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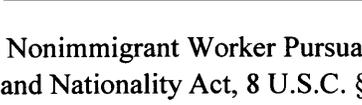
U.S. Citizenship
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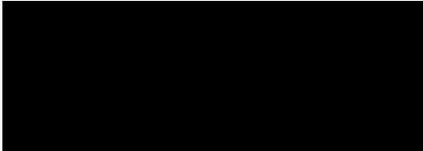
DA MAY 13 2004

FILE: EAC 03 025 52868 Office: VERMONT SERVICE CENTER Date:

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:



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

for 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 operates a skating facility that hosts ice-skating and hockey activities throughout the year. It seeks to employ the beneficiary as a head coach, and endeavors to classify him 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 offered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 field 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.

The record of proceedings 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; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a head coach of its facility in the sport of hockey. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. They were further discussed in counsel’s brief on appeal. According to the evidence the beneficiary would: analyze performance and instruct professional athletes in game strategies and techniques to prepare them for athletic competition; observe players while they perform to determine their need for individual or team improvement; coach players individually or in groups, demonstrating techniques of the sport coached; oversee daily practice of players to instruct them in areas of deficiency; determine strategy during games, independently, or in conference with other coaches, professional athletes, or head coaches based on such factors as weaknesses in opposing teams; conduct private and semi-private lessons for children seven to fifteen years old; and conduct lectures in the history of sports, particularly in hockey, explaining the peculiarities in different countries, and acquainting young sportsmen with the achievements of outstanding hockey players, popularizing this kind of sport. The petitioner requires a minimum of a bachelor’s degree in physical education for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). In support of that assertion counsel submits a brief.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those provided by “athletes, coaches, umpires, and related workers” as detailed in the *Handbook*. The *Handbook* notes that the education and training requirements for coaches vary greatly by the level and type of sport. Public and secondary coaches and sports instructors must have a bachelor’s degree to meet state licensure requirements for public school teachers. There is no standard degree requirement, however, for coaches in the industry outside of a formal educational environment. Many individuals enter into the coaching profession based upon personal experience and athletic training without any education at the baccalaureate level. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of

this proposition, the petitioner makes reference to the educational backgrounds of various college and/or club coaches. There is no indication, however, that the non-collegiate coaches are from organizations similar to that of the petitioner, or that their duties and responsibilities are parallel to those offered to the beneficiary. The requirements of collegiate coaches cannot be considered parallel to those of the offered position because their duties are performed in institutions of higher education, and the beneficiary's are not. Finally, the examples provided are insufficient in scope to establish a standard for the entire industry.

The petitioner asserts that it normally requires a degree or its equivalent for the position offered. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In support of that assertion the petitioner lists each team, coach, and volunteer affiliated with its facility. The petitioner states that each employee or volunteer possesses at least a bachelor's degree, but notes that the degrees are in different fields of study rather than in any particular specialty. The petitioner does not offer documentary proof of the degrees held by its coaches or volunteers, and does not state the particular field of study of any alleged degree, with the exception of one head coach that holds a law degree. Even if the petitioner established, however, that all of its coaches held bachelor's degrees, the proffered position would still not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals without a baccalaureate level education.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can be performed only by individuals with a degree in a particular specialty, or that they are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties of the offered position are routine for coaches and head coaches in the industry.

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 and the appeal shall accordingly be dismissed.

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