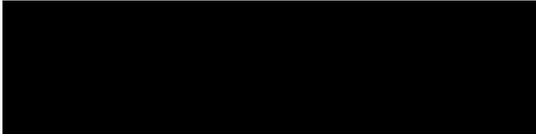


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DZ

FILE: EAC 03 013 51972 Office: VERMONT SERVICE CENTER Date: JUN 02 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:



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.

to Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a tennis club that seeks to employ the beneficiary as a director of fitness/conditioning. 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 on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that it does not appear that all of the evidence, which includes materials relating to tennis management being a specialty occupation and a major at several universities, was reviewed. Counsel further states that he is submitting additional material, including a letter from an academic expert, in support of his claim that the proffered position is a specialty occupation.

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; (5) Form I-290B and supporting documentation; (6) the AAO's decision dismissing the appeal; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of fitness/conditioning. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 11, 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: designing and managing fitness programs for club members and guests; designing fitness and conditioning programs for tennis players; designing and implementing rehabilitation programs for sports injuries and individualized programs to address member-specific weaknesses and needs; designing and conducting daily warm-up programs; participating in exhibition matches and substituting as instructor, as required; and providing consultation to other sports clubs. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree with concentration in sports science/physical education.

The record contains the following documentation submitted on motion:

- Letter, dated February 26, 2003, from the petitioner's club manager who states, in part, that Professional Tennis Management (PTM) is a specialty occupation, and that the PTM degree program focuses on all aspects of the tennis industry, including Tennis Teaching Techniques, Facilities Management, Tennis Academy Co-op, Physical Science, Health Education, Professional Tennis Management, Psychology of Coaching, Food & Beverage Management, Tournament Administration, etc.;
- Letter, dated February 27, 2003, and course listings from [REDACTED] PTM Program, Ferris State University, who states, in part, that a tennis professional requires a baccalaureate degree "for entry-level employment in the profession and specialized knowledge pertaining to the specific profession and area of specialization.";
- Letter, dated February 26, 2003, from the general manager of Hudson Valley Health & Tennis Club, who states, in part, a bachelor's degree in PTM or an equivalent is required for all its tennis professionals;
- PTM university/college curricula;
- Approval notices for similar petitions, with support documentation;
- Letter, dated April 29, 2002, from the club manager of Trumbull Racquet Club, Inc., who describes its educational requirements as follows: the minimum requirement for a tennis professional is a 4-year college degree or equivalent, and a minimum requirement for a tennis instructor is a 2-year college degree or equivalent, and, in all cases, world-class competition is required;
- Letter, dated April 26, 2002, from the club manager of Kings Highway Tennis Club, who states, in part, that a minimum of a bachelor's degree is required for its tennis professionals and training directors, as well as having competed in World Class competitions;

- Letter, dated April 26, 2002, from the general manager of Beaver Brook Tennis Club, who states, in part, that all of its tennis professionals have a four-year college degree or equivalent; and
- Letter, dated April 26, 2002, from the club manager of Fairfield Indoor Tennis, Inc., who states, in part, that all of their tennis professionals have a minimum of a baccalaureate degree and world-class competition.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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. The AAO does not concur with counsel that the proffered position is a specialty occupation. The proffered position is similar to that of a sports instructor. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a sports instructor position.

Furthermore, a review of the U.S. Professional Tennis Association's (USPTA) website at www.uspta.org finds that a professional tennis management program is offered both at four-year and two-year institutions. USPTA includes the professional tennis management program at Tyler Junior College, Tyler, Texas, as being USPTA accredited.

On motion, counsel states, in part, that the AAO officer ignores the DOL's *Dictionary of Occupational Titles (DOT)* definition of the proffered position as Level II, the SVP of 7. He further states that this classification by the DOL constitutes independent verification that the proffered position requires specialized knowledge. Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP does not indicate that a particular occupation requires specialized knowledge that is associated with 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 is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe 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, the record contains the above-listed letters. Although most of the writers assert that a bachelor's degree is required for positions such as the proffered position, the record reflects that, in many instances, a bachelor's degree in specific specialty is not required. For example, some of the degree fields are related to engineering, Spanish, and computers. Furthermore, the writers do not provide evidence in support of their assertions. 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).

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. 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. On appeal, counsel states: “All [t]ennis clubs in Fairfield County require a degree for all employees except those who are merely tennis instructors.” On motion, counsel further states: “All tennis clubs in Fairfield County, [CT] require candidates with bachelor's degrees for EVERY professional position in the club.” Counsel asserts that by combining a bachelor's degree with practical experience, that degree becomes the equivalent of a degree in tennis management. The letters from the various tennis clubs are noted. The record, however, does not contain evidence that the petitioner requires a degree in a specific specialty for its tennis professional positions, nor that all of the individuals holding these positions hold the equivalent of a baccalaureate degree in tennis management. Furthermore, counsel's assertions do not overcome the information provided by the DOL in its *Handbook* or the aforementioned information found at the website of the USPTA. See *Matter of Treasure Craft of California, id.*

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 decision of the AAO, dated February 5, 2003, is affirmed. The petition is denied.