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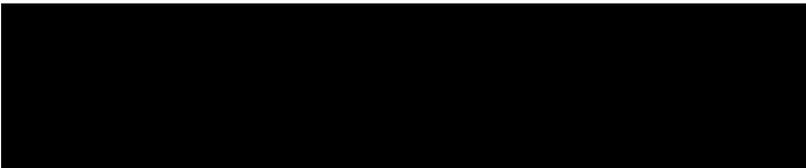
FILE: SRC 05 106 52021 Office: TEXAS SERVICE CENTER Date:

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The 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 nonprofit recreational soccer club that seeks to employ the beneficiary as its director of training. 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 two grounds: (1) her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation; and (2) her determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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:

An 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 qualification for classification as a specialty occupation, the proposed 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 proposed position.

According to the petitioner’s letter of support, dated June 27, 2004, the duties of the proposed position would include developing and implementing training sessions utilizing the approved FIFA<sup>1</sup> format for soccer education, including technical, functional match-related, situational, and past game analysis for field players, goalkeeper training, and organizational strategies for resumption of play; strength, fitness, and quickness training; supervising the training for each team in the club; and coaching and training (i.e., assuming full responsibility) for at least two teams in the club.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities to positions found within the athletes, coaches, umpires, and related workers occupational groupings discussed in the *Handbook*. The AAO notes that counsel drew the same parallel in his October 6, 2005 response to the director’s request for additional evidence.

In its discussion of the duties of athletes, coaches, umpires, and related workers, the *Handbook* states the following:

*Coaches* organize amateur and professional athletes and teach them the fundamentals of individual and team sports. (In individual sports, *instructors* sometimes may fill this role.) Coaches train athletes for competition by holding practice sessions to perform drills that improve the athletes’ form, technique, skills, and stamina. Along with refining athletes’ individual skills, coaches are responsible for instilling good sportsmanship, a competitive spirit, and teamwork and for managing their teams during both practice sessions and competitions. Before competition, coaches evaluate or scout the opposing team to determine game strategies and practice specific plays. During competition, coaches may call specific plays intended to surprise or overpower the opponent, and they may substitute players for optimum team chemistry and success. Coaches’ additional tasks may include selecting, storing, issuing, and taking inventory of equipment, materials, and supplies.

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<sup>1</sup> The AAO will assume that the petitioner is referring to the *Federation Internationale de Football Association*.

*Sports instructors* teach professional and nonprofessional athletes individually. They organize, instruct, train, and lead athletes in indoor and outdoor sports such as bowling, tennis, golf, and swimming. Because activities are as diverse as weight lifting, gymnastics, scuba diving, and karate, instructors tend to specialize in one or a few 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 and of physiology, they determine the type and level of difficulty of exercises, prescribe specific drills, and correct athletes' techniques. Some instructors also teach and demonstrate the use of training apparatus, such as trampolines or weights, for correcting athletes' weaknesses and enhancing their conditioning. As coaches do, sports instructors evaluate the athlete and the athlete's opponents to devise a competitive game strategy.

Coaches and sports instructors sometimes differ in their approaches 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, improve their physical condition, and achieve success in their sport.

The *Handbook* reports the following educational requirement for individuals seeking employment in this field:

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. Athletes usually begin competing in their sports while in elementary or middle school, and continue through high school and sometimes college. They play in amateur tournaments and on high school and college teams, where the best attract the attention of professional scouts. Most schools require that participating athletes maintain specific academic standards to remain eligible to play. Becoming a professional athlete is the culmination of years of effort. Athletes who seek to compete professionally must have extraordinary talent, desire, and dedication to training.

For high school coaching and sports instructor jobs, schools usually prefer to hire teachers willing to take on the jobs part time. If no one suitable is found, schools 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 knowledge and experience needed to become a head coach. Head coaches at large 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, a person usually needs years of coaching experience and a winning record in the lower ranks.

Head coaches at public secondary schools and sports instructors at all levels usually must have a bachelor's degree. (For information on teachers, including those specializing in physical education, see the section on teachers—preschool, kindergarten, elementary, middle, and secondary elsewhere in the *Handbook*.) Those who are not teachers must meet State requirements for certification to become a head coach. Certification, however, may not be required for coaching 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.

For those interested in becoming a tennis, golf, karate, or other kind of instructor, certification is highly desirable. Often, one must be at least 18 years old and certified in cardiopulmonary resuscitation (CPR). There are many certifying organizations specific to the various sports, and their training requirements vary. Participation in a clinic, camp, or school usually is required for certification. Part-time workers and those in smaller facilities are less likely to need formal education or training.

On appeal, counsel cites to the *Handbook's* paragraph regarding head coaches and sports instructors at public secondary schools as evidence that a degree is in fact required for the proposed position. However, the petitioner is not a public secondary school, and that paragraph has no relevance to this proceeding.

The findings of the *Handbook* regarding athletes, coaches, umpires, and related workers demonstrate that a bachelor's degree or its equivalent is not a requirement for the proposed position. While certification may be "highly desirable," such certification is not equivalent to the attainment of a bachelor's degree or its equivalent in a specific specialty.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The record contains three letters that address this issue: (1) the first letter, dated August 23, 2005, is from [REDACTED] Director of Coaching for the Louisiana Soccer Association; (2) the second letter, dated December 14, 2005, is from [REDACTED] Director of Coaching for U.S. Youth Soccer; (3) and the third letter (which is unsigned), dated October 4, 2005, is from [REDACTED], Professor and Chair of the Department of Health, Human Performance, and Recreation at Central Washington.

[REDACTED] stated that the duties of the proposed position "require at least a bachelor's degree in physical education or [a] related discipline, or the educational equivalent based upon a combination of education and work experience as a minimum requirement for entry into the position. . . ." However, as was noted by the director in her denial, [REDACTED] submitted no evidence in support of his assertions, and did not cite to industry or trade literature or other data. Simply 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)).

Counsel resubmits [REDACTED] letter on appeal, but does not address the director's notation that no supporting evidence to support his assertions was submitted. Nor does counsel submit any documentation to support [REDACTED] assertions.

Neither is [REDACTED] letter supported by reference to industry data or other evidence. Although [REDACTED] states that the duties of the proposed position “require at least a bachelor’s degree in physical education or [a] related discipline, or the educational equivalent based upon a combination of education and work experience as a minimum requirement for entry into the position. . . .”, no evidence to document his assertion is presented. Again, simply 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)).

Moreover, the AAO notes that the letters from [REDACTED] and [REDACTED] other than the sentence in each letter addressing the author’s background, are identical. While CIS does not question the authenticity of the signatures, it does not appear that the expressions in the letters are those of the authors. Accordingly, the evidentiary weight of these two letters is further diminished.

[REDACTED] letter states the following: “Further, I believe that the position is a specialty occupation requiring a degree and that it is the industry standard to require someone with a bachelor’s degree. . . .” However, he cites no objective support and submits no evidence to support this assertion. His conclusion regarding the industry norm is based on his undocumented “belief” and therefore does not establish a factual basis which the AAO can assess for accuracy and evidentiary weight. Again, simply 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)). Moreover, the petitioner has not established that [REDACTED] possesses the expertise and knowledge regarding the area of recreational soccer to make such an assessment. None of his work experience appears to have involved soccer, and none of his publications mention soccer.

Thus, the AAO finds that these three letters do not establish that the petitioner’s degree requirement exists in parallel positions among similar organizations. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Accordingly, the petitioner has not satisfied the first prong of the second criterion.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is very similar to the fitness worker and athletes, coaches, umpires, and related worker positions described in the *Handbook*. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet this criterion, the AAO normally reviews the petitioner’s past

employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The position proposed in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will not disturb the director's denial of the petition.

Finally, the AAO notes that the beneficiary was previously granted H-1B nonimmigrant status. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, its approval would constitute error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.