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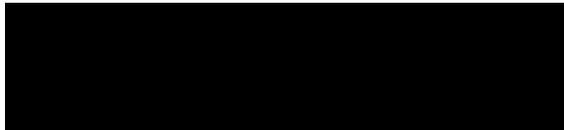


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Office: NEBRASKA SERVICE CENTER

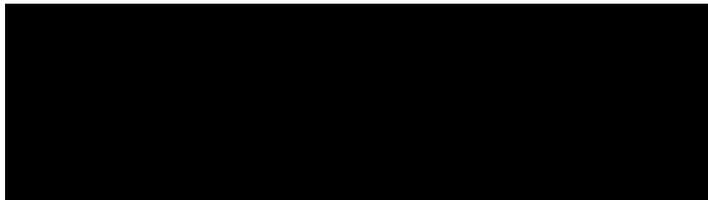
Date: NOV 30 2004

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:



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 director of the service center 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 national Olympic development organization. It seeks to employ the beneficiary as coach until 2006 for the women's wrestling representing the United States in international competitions. 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 on the grounds that the proffered position is not a specialty occupation. On appeal, the petitioner states that the proffered position qualifies as a specialty occupation.

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.

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 response 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 serves as the governing body for amateur wrestling in the United States, recognized by the U.S. Olympic committee as having the responsibility of selecting and preparing athletes for world and Olympic competition. The petitioner seeks to hire the 25-year-old beneficiary to help coach women wrestlers. The beneficiary would divide her time between the Olympic Training Center in Colorado Springs, Colo., and the U.S. Olympic Education Center at Northern Michigan University at Marquette, Michigan.

According to the evidence submitted with the petition, the petitioner is a 501(c)(3) organization that reported income of \$5.3 million in 2001.

Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail instructing and training gymnasts at various levels. Specifically, the beneficiary would prepare women athletes for international Olympic events; work individually with athletes as well as in group settings; and analyze tapes of opponents and develop game plans for matches. She would divide her time as follows: individual workouts, 15 percent; team practices, 30 percent; analysis of foreign competition, 25 percent; technique clinics on behalf of the petitioner, 10 percent; and promotion and development of university programs at Northern Michigan University. The petitioner stated that a candidate must possess a bachelor’s degree or its equivalent in physical education-teaching education.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the petitioner failed to establish that a baccalaureate or higher degree or its equivalent was the normal minimum entry requirement for the position or that the degree requirement was common to the industry in parallel positions among similar organizations, or in the alternative, that the position was unique or so complex that it could only be performed by an individual with a degree. The director cited evidence that one of the petitioner’s coaches lacked a degree. He also cited the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* for the proposition that a job candidate’s success in prior athletic competitions was often a substitute for a four-year degree.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Upon review of the record, however, 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 first considers 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that the duties of the proffered position mirror those performed by coaches and sports instructors. Coaches organize, instruct, and teach amateur and professional athletes in fundamentals of individual and team sports. In individual sports, instructors may sometimes fill this role.

Coaches train athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and stamina. Using their expertise in the sport, coaches instruct the athlete on proper form and technique in beginning and, later, in advanced exercises attempting to maximize the players' physical potential. Along with overseeing athletes as they refine their individual skills, coaches also are responsible for managing the team during both practice sessions and competitions, and for instilling good sportsmanship, a competitive spirit, and teamwork. During competitions, for example, coaches substitute players for optimum team chemistry and success. In addition, coaches direct team strategy and may call specific plays during competition to surprise or overpower the opponent.

The *Handbook* also states that sports instructors "teach professional and nonprofessional athletes on an individual basis." They organize, instruct, train, and lead athletes of indoor and outdoor sports. Because activities are as diverse as weight lifting, gymnastics, and scuba diving, instructors tend to specialize in one or a few types of activities.

Like coaches, sports instructors also may hold daily practice sessions. Using their knowledge of their sport, physiology, and corrective techniques, they determine the type and level of difficulty of exercises, prescribe specific drills, and correct

the athlete's techniques. Some instructors also teach and demonstrate use of training apparatus, such as trampolines or weights, while correcting athletes' weaknesses and enhancing their conditioning.

The *Handbook* continued:

Sports instructors spend more of their time with athletes working one-on-one, which permits them to design customized training programs for each individual. Motivating athletes to play hard challenges most coaches and sports instructors but is vital for the athlete's success. Many coaches and instructors derive great satisfaction working with children or young adults, helping them to learn new physical and social skills and to improve their physical condition, as well as helping them to achieve success in their sport.

Like the sports instructor and coach, the beneficiary will work with and motivate young women; demonstrate the use of training apparatus; prescribe specific drills and design customized training programs for each individual; design a flexibility and strength training program and study muscle tones to determine the level of difficulty; apply knowledge of the sport, physiology, and mechanics; coach and instruct the athletes; and direct team strategy.

The DOL relates that education and training requirements for athletes, coaches, umpires, and related workers 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 sports instructor jobs, schools usually prefer to hire teachers willing to take on the jobs part time. If no one suitable is found, they hire someone from outside. Some entry-level positions for coaches or instructors require only experience derived as a participant in the sport or activity. Many coaches begin their careers as assistant coaches to gain the necessary knowledge and experience needed to become a head coach. Head coaches at larger schools that strive to compete at the highest levels of a sport require substantial experience as a head coach at another school or as an assistant coach. To reach the ranks of professional coaching, it usually takes years of coaching experience and a winning record in the lower ranks.

The *Handbook* mentions that public secondary school sports instructors at all levels usually must have a bachelor's degree; however, it does not state that sports instructors at private schools require a bachelor's degree in a specific specialty.

Counsel seeks to associate the proffered position more with public high school and college coaching rather than with professional team coaching, citing the *Handbook's* statement that, unlike professional coaches, "public secondary school coaches and sports instructors at all levels usually must have a bachelor's degree."

Based on the information in the *Handbook*, the petitioner fails to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) because a coach/sports instructor position in a private gymnastics school would not require a specific bachelor's degree. The *Handbook* undermines counsel's assertion that training gymnasts at the competitive level requires gymnastics coaches to possess at least a bachelor's degree in physical education or a related field.

To establish the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel contends that the industry standard is to require a bachelor's degree. Counsel emphasizes that the petitioner trains gymnasts at the competitive level and that similar academies and schools require their gymnastics coaches to possess at least a bachelor's degree in physical education or a related field. Counsel submits six opinion letters from authorities in the field: wrestling coaches at various U.S. colleges.

Counsel submitted the opinion letters on appeal and only after the director's decision, despite the director's earlier request for evidence that specifically asked for documents showing the degree requirement in parallel positions. The purpose of a Request for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Thus, neither counsel nor the petitioner submitted evidence of the degree requirements for parallel positions among similar organizations. Consequently, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Counsel also asserts that the position satisfies the third criterion, namely, that the employer normally requires a degree or its equivalent for the position. The petitioner's support letter states that the International Olympic Committee recently added women's freestyle, Greco-Roman wrestling to the 2004 Olympic Games, and "for this reason" is seeking the visa to bring the beneficiary to the United States to help develop the team. The letter states that the United States has no existing "feeder" program for women's wrestling from which such an individual could be drawn. Thus, it cannot be said that the petitioner has in the past hired only degreed people for the position, because the position is new. The evidence is not persuasive in establishing the third criterion.

The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the

position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As previously discussed, the *Handbook* reveals that coach and sports instructor positions in a private gymnastics school would not require a specific bachelor's degree.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The submitted evidence fails to establish the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The beneficiary's training programs, including the individual gymnastics programs, are akin to the training programs that coaches and sports instructors devise as described in the *Handbook*. For example, the *Handbook* states that coaches instruct athletes on proper form and technique in the beginning and, later, in advanced exercises attempt to maximize the players' physical potential, whereas sports instructors spend more of their time with athletes working one-on-one, permitting them to design customized training programs for each individual. The petitioner fails to establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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.

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