

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

*DA*

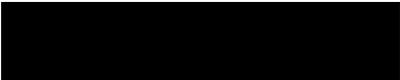
U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 070 50396 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner:   
Beneficiary: 

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

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 non-profit swimming club affiliated with the [REDACTED]. It seeks to employ the beneficiary as an age group 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 an appeal. The petitioner also submits additional documentation on the U.S.A Swimming Association coaching criteria.

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 letter dated April 22, 2002 that responds 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 age group swimming coach. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the

petitioner's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: developing of the club's youngest swimmers as well as working closely with the rest of the coaching staff to maintain the petitioner's level of excellence and to teach swimmers how they can be the best in the nation. The petitioner added that the most important responsibility of its coaches is to foster in the swimmers knowledge and awareness of the sport while also developing the social and mental skills that all young people need.

A letter of employment submitted by the petitioner in the original petition stated more specific duties. According to the petitioner, the beneficiary's primary responsibility will be as the head of the petitioner's developmental program. The beneficiary would oversee the physical and technical development of the petitioner's two lowest groups. This responsibility included the following duties: introduction and cultivation of proper stroke technique; development of starts and turns; abdominal and shoulder strengthening routines; introduction of proper stretching techniques; design and implementation of a seasonal plan; teaching the use of pace clock and heart-rates during practice; and development of an overall aerobic base for the club's youngest swimmers. The beneficiary's secondary responsibility would be to work with the other coaches on its staff to develop proper technique and strong racing habits amongst all of the swimmers. In addition, the beneficiary would also be asked to help the petitioner's head coach implement a new strength program for the petitioner's national level swimmers.

In the petitioner's response to the director's request for further evidence, it provided more specifics with regard to the beneficiary's duties. The petitioner stated the position involved teaching, directing, and supervising of male and female swimmers between the ages of six to 18. The petitioner stated that these responsibilities required an education in the physiological and psychological development of pre-adolescent and adolescent children. The petitioner further stated that the role of the age group coach is that of a teacher of safety, stroke mechanics, flexibility, and specific drills related to swimming efficiency. The beneficiary would also be responsible for the design and implementation of a seasonal plan that involved stroke mechanics, development of an aerobic base, skill curriculum and progression, dry-land strength and flexibility program, team dynamics activities and the competition schedule. The petitioner described the administrative responsibilities of the position as "use of the computer for data entry, meet entries, and budget." In its cover letter to the petition, the petitioner stated that it required all its coaches to possess at least a baccalaureate degree, preferably in a field related to teaching or the developmental sciences.

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). In particular the petitioner had not submitted documentary evidence to establish that it required all its age group swim coaches to possess a baccalaureate degree in a specific specialty.

On appeal, the petitioner submits text from the U.S.A. Swimming Association certification materials entitled "Progressions For Athlete and Coach Development" to illustrate the specialized theoretical and practical knowledge required for age group swim coaches. The petitioner also provided the following description of its work:

Mass Bay Marlins, Inc. was founded in 1992 as an U.S.A. Swimming registered club for individuals in grade school through college. The team is organized into five units based on ability: Age Group 3, Age Group 2, Age Group 1, senior, and the national team. The goal of the Mass Bay Marlins is to select and train swimmers who desire and are capable of successfully competing at the highest level of competitive swimming [,] regionally, nationally and internationally.

The petitioner also states that it requires its coaches to have baccalaureate degrees and lists the following relevant fields of studies: early childhood education, child development, psychology, sports training and management, sports medicine, and/or organizational behavior. The petitioner submits diplomas and W2-forms for [REDACTED], [REDACTED], and [REDACTED] three individuals that it had previously identified as its coaching team. The petitioner also submitted the academic transcripts of [REDACTED].

Finally, the petitioner submits an additional job description that states the beneficiary will be the head coach for three age group teams; will supervise assistant coaches; and will develop and direct the training program for more than fifty age group swimmers. The petitioner also submits a letter from [REDACTED], New England representative, U.S.A. Swimming Association. According to Ms. [REDACTED], her organization reviews the examination regulations and certification documents of all of New England U.S.A. swim coaches. Ms. [REDACTED] states that all U.S.A. swimming coaches are required to demonstrate a specialized knowledge in the areas of child psychology and development, sports management, and health. Ms. [REDACTED] then states that this type of specialized knowledge is usually associated with the attainment of a bachelor's degree.

In its appeal documentation, the petitioner has added more responsibilities to the proffered position than were originally described in the initial petition and in the petitioner's response to the director's request for further evidence. For example, on appeal, the petitioner described the position as head coach and the beneficiary would supervise three age group swim teams. This new responsibility is not found elsewhere in the record. The letter of employment contained in the original petition only stated that the beneficiary would oversee the physical and technical development of the two lowest groups of swimmers. The petitioner must establish that the position that was offered to the beneficiary at the time the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Accordingly, only the original job description and the additional information submitted by the petitioner in its response to the director's request for further evidence will be considered in this proceeding.

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. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), namely that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the sports instruction field, the

Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), 2002-2003 edition, on page 127, examines the following duties and educational requirements for coaches:

*Coaches* organize, instruct, and teach amateur and professional athletes in fundamentals of individual and team sports. Coaches train athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and conditioning.

....

As coaches, advocating good sportsmanship, promoting a competitive spirit, tutoring fairness, and teaching teamwork are all important responsibilities.

With regard to training, and other qualifications for coaching positions, the *Handbook* states on page 128:

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 .

For high school coach and sports instructor jobs, schools usually first look to hire existing teachers willing to take on the jobs part time. . . . Some entry-level positions for coaches or instructors only require experience derived as a participant in the sport or activity. . . .

Public secondary school coaches and sports instructors at all levels usually must have a bachelor's degree and meet State requirements for licensure as a teacher. . . .

For sports instructors, certification is highly desirable for those interested in becoming a tennis, golf, karate, or any other kind of instructor. . . .

Accordingly the *Handbook* does not indicate that the minimum educational requirement for entry into the position of an age group swim coach at a non-profit U.S.A. Swimming Association-affiliated swim club is a baccalaureate degree in a specific specialty. Although the *Handbook* states that public secondary school coaches and sports instructors at all levels must have a bachelor's degree and be licensed, the proffered position does not appear to fit into this coaching category. Overall, experience in the sport as well as the appropriate certification in the sport appear to be predominant requirements for entry into the proffered position. Without more persuasive evidence, the petitioner has not established this criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Regarding parallel positions in the petitioner's industry, the director stated in his decision that the petitioner had submitted job announcements with regard to other coaching positions in similar facilities; however, no such documentation is found in the record. On appeal, the petitioner submits a letter from [REDACTED] New England representative, U.S.A. Swimming Association. According to Ms. [REDACTED], all U.S.A. Swimming Association-certified coaches are required to demonstrate a specialized knowledge in the areas of child psychology and development, sports management, and health. Ms. [REDACTED] then states that this type of specialized knowledge is usually associated with the attainment of a bachelor's degree. In her evaluation of whether the proffered position is a specialty occupation, Ms. [REDACTED] utilized the last job description provided by the petitioner in her evaluation, which as previously stated, will not be considered in this proceeding. Her professional opinion as the head of a regional swimming association that certifies swim coaches is persuasive as to the types of knowledge coaches need to demonstrate prior to being certified. Nevertheless, she provided no further documentation to establish that throughout the swim club world, coaches are required to possess a baccalaureate degree in a specific specialty. Again, 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).

In addition, while this letter lends some weight to the supposition that swim coaches may possess baccalaureate degrees, this fact is not dispositive in the present proceedings. This is because the letter does not establish that a requirement of a baccalaureate in a specific specialty is a necessity in U.S.A. Swimming Association programs. As previously stated, 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. Ms. ██████ does not specify any particular specialty in which a swim coach would need to have a baccalaureate degree to enter into the 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 identified in its response to the director’s request for evidence that a bachelor’s degree, experience working with children, and age group coaching experience were prerequisites to being an age group coach in a U.S.A. Swimming program. In the original petition, the petitioner stated that all of its coaches must hold at least a bachelor or arts or a bachelor’s of science degree, preferably in a field related to teaching or the development sciences. To establish this assertion, the petitioner, in its response to the director’s request for further evidence, provided a list of three current swim coaches and the names of four other individuals who have previously worked for the petitioner as swim coaches. While the petitioner lists the academic degrees of the three current swim coaches, the petitioner provided no documentation to further establish his assertions with regard to their academic credentials. *See Matter of Treasure Craft of California, supra.* On appeal, the petitioner provides diplomas and W-2 Forms for three current coaches; however, the documentation submitted only establishes that one swim coach, Tracie Grant, possesses a baccalaureate in a specific specialty. Her baccalaureate degree is in psychology and her master’s degree is in child life and family centered services. In addition, the record is not clear as to the relationship between the identified baccalaureate and master’s degree and the petitioner’s stated preference for degrees in teaching or the development sciences. Furthermore, the petitioner provided no transcripts or other documentation to establish the other two swim coaches’ baccalaureate degrees or their specific specialties. It should also be noted that the petitioner stated it preferred the above-mentioned range of specific specialities, whereas the regulatory criteria state that the petitioner usually requires a specific specialty. (Emphasis added.) Based on this documentation, the petitioner has not established that it requires all its age group swim coaches to possess a bachelor’s degree in a specific specialty.

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. Although Ms. ██████ states that specialized knowledge in child psychology and development, sports management, and health is required for the certification of age group swim coaches, the U.S.A. Swimming certification and training materials submitted by the petitioner on appeal, focus almost exclusively on techniques for developing and measuring the sports performance of athletes. 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.

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.

EAC 02 070 50396

Page 7

**ORDER:** The appeal is dismissed. The petition is denied.