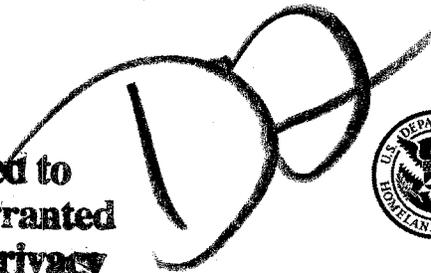


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prevent clearly unwarranted
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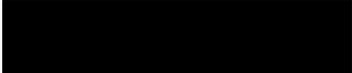


U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE: EAC 02 104 52534 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner: 
Beneficiary: 

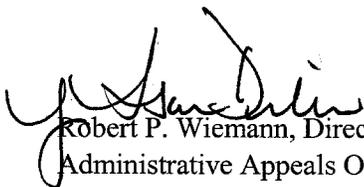
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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.

According to the Form I-129, the petitioner is a company engaged in the “pros[h]op and training business,” and it seeks to employ the beneficiary as a physical education 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 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, in the nature of a request for an extension of time in which to respond; (4) the director’s denial letter, which, in part explains why the request for additional time to respond to the RFE was not granted; and (5) the matters submitted on appeal, including the Form I-290B, which counsel has annotated with the reasons for the appeal, and additional documentary evidence. The AAO reviewed the record in its entirety before issuing its decision.

Based upon its review of the entire record, including all of the documents submitted in support of the petition and the appeal, the AAO has determined that the director was correct in his decision to deny the petition, because the proffered position did not meet any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

In analyzing the evidence, the AAO first applied the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): 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.

For a nontechnical description of the proposed duties, the petitioner’s Form I-129 stated:

Plan, direct and supervise all sports and fitness program[s] for children, youth, and adults. Hire and supervise personnel. Plan and direct summer camp. Oversees gym and fitness center activities.

The letter of support, which the petitioner’s executive director submitted with the Form I-129 also described the position in the same terms as above.

On appeal, counsel, on the Form I-290B, and the petitioner’s president, in an attached letter, assert that, due to business expansion, the duties of the proffered position also include management of the petitioner’s program for engaging sportsmen from various countries to compete in the United States. On the Form I-290B, counsel asserts:

The petitioning company, expanding their [sic] business, needs a specialist with [the] proper sports education and experience – to meet the complexity and special duties arising of [sic] such expansion; the duties include, but [are] not limited by: authorized and professional selection of athletes abroad to invite; organization and supervision of their training and participation in U.S. competitions; constant business contacts with third parties (sports organizations in the USA); training schedule and rehabilitation period for athletes – all these duties can be performed by a person with, at least, a baccalaureate degree and professional sports experience on a high level. (See the Co.’s letter [i.e., the letter from its president] attached.)

The evidence of record presents the proffered position in terms that are so general that they limited the precision with which the AAO could compare it with particular occupations. The record lacks specific information about the particular duties, the extent to which other employees may share them, and the relative amounts of time that would be spent on them.

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. Because of the lack of detailed information, the AAO could assess the proposed duties and their requirements only to an imprecise and uncertain degree. In light of this caveat, the AAO found that the proffered position did not comport with any particular occupation described in the 2002-2003 edition of the *Handbook*. Rather, it appears to be an amalgam of some general duties of fitness worker, sports coach, and sports agent occupations. The *Handbook*, however, does not indicate that fitness worker, sports agent, and sports coach occupations normally require a baccalaureate or higher degree in a specific specialty.

Furthermore, regardless of the *Handbook* information, the proffered position is not identifiable 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 indicate that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, firms, or professional associations in the industry to that effect. Accordingly, the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) is not satisfied.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong, 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 record descriptions of the position and its duties are in general, generic terms that convey nothing particularly complex or unique about the position.

Therefore, 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 proffered position cannot qualify as a specialty occupation under 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 – as the evidence does not establish a history of the petitioner previously requiring a baccalaureate or higher degree in any 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 them is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the proffered position are presented in general terms that do not adequately identify the specific duties that would engage the beneficiary. To the general extent that the duties are portrayed in the record, it is not evident that they 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.

The AAO notes that counsel and the petitioner's president contend that the proposed duties are so complex and specialized that they establish that the proffered position is a specialty occupation. The evidence, however, does not substantiate such complexity and specialization. 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.