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20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: SRC 03 016 50440 Office: TEXAS SERVICE CENTER Date: **MAR 15 2004**

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 golf and tennis country club that seeks to employ the beneficiary as a tennis program 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 he found that the petitioner had failed to establish that the proffered position is a specialty occupation.

On appeal, counsel files a Form I-290B, annotated with the grounds of the appeal, and additional evidence.

The director found that the proffered position did not meet any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel asserts that, contrary to the director's findings, the evidence of record establishes that: (1) "a bachelor's degree is common to the industry among parallel organizations," therefore qualifying the proffered position as a specialty occupation in accordance with the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) (2); and (2) the proffered tennis program director is "a business management occupation," for which counsel maintains Citizenship and Immigration Services (CIS) "routinely grants business manager petitions for other industries with identical job duties."

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE, with documentation; (4) the director's denial letter; and (5) the matters submitted on appeal, including the Form I-290B, which counsel has annotated with the reasons for the appeal, and letters from four tennis directors and one tennis pro. The AAO reviewed the record in its entirety before issuing its decision.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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.

Upon review of the entire record and all of counsel’s assertions on appeal, the AAO has determined that 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.

In analyzing the evidence, the AAO first applied the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The petitioner has not met this criterion.

The petitioner’s Form I-129, describes the beneficiary’s proposed duties as follows:

Supervise and direct all aspects of the junior tennis program. Responsible for marketing and advertising of the junior program to gain child interest and increase enrollment and maximize revenues. Direct tennis instructors to teach various group and individual lessons in the manner best suited to child improvement. Supervise all junior tennis staff.

There is ample evidence in the record that the proffered position has some business aspects. This excerpt from the Head Pro at Richland Tennis Center is fairly representative of the general tenor and detail of the evidence about the business aspects:

Running a tennis program involves much more than simply playing good tennis. A tennis director is expected to be able to effectively *run* all of the business of the program that often includes budgeting and planning, marketing, working in the tennis shop, analyzing the expenditures of the program, and creating new ways to bring in more revenue. Many times, the program directors spend a great deal of time working *off* the court. [Emphasis in original.]

The evidence does not support counsel's assertion to the effect that the proffered position is primarily in business management. Rather, the totality of evidence indicates a position that is an amalgam of individual sports instructor and business management occupations.

CIS recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and performance requirements of a wide variety of occupations. The 2002-2003 edition of the *Handbook* does not report that instructors in individual sports like tennis require a baccalaureate or higher degree or equivalent in a specific specialty. Also, the *Handbook* does not indicate that one must have such credentials in order to engage in business management in general or in management as a director of junior tennis.

Furthermore, apart from the *Handbook* information, the proffered position, as it is described in the evidence of record, is not readily recognizable as one that normally requires a baccalaureate or higher degree or equivalent in any specific specialty.

For the reasons discussed above, the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) is not satisfied.

Next, the petitioner has not presented evidence that would qualify the proffered position under either section of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

First, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether a degree requirement is common to the industry in parallel positions among similar organizations, factors often considered by CIS 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)).

As just discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from professional associations in the petitioner's industry. However, there are eight submissions from others in the tennis center industry - one Head Pro and seven tennis directors - which the AAO considered in terms of what they establish about the industry's educational requirements.

After a general description of the business aspects of a tennis director's job, the Director of Racquet Sports at Hilton DFW Lakes opined, "It is both logical and common that a tennis program director would be expected to have a degree in business because he must have the knowledge necessary to keep his program running efficiently."

The tennis director at McLeLand Tennis states his belief that a bachelor's degree in business or business sports management is the "standard" in the field. In the same vein, the tennis program directors of Mira Vista, Colonial, and Shady Oaks Country Clubs submitted typed, one-paragraph letters that are identical to each other except for the handwritten entries for the submitter's name, address and phone number, and the name of his country club. These three documents state, in pertinent part:

[I] am writing this letter to inform you that I have an undergraduate baccalaureate degree in business and that it is the industry standard in my position to have at least an undergraduate baccalaureate degree in business.

The tennis director at McLeLand Tennis and the authors of the three identical submissions share an opinion about an industry's hiring standard, but they do not state a convincing factual basis for that opinion. Furthermore, the evidentiary value of the three virtually identical letters is undermined by their identical form and content, which opens to question the amount of reflection that the authors gave to these submissions.

Furthermore, the eight submissions are not all consistent with each other on the issue of educational requirements. The Head Pro at Richland Tennis Center claims only a "Bachelor's Degree," not one in business, when he states that he finds such degree "not only common but necessary in my profession." The tennis director at Shellingham Tennis Club "studied business in college" but he did not state that he received a business degree. What is more telling, however, is that he opined not that a business degree is necessary, but only that it is beneficial in his occupation and "that any program will be more successful when run by someone with this background in business." Also, in light of his aforementioned opinion about the need for a business degree, it is notable that the Director of Racquet Sports at Hilton DFW Lakes is silent about his educational background. Finally, in describing what he "would look for in a Director of Junior Tennis," the tennis director at Cotton Creek Country club, who does have a business degree, did not identify a business degree as a prerequisite. Rather, he stated that he would seek someone with a "sound foundation in business skills" as well as in teaching skills and knowledge of the game.

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). Here, the AAO has determined that the opinions about the need for a bachelor's degree in business are not convincing.

It must also be noted that the petitioner would not have succeeded even if the evidence had substantiated that the tennis program director industry commonly requires a baccalaureate degree "in business" or business administration. The coursework of a generalized degree in business or business administration does not confer a sufficient amount of highly specialized knowledge for this degree to be recognized as one in a specific specialty.

For the reasons discussed above, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides that "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."

The evidence of record does not convey how this particular proffered position is so complex or unique as to be distinguishable from similar positions that persons can perform without a degree in a specific specialty. Throughout the record, the business aspects upon which counsel relies are stated in general, generic terms that convey nothing particularly complex or unique. To the extent to which it is presented in the record, the

proffered position appears to be within the competency of a person with a tennis instructor background and business knowledge short of that acquired by a baccalaureate degree in a business specialty.

For the reasons just discussed, the petitioner has not satisfied either of the specialty occupation qualifying criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

Next, the petitioner did not satisfy 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 evidence of record does not provide a meaningful history of the petitioner’s hiring history for tennis program directors.

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 meet this criterion, the evidence of record must, first of all present specific – not general – duties, so that CIS can assess the practical demands of the particular duties. Next, it must be evident that these specific duties are too complex and specialized to be performed by someone who lacks specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty.

The petitioner has not satisfied this criterion. The nature of the duties depicted in the record involves instructing in junior tennis, supervising junior tennis instructors, working at the tennis center’s retail store, budget responsibilities, marketing and selling junior tennis programs, and, as stated in the Tennis Director’s letter of response to the RFE, “business analyses, forecasts, and decisions necessary to run the business profitably.” Such evidence does not adequately identify what specific business duties would engage the beneficiary, nor does it establish in what respects those duties would be so complex and specialized that they could only be performed by someone with the specialized knowledge that is usually associated with a baccalaureate or higher degree 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. For this reason, 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.