

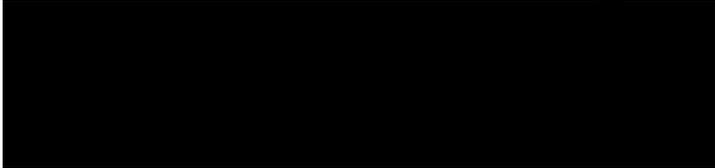
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U.S. Citizenship
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Services

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FILE: LIN 03 044 51653 Office: NEBRASKA SERVICE CENTER Date: JUN 9 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.

Mari Johnson

Robert P. Wiemann
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 Taekwondo school that seeks to employ the beneficiary as a master Taekwondo 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and the director's decision is an abuse of discretion.

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 [REDACTED]. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would be teaching students in the petitioner's school the martial arts of Taekwondo as well as the care and proper conditioning of their bodies. The beneficiary would teach novice and advanced students, and also assist in the testing of students' skills in Taekwondo. The petitioner appears to indicate in its response to the director's request for further evidence that a baccalaureate degree plus a 4th degree or black belt in Taekwondo is required for the position.

The director found that the proffered position was not a specialty occupation and stated that the duties of the position appear to be that of a physical training instructor. The director referred to the training requirements for this classification as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The excerpt stated that certification was highly desirable for those interested in becoming a karate instructor, as well as being 18 years old and CPR certified. 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, the petitioner states that the position is not a physical training instructor. Counsel further states that a Taekwondo instructor is a highly trained teacher who requires many years of study to achieve his rank. Counsel also asserts that the petitioner did establish that similar businesses did, in fact, employ individuals with college degrees for parallel positions.

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 individual [REDACTED]

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, the petitioner correctly identified it as a sports instructor position that requires training beyond the requirements for an entry-level sports instructor. With regard to training requirements and academic credentials, the 2004-2005 edition of the *Handbook* states the following:

Public secondary school head coaches and sports instructors at all levels usually must have a bachelor's degree. . . . Those who are not teachers must meet State requirements for certification in order to become a head coach. Certification, however, may not be required

for coach and sports instructor jobs in private schools. Degree programs specifically related to coaching include exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

What is less clear from the *Handbook* description is whether master [REDACTED] by private clubs or companies in Illinois would also be required to have baccalaureate degrees. It is noted that the petitioner stated that the job description for the proffered position required its master Taekwondo instructors to work with students from both public and private schools, and that Taekwondo instructors had to fulfill the requirements set forth by the State of Illinois, presumably as to academic credentials. However, the petitioner only provided documentation from the [REDACTED] a private school. There is no documentation in the record to suggest that the petitioner's instructors are teaching in public schools in Illinois, and, therefore, could be required to have a bachelor's degree in a specific specialty. In addition, the record lacks sufficient information as to whether the petitioner's requirement for a black belt in Taekwondo is the equivalent of any required certification. Without more persuasive evidence, neither the petitioner nor the *Handbook* establishes that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

With regard to parallel positions in similar Taekwondo schools, the petitioner submitted a letter from [REDACTED] master instructor in [REDACTED] is identified in the letter [REDACTED]. The writer stated that to be a master instructor at his school, an employee needed a bachelor's, or higher, degree, in physical education, in addition to being [REDACTED]. The petitioner submitted a second letter from [REDACTED] instructor [REDACTED]. This writer stated that any applicant for the position of [REDACTED] instruction at his school was required to have a baccalaureate degree in physical education, in addition to being a Taekwondo master. Neither letter writer provided any evidentiary documentation to further substantiate his assertions. 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* [REDACTED]

A third letter is from [REDACTED] in this letter [REDACTED] that the petitioner or an instructor from the petitioner's school, teaches Taekwondo classes as an extra-curricular activity at the Academy, and that the Academy looks for professionals to teach its students. This letter contains no mention of any academic credentials required by the Academy for its Taekwondo instructors. 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. The petitioner stated in its letter of support that it had submitted other petitions for similar positions that had been approved. The record contains a letter from [REDACTED] that stated he was employed by the petitioner. No dates of employment are provided in this letter. In addition the petitioner submitted a graduation certificate for [REDACTED] that indicated he received a bachelor's degree in physical education at [REDACTED]. The petitioner also submitted a I-797 Approval Notice for [REDACTED] that indicated that [REDACTED] was approved to work for the petitioner from September 15, 2000 to November 13, 2001, after the issuance of an initial I-797 Approval Notice for another petitioner in New York. Nevertheless, the petitioner provided no documentation, such as payroll records, to establish its employment of [REDACTED]. The petitioner also submitted no further documentation on any other employees previously or currently employed [REDACTED]. This evidentiary documentation is not viewed as sufficient

to establish that the petitioner previously required or currently requires a baccalaureate degree in a specific specialty for its master Taekwondo instructors. Therefore the petitioner has not met this criterion.

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 of the position appear generic. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a master Taekwondo instructor. It also provided no further information as to the volume of classes, level of students, or types of competitions entered by the petitioner's students. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 position, if the position had been determined to be a specialty occupation. While the petitioner provided documentation as to the beneficiary's graduate studies in physical education with an emphasis in safety and security, this documentation is not sufficient to establish that the beneficiary has undertaken coursework in such areas as kinesiology, physiology, physical education, or sports medicine. These are the courses identified in the *Handbook* as more relevant to a baccalaureate degree in physical education. For this additional reason, the petition may not be approved.

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.