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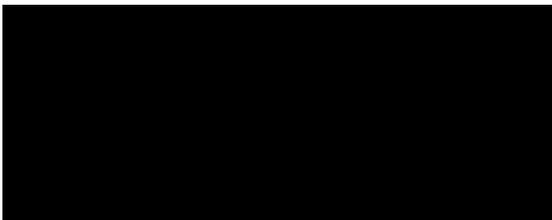


FILE: EAC 04 095 50144 Office: VERMONT SERVICE CENTER Date: **AUG 31 2005**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 martial arts facility that seeks to employ the beneficiary as a director for physical education programs. 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, counsel submits a brief and previously submitted evidence.

The AAO will discuss the director's determination that the proffered position is not 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 is seeking the beneficiary's services as a part-time director of physical fitness education programs. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning and supervising programs for after-school physical fitness activities for clients of the petitioner; devising and implementing physical conditioning regimens for the CMAI Competition team; organizing and coordinating the physical education programs of all students in coordination with coaches based on their level of competence, difficulty of exercises, corrections needed, prescribed movements applying knowledge of sports, physiology and corrective techniques; developing and conducting personal training programs for individual clients and staff of the petitioner; conducting research and developing weekly journal to be published and disseminated among the petitioner's client's staff and the world wide web; directing preparation and dissemination of publicity to promote the petitioner's events and programs; being in charge of the selection, order, issue and inventory or equipment materials, supplies for the physical education programs of the institute; submitting reports and evaluations. The petitioner indicated that the minimum requirement for this position is a baccalaureate degree.

The director issued a request for additional evidence to support the petitioner's claim that the proffered position is a specialty occupation. In response, the petitioner provided a letter from its director who indicated that he previously held the proffered position and that he has a bachelor's degree and a Juris Doctorate. The petitioner submitted a biography of the president and founder of another martial arts school which indicated that he had a bachelor's degree in physical education. The petitioner submitted information about its business and biographies of its some of its instructors, some of whom have a bachelors degree in economics, computer engineering and secondary education. The petitioner submitted a position evaluation from an educational consulting firm. Additionally, counsel referred to the Department of Labor's *Dictionary of Occupational Titles (DOT)* and noted that the position Director of Athletic (education) has an SVP 9 category.

The director determined that the proffered position was not a specialty occupation. The director referred to the petitioner's response and noted that current instructors in similar positions have a wide range of bachelor's degrees and the director found that a baccalaureate degree in a specific field of study is not a requirement for the proffered position. The director noted that the petitioner submitted an opinion letter but that Citizenship and Immigration Services (CIS) is not bound by such opinions in regards to educational requirements of certain positions. Further, the director stated that she was not convinced that the primary duties of the position would be so complex and specialized in scope that they can be considered to require a degree in a specific field of study to successfully perform such duties. Therefore, the director concluded that the evidence of record does not establish that the job offered qualifies as a "specialty occupation" pursuant to § 101(a)(15)(H)(i)(b) of the Act.

On appeal, counsel attempts to explain that while there are instructors at the petitioner institute who have different bachelor's degrees, . . . "the relationship of these degrees to the duties and responsibilities attached to this position cannot be simply ignored. The underlying thread shown in these examples of a wide range of bachelor's degrees is the fact that this position cannot be given and assured by an individual who simply has a high school degree."

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 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 Department of Labor's Occupational Outlook Handbook (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)).

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.

Counsel states that the proffered position qualifies as a specialty occupation. Counsel refers to the *DOT* in support of his contention that the proffered position is a specialty occupation. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on the *DOT* information.

The AAO notes that the *Handbook* discloses that the majority of duties of the proffered position are those of a sport instructor. Like the beneficiary who will "develop and conduct personal training programs for individual clients and staff; devise and implement physical conditioning regimens for the [petitioner's] competition team; and organize and coordinate the physical education programs of all students in coordination with coaches based on their level of competence, difficulty of exercises, corrections needed,

prescribed movements applying knowledge of sports, physiology and corrective techniques” the *Handbook* reports:

*Sports instructors* teach professional and nonprofessional athletes on an individual basis. They organize, instruct, train, and lead athletes of indoor and outdoor sports such as bowling, tennis, golf, and swimming. Because activities are as diverse as weight lifting, gymnastics, and scuba diving, and may include self-defense training such as karate, instructors tend to specialize in one or a few types of activities. Like coaches, sports instructors also may hold daily practice sessions and be responsible for any needed equipment and supplies. 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. Using their expertise in the sport, sports instructors evaluate the athlete and the athlete’s opponents to devise a competitive game strategy.

Coaches and sports instructors sometimes differ in their approach to athletes because of the focus of their work. For example, while coaches manage the team during a game to optimize its chance for victory, sports instructors—such as those who work for professional tennis players—often are not permitted to instruct their athletes during competition. 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.

The petitioner fails to establish the first criterion because the *Handbook* states that for coaches and sports instructors there are many paths of entry. Education and training requirements for coaches and sports instructors vary greatly by the level and type of sport. The *Handbook* states that some entry-level positions for coaches or instructors require only experience derived as a participant in the sport or activity. The *Handbook* further states that for sports instructors, certification is highly desirable for those interested in becoming a tennis, golf, karate, or any other kind of instructor. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

There is no evidence in the record that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted a biographic data page for a director of a different martial arts facility. The information provided did not establish that he holds a position parallel to the proffered position and that the facility is similar to the petitioner. This evidence is insufficient to demonstrate that a degree requirement is common to the industry in parallel positions among similar organizations. No evidence is in the record that would show the proffered

position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The petitioner submitted a letter from an individual that attests that the position is a professional one, requiring a degree. However, there was no additional documentation submitted to establish an industry standard for such positions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Again, the *Handbook* reveals that the duties of the proffered position would be performed by a coach or a sports instructor, an occupation that does not require a specific baccalaureate degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. As discussed above, the petitioner indicated that the person who previously held the position had a bachelor's degree, for which the specialty was never identified, and a J.D. Additionally, the petitioner indicated that its current instructors had bachelor's degrees in various areas such as economics and computer engineering. As noted above, the statute and regulation require that the degree be in a specific specialty in order for the position to be a specialty occupation.

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. Once again, the *Handbook* portrays the duties of the proffered position as performed by a coach or sports instructor, an occupation that does not require a specific baccalaureate degree. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.