

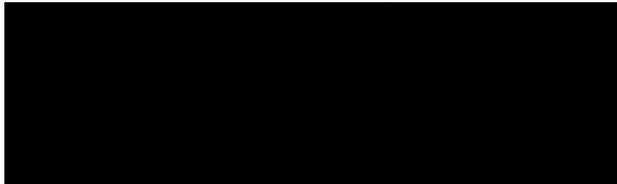
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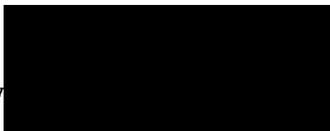
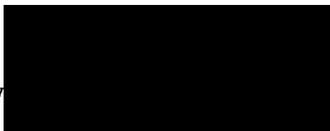


**U.S. Citizenship
and Immigration
Services**



DR

FILE: LIN 03 196 53797 Office: NEBRASKA SERVICE CENTER Date: **SEP 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

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 worldwide distributor of ionized bracelets. 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.

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 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 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 are 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. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. According to the evidence the beneficiary would: plan and direct training of athletes on the Q-Ray long distance running team; oversee training of athletes for domestic and international long distance running competition and provide leadership for the team; conduct practice sessions, creating and implementing practice drills and improving each athlete's record; work with each athlete on proper form and technique and create or provide advanced exercises to maximize the athlete's potential; observe and support each athlete's individual need and particularities with altitude training methods; select appropriate fitness centers for the athletes to do strength and endurance training; interview and recommend hiring weight training coaches to improve specific areas of muscle that each athlete may need to improve to better performance; liaise with professional scouts or sports agents on behalf of the company to increase the number of exceptional runners on the running team; recruit athletes personally and enter into contracts on behalf of the petitioner; evaluate potential recruits records and abilities and make appropriate recommendations to the president of the company; create expense reports and a summary of monthly training and athletes' progress reports for the president of the company; and travel with athletes to participate in various marathon races around the country. The petitioner requires a minimum of a bachelor's degree in physical education or a related field for entry into the proffered 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 submits a brief stating that the offered position qualifies as a specialty occupation.

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, or that the employer normally requires a degree or its equivalent for the proffered position, and offers no evidence in that regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3). It should further be noted that the coaching/training duties of the proffered position appear to be routine for coaches in the industry. In addition to his coaching and training responsibilities, the beneficiary will also have some managerial and administrative responsibilities in that he will recruit athletes, manage a budget for his team, and enter into contracts on behalf of the petitioner. Those duties, however, are not so complex or unique that they can be performed only by an individual with a baccalaureate level education in a specific specialty. A wide variety of educational disciplines and/or experience will equip individuals to perform those functions.

The petitioner has also failed to establish that the duties of the offered position 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)(4). Again, the duties of the offered position are routine for coaches in the industry, with the addition of some managerial/administrative responsibilities that are not of such complexity as to require a baccalaureate level education.

Finally, counsel's assertions regarding the DOT's SVP rating for the offered position are also unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

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.