



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DR

FILE: LIN 04 029 52695 Office: NEBRASKA SERVICE CENTER Date: JUN 28 2005

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 rejected the subsequent appeal. 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 rowing club that seeks to employ the beneficiary as an athletic program director. 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 ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 athletic program director. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's duties entail defining an annual plan for the Juniors Open and Masters crews; developing plans with the board of directors, and implementing them through assistant and squad coaches; recruiting coaches for squads, varsity men and women, novice men and women, masters, and intermediates; coordinating coaching staff and equipment in accordance with practice schedules; maintaining payroll records; preparing the regatta calendar and coordinating regatta entry forms; coordinating fuel replenishment, equipment repair, and equipment usage for squads; recruiting volunteers for activities; selecting equipment for events; coordinating regatta plans with boosters; organizing training camps; developing comprehensive training and practice plans for master's rowing; coordinating rowing practice schedules; monitoring the performance of athletes and evaluating their strength and weaknesses; demonstrating techniques to improve performance; developing coaching methods and rowing instruction; running camps, deciding which seminars to offer, and preparing the daily itinerary and scrimmages; assisting coaches in identifying the junior rowers who might complete programs; coordinating with high school athletic directors to develop the junior rowing program; ensuring safety; and managing the boathouse. The petitioner's November 6, 2003 letter indicated that it requires a bachelor's degree or its equivalent in sports management, coaching, recreation management, or a closely related field for the proposed position.

The director concluded that the proposed position resembled that of a coach and recreation supervisor or director as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director indicated that the *Handbook* reveals that these occupations do not require a baccalaureate degree in a specific specialty. According to the director, the proposed position is neither complex nor specialized enough to require a bachelor's degree in a specific specialty. The director found the job postings unpersuasive in demonstrating that the industry requires a baccalaureate degree in a specific specialty for the proposed position. Moreover, the director stated that the submitted affidavits, which attest that competitive rowing experience can equate to a minor or major in physical education or a related field, are unpersuasive because credential evaluations are advisory in nature and are not binding. The director stated that the petitioner has not shown that it has a history of hiring persons with a bachelor's degree in a specific field of study.

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.

Counsel asserts that the AAO has already determined that the proffered position is a specialty occupation since we had approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in their record of proceedings, counsel's assertion is not sufficient to enable the AAO to determine whether the instant H-1B petition is parallel to the prior petitions. Moreover,

each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO will next consider 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. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 information about the duties and educational requirements of particular occupations.

In the appeal brief, counsel asserts that the petitioner is not seeking to hire an athlete, umpire, or a sports instructor as those occupations are described in the *Handbook*; it seeks to employ a person who will function as an upper-level head coach. Referring to the *Handbook*, counsel states that it indicates that public secondary school head coaches and sports instructors at all levels usually must possess a bachelor's degree. Counsel asserts because the beneficiary will serve, in part, as head coach to 100 public and private secondary school rowers, the proposed position qualifies as a specialty occupation.

The *Handbook* describes coaches as organizing, instructing, and teaching amateur and professional athletes in fundamentals of individual and team sports. They also select, store, issue, and inventory equipment, materials, and supplies. With respect to the educational requirements for a coach position, the *Handbook* reports:

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 coach and 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.

Public secondary school head coaches and sports instructors at all levels usually must have a bachelor's degree. . . . Those who are not teachers must meet State requirements for certification in order to become a head coach. Certification, however, may not be required for coach and sports instructor jobs in private schools. Degree programs specifically related to coaching include exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

As indicated by the *Handbook*, public secondary school head coaches usually must have a bachelor's degree, and head coaches at other institutions do not require a baccalaureate-level degree. Even though counsel asserts that the beneficiary will provide services as a head coach to public and private secondary school rowers, these institutions are not employing the beneficiary. We note that the submitted documents entitled "Coaching Education Program Overview" and "Continuing Education" discuss certification of a coach; they do not indicate that a bachelor's degree is required for a coach position.

In the appeal brief, counsel states that the director misinterpreted the *Handbook's* information regarding the educational requirements of recreation supervisors and directors. Counsel states that the *Handbook* reports that a bachelor's degree and experience is preferred for most recreational supervisor jobs and is required for higher-level administrative positions. According to counsel, since the *Handbook* reports that full-time professional positions *usually* require a college degree with a major in parks and recreation or leisure studies, this satisfies the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) as the regulation does not indicate that a degree must always be required for a particular position. Counsel asserts that the term "normally" is synonymous with the terms "usually," "generally," "typically," and "ordinarily." Counsel states that a broad range of occupations and educational requirements, including a graduate degree for some administrative positions, are described in the *Handbook's* classification of recreation and fitness workers. Counsel states that the petitioner's requirement of a bachelor's degree in sports management, coaching, recreation management, or a closely-related field satisfies the regulatory requirement that the bachelor's degree be directly related to the specialty occupation.

Counsel's assertions are not persuasive in establishing the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The *Handbook* reveals the following about the educational requirements of recreation workers:

Educational requirements for recreation workers range from a high school diploma—or sometimes less for many summer jobs—to graduate degrees for some administrative positions in large public recreation systems. Full-time career professional positions usually

require a college degree with a major in parks and recreation or leisure studies, but a bachelor's degree in any liberal arts field may be sufficient for some jobs in the private sector. In industrial recreation, or "employee services" as it is more commonly called, companies prefer to hire those with a bachelor's degree in recreation or leisure studies and a background in business administration.

Specialized training or experience in a particular field, such as art, music, drama, or athletics, is an asset for many jobs. Some jobs also require certification. For example, a lifesaving certificate is a prerequisite for teaching or coaching water-related activities. Graduates of associate degree programs in parks and recreation, social work, and other human services disciplines also enter some career recreation positions. High school graduates occasionally enter career positions, but this is not common. Some college students work part time as recreation workers while earning degrees.

A bachelor's degree and experience are preferred for most recreation supervisor jobs and required for higher level administrative jobs. However, an increasing number of recreation workers who aspire to administrative positions obtain master's degrees in parks and recreation or related disciplines. Certification in the recreation field may be helpful for advancement. Also, many persons in other disciplines, including social work, forestry, and resource management, pursue graduate degrees in recreation.

The *Handbook* indicates that employers in large public recreation systems require a graduate degree for an administrative position. Since the petitioner is a small rowing club and is not part of a large public recreation system, the proposed position would not require a graduate degree.

Although the *Handbook* reports that full-time professional positions in recreation usually require a college degree with a major in parks and recreation or leisure studies, the actual duties of the proposed position - enforcing safety and recreation rules; liaising with park and recreation officials; acquiring, maintaining, replacing, and repairing equipment; preparing payroll; representing the petitioner at meetings; recruiting volunteers; recruiting, training, reviewing, and evaluating staff, which are part-time coaches; and managing the rowing center - do not require baccalaureate-level education. As already discussed in this decision, the *Handbook* indicates that public secondary school head coaches usually require a bachelor's degree in a specific specialty. Because the petitioner is not a public secondary school, a person performing the coaching-related duties of the proposed position, including handling equipment and recruiting, training, reviewing, and evaluating part-time coaches, would not require a bachelor's degree. The petitioner does not elaborate on the duty to liaise with park and recreation officials and develop population-specific recreational rowing programs, events, and clinics. As such, we cannot meaningfully analyze whether these duties would require a baccalaureate degree in a specific specialty.

To show that a bachelor's degree in a specific specialty is the usual requirement for the proposed position, counsel points to the section entitled "Arts, Entertainment, and Recreation" in the 2004-2005 edition of the *Career Guide to Industries (CGI)*; U.S. college and university programs in physical education, exercise

sciences, and sports management; and a publication from Canada's Human Resources Development Department.

This evidence, however, falls short of establishing the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The *CGI* indicates that the recreation or leisure time industry provides a wide range of entertainment, and that a bachelor's degree is not required for entry-level supervisory or professional jobs, but is necessary for high-level supervisory positions. The *CGI* reports:

Entry-level supervisory or professional jobs in recreation sometimes require completion of a 2-year associate degree in parks and recreation at a junior college. Completing a 4-year bachelor's degree in this field is necessary for high-level supervisory positions. . . .

The *CIG* reveals that a bachelor's degree is necessary for high-level supervisory positions. However, as we have already discussed above in this decision, the duties of the proposed position would not require baccalaureate-level education. Consequently, the nature of the proposed position does not rise to the caliber of high-level supervisory position.

Although U.S. colleges and universities offer programs with degrees in physical education, exercise sciences, and sports management, this is irrelevant in determining whether employers require a baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into a particular position. Likewise, evidence from another country, Canada's Human Resources Development Department, is irrelevant in deciding the minimum educational entry requirements of U.S. employers.

Based on the above discussion, the evidence from the *CGI*, college and university programs, and Canada's Human Resources Development Department fail to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the second criterion at 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 refers to expert opinions and job postings.

For various reasons, this evidence is not convincing. The letters from the former head coach of the Regina Rowing Club, the executive director of Rowing Canada Aviron, and the club captain at St. Catharines Rowing Club attest that a bachelor's degree in a specific specialty such as sports science, physical education, or a related field is required for the proposed position. Nonetheless, none of the individuals provide independent evidence to substantiate the attestation that a bachelor's degree would be required for the proposed position. Moreover, the letters are from persons who have developed their entire rowing careers in Canada; none of the letters indicate the grounds on which the hiring requirements of a rowing organization in another country can be made. 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)).

The job postings are not persuasive for various reasons. USAA, an insurance and financial services company with 4.8 million members; Wilmington City School District; the City of Garland, Texas; The College of Lake County; Franklin Pierce College; LeTourneau University; San Diego State University; Loyola Marymount University; Boston College; and UCF Athletics Association, Inc. at the University of Central Florida are dissimilar in nature (universities, colleges, public entities, and an insurance and financial services company) from the petitioner, a small rowing club. The degree requirement of two employers differ from the petitioner: Norwalk River Rowing Association requires a bachelor's degree, but not in a specific specialty, and the YMCA Alexandria accepts a person with a high school diploma or bachelor's degree. The Kingwood Athletic Center and the Big Bass Lake Community Association differ in size from the petitioner: the former has over 45 facilities and the latter's facilities includes indoor and outdoor pools, lakes, a ski-tube area, playgrounds, and tennis courts. Based on the information in the postings, the AAO cannot determine whether the petitioner is similar in size and scope to Altheus, the Mittleman Jewish Community Center, and the athletic club in Grand Rapids. The duties of The YWCA of St. Paul involve marketing; thus, they differ from the proposed position.

Based on the above discussion, the submitted evidence fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a degree requirement is common to the industry in parallel positions among similar organizations.

To establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree, counsel refers to articles entitled "Rowing for Your Health" and "Rowing Frequently Asked Questions," and programs at Rutgers University, Carthage College, and other U.S. colleges and universities. The articles describe the basics of rowing such as the advantages and disadvantages of rowing, rowing equipment, learning to row, and terms associated with rowing. It does not discuss whether rowing has formal educational requirements. College degree programs in parks, recreation, leisure and fitness studies and related fields are irrelevant in establishing whether or not the proposed position is so complex or unique that it requires a bachelor's degree in a specific specialty. Consequently, the submitted evidence fails to establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Furthermore, as already discussed in this decision, the beneficiary's duties would not require a bachelor's degree in a specific specialty.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that it normally requires a degree or its equivalent for the position. Counsel states that the affidavit from the petitioner's president establishes that the petitioner hired persons with a degree or its equivalent in physical education, coaching, or a closely-related field for lower-level, part-time positions. Counsel asserts that the president also states that the head coach who had been paid by the petitioner held the educational equivalent of a bachelor's degree in physical education or coaching. According to counsel, CIS has found that extensive practical work experience is indicative of a professional. Counsel maintains that the persons occupying part-time squad and assistant coaches, jobs which are subordinate to the proposed position, hold a bachelor's degree, and five of

them had four years of collegiate competitive rowing training and experience. Counsel states that the submitted expert opinion letters, which the director failed to properly consider, indicate that a bachelor's degree and four years of collegiate competitive rowing training and experience is equivalent to a bachelor's degree with a major or minor in physical education or coaching.

The record reflects the following: the petitioner's November 6, 2003 letter indicates that it has hired six part-time lead squad and assistant squad coaches, and that they are college graduates with competitive rowing experience; the affidavit from the petitioner's president states that the head coach who supervised the beneficiary holds the educational equivalent of a bachelor's degree in physical education and coaching based on experience and certification; the letter from the Rowing Coordinator Head Coach, Men's Lightweight Crew with Dartmouth College states that by the time his top athletes graduate, they have easily earned the equivalent of a bachelor's degree in physical education or exercise science; and the letter from the Head Rowing Coach Washington University Crew indicates "upon four years of collegiate-level rowing, a person would have the functional equivalent to at least a [m]inor in [p]hysical [e]ducation or [e]xercise [s]cience."

Counsel's statements and the evidence in the record is insufficient to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner indicates that six part-time lead squad and assistant squad coaches are college graduates. However, the petitioner does not specify their field of specialty. Nor does the petitioner furnish evidence to corroborate its statement. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel states that the affidavit from the petitioner's president establishes that the petitioner hired persons with a degree or its equivalent in physical education, coaching, or a closely-related field for lower-level, part-time positions. However, the affidavit in the record from the petitioner's president does not aver to this; it discusses only the beneficiary and the head coach.

The letters from the Rowing Coordinator Head Coach with Dartmouth College and the Head Rowing Coach Washington University Crew indicate that competitive rowing experience is equivalent to a bachelor's degree or minor in physical education or exercise science. Nonetheless, educational equivalency is considered by CIS only when a specific degree does not exist in an occupational field. *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000). The petitioner has submitted evidence that shows that colleges and universities offer various degrees in areas including sport management; movement science; exercise and sport science; physical education; and recreation, sport, and fitness management. Thus, in determining whether the proposed position qualifies as a specialty occupation, the AAO will not consider educational equivalency because specific bachelor's degrees exist in the proposed position's occupational field.

Based on the above discussion, the petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner to establish that it normally requires a degree or its equivalent for the position.

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. As already discussed in this decision, the *Handbook's* information and the evidence in the record show that the proffered position does not rise to the level of an occupation that would require a bachelor's 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.