic Training Center. The petitioner claims that its team program, level 4 through 10, competes at the local, state, regional, and national levels. The petitioner explains that a candidate must possess specific knowledge such as start values of elements and routines, point values for fault deductions, and the rules and regulations governing USGA competitions.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that the director properly analogized the proffered position to coaches and sports instructors. Coaches organize, instruct, and teach amateur and professional athletes in fundamentals of individual and team sports. In individual sports, instructors may sometimes fill this role. Coaches train athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and stamina. 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' physical potential. Along with overseeing athletes as they refine their individual skills, coaches also are responsible for managing the team during both practice sessions and competitions, and for instilling good sportsmanship, a competitive spirit, and teamwork. During competitions, for example, coaches substitute players for optimum team chemistry and success. In addition, coaches direct team strategy and may call specific plays during competition to surprise or overpower the opponent.

Sports instructors teach professional and nonprofessional athletes on an individual basis. They organize, instruct, train, and lead athletes of indoor and outdoor sports. Because activities are as diverse as weight lifting, gymnastics, and scuba diving, instructors tend to specialize in one or a few types of activities. Like coaches, sports instructors also may hold daily practice sessions. Using their knowledge of their sport, physiology, and corrective techniques, they determine the type and level of difficulty of exercises, prescribe specific drills, and correct the athlete's techniques. Some instructors also teach and demonstrate use of training apparatus, such as trampolines or weights, while correcting athletes' weaknesses and enhancing their

conditioning. Sports instructors spend more of their time with athletes working one-on-one, which permits them to design customized training programs for each individual. Motivating athletes to play hard challenges most coaches and sports instructors but is vital for the athlete's success. Many coaches and instructors derive great satisfaction working with children or young adults, helping them to learn new physical and social skills and to improve their physical condition, as well as helping them to achieve success in their sport.

Like the sports instructor and coach, the beneficiary will work with and motivate children and young adults; demonstrate the use of training apparatus; prescribe specific drills; train athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and stamina; and correct the athlete's techniques. Sports instructors and coaches teach professional and nonprofessional athletes. This undermines the petitioner's assertion that the DOL's description of a coach and sports instruction involves only general physical education. Based on the information in the *Handbook*, the duties of the proffered position parallel those of a coach and sports instructor.

The DOL relates that education and training requirements for athletes, coaches, umpires, and related workers 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. For high school sports instructor jobs, schools usually prefer to hire teachers willing to take on the jobs part time. If no one suitable is found, they hire someone from outside. Some entry-level positions for coaches or instructors require only experience derived as a participant in the sport or activity. Many coaches begin their careers as assistant coaches to gain the necessary knowledge and experience needed to become a head coach. Head coaches at larger schools that strive to compete at the highest levels of a sport require substantial experience as a head coach at another school or as an assistant coach. To reach the ranks of professional coaching, it usually takes years of coaching experience and a winning record in the lower ranks. The *Handbook* mentions that public secondary school sports instructors at all levels usually must have a bachelor's degree; however, it does not state that sports instructors at private schools require a bachelor's degree in a specific specialty. Based on the information in the *Handbook*, the petitioner fails to establish the first criterion because a sports instructor position in a nonprofit gymnastics training academy would not require a specific bachelor's degree.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submitted evidence about the credentials of gymnastics coaches.

The petitioner's evidence is not convincing. Coach and sports instructor positions in private schools do not require a bachelor's degree in a specific specialty, and the submitted evidence about the credentials of gymnastics coaches serves to substantiate the DOL's finding that a specific bachelor's degree is not an industry-wide requirement. The AAO reviewed the biographical backgrounds of the 18 M&M gymnastics coaches. Of these, 5 of the coaches do not hold degrees, and of the 13 who do hold a bachelor's or higher degree, the degrees are in a variety of fields such as physical education, psychology, recreation therapy, exercise and fitness, nuclear medicine technology, criminal justice, dance performance, and marketing and business administration. The most common degrees are recreation therapy and exercise and fitness. Based on

the submitted evidence, employers in the industry do not require gymnastics coaches to hold a bachelor's degree in a specific specialty.

The opinion letter from [REDACTED] is insufficient to establish that the proffered position requires a bachelor's degree in a specific specialty. [REDACTED] fails to submit independent corroborating evidence that would substantiate her opinion that a specific baccalaureate degree is required for the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, her opinion does not evince or explain why the proffered position requires a specific degree. For example, Dr. Del Rey merely stated:

I have placed undergraduate students in positions of employment in the field of sports studies and sports management, and I am very familiar with the educational requirements for positions in the field of physical education/sports studies, such as the position offered by the [petitioner]. The requirement for such a position is a bachelor's degree in physical education/sport studies (or equivalent) with a minor in athletic coaching.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree.

The petitioner asserts that it satisfies the third criterion: it normally requires a degree or its equivalent in a specific specialty for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). According to the petitioner, it presently has seven team coaches. Of the seven, five have degrees; one is enrolled in a bachelor's program and has eight years of experience; and another has twelve years of experience. According to the petitioner, the degrees are in physical education and health, teacher of physical education, elementary education, psychology, and civil engineering. All of the degree holders, the petitioner contends, have extensive experience as athletes or coaching team athletes, or both. The petitioner states that because there is no degree program available in the United States specifically designed to train coaches, it seeks a candidate with a baccalaureate degree and appropriate experience. This explains, the petitioner avers, the wide variety of degrees held by coaches.

The petitioner's claim that there is no degree program available in the United States specifically designed to train coaches is unpersuasive. According to the *Handbook*, there are degree programs specifically related to coaching such as exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine. The AAO finds that the degree programs are also relevant for a sports instructor position. Consequently, the wide variety of degrees held by coaches substantiates the DOL's finding that no specific bachelor's degree is required for coach or sports instructor positions. The AAO notes that educational equivalency is considered by CIS only when a specific degree does not exist in an occupational field. *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000).

Although the petitioner claims that five of its coaches hold bachelor's degrees, this is insufficient to establish the third criterion. Moreover, no evidence is submitted that would substantiate this claim or show the specific degree held by the employee.

There is insufficient evidence to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner establish 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 in a specific specialty. The biographic sketches of gymnastics coaches illustrate that they hold a wide variety of bachelor's degrees. In addition, the *Handbook* shows that the duties of a coach and sports instructor resemble those of the proffered position. Accordingly, the proffered position does not require a specific baccalaureate degree.

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.