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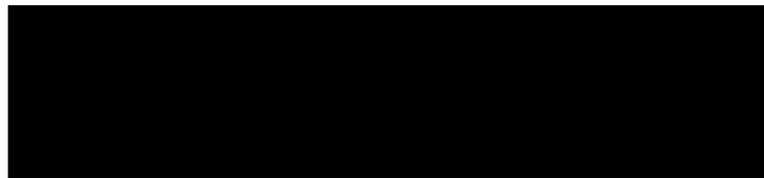
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FILE: LIN 05 071 51574 Office: NEBRASKA SERVICE CENTER Date: **MAY 16 2007**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition. 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 private gymnastic facility. It seeks to employ the beneficiary as a gymnastics coach. Accordingly, the petitioner 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 record includes: (1) the January 7, 2005 Form I-129 and supporting documents; (2) the director's March 10, 2005 request for further evidence (RFE); (3) counsel's May 3, 2005 response to the director's RFE; (4) the director's June 13, 2005 denial decision; (5) counsel's July 26, 2005 untimely appeal; (6) the director's September 1, 2005 notice that the untimely appeal would be treated as a motion to reopen; (7) counsel's September 6, 2005 brief in support of the motion; (8) the director's December 6, 2005 denial decision; and (9) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On June 13, 2005, the director denied the petition determining that the petitioner had failed to establish that the proffered position is a specialty occupation. The director did not receive the Form I-290B, Notice of Appeal, until July 26, 2005, but treated the untimely-filed appeal as a motion to reopen. Upon review of counsel's brief submitted in support of the motion to reopen, the director determined that the grounds of denial had not been overcome and denied the petition. On appeal, counsel for the petitioner submits a brief and documentation in support of the appeal. The issue before the AAO is whether the petitioner has established that the proffered position is a specialty occupation.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 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.

In a December 28, 2004 letter appended to the Form I-129, the petitioner stated:

The position of gymnastics coach has two distinguishable tasks: preparing teams for competition and teaching gymnastics classes to individuals. The coach will divide his time equally between the two tasks and his responsibilities will require that he evaluate the abilities of the individuals to determine a suitable training program. The coach will teach and demonstrate the use of gymnastics apparatus, such as trampolines, corrective weights; mechanical exercise; and evaluate progress.

The petitioner also described the body movements and skills that would be taught including vault, hip circle, acrobatic elements, cartwheel, handstand forward roll, etc. The petitioner also noted that coaching teams for competition and teaching gymnastics classes to individuals included different approaches and motivational strategies and that the coach in this position is responsible for knowledge associated with the position and correctly applying the "pedagogical philosophies, approaches, and motivational strategies appropriate for each age group and skill level." The petitioner claimed that such knowledge could be attained only at the college level.

Counsel for the petitioner in her statement in support of the petition noted that the beneficiary had received an H-1B classification and asserted that such approval demonstrated that the occupation had already been identified as a specialty occupation.

In a May 3, 2005 letter submitted in response to the director's RFE, counsel asserted that deference should be given to the previous decisions regarding the beneficiary's H-1B classification. Counsel also repeated

portions of the petitioner's description of the proffered position and asserted that the specific duties of the position are specialized and complex. Counsel also submitted two letters to demonstrate the position of gymnastics coach is a specialty occupation.

In the April 1, 2005 letter authored by [REDACTED] a gymnastic coach/choreographer for competitive gymnasts, [REDACTED] opined:

Based on my extensive experience, I can say that gymnastics coaching requires the ability to understand and apply a highly specialized body of knowledge. Involved is not only a knowledge of the athletic elements of a routine, but also techniques to evaluate a student's ability with those elements and to improve the student's ability from whatever level one might find him or her.

[REDACTED] opined further that the tasks involved required a "background in training approaches, pedagogical methods, and motivational theory [and that] such knowledge is obtained at the university level and normally associated with the knowledge required to obtain a bachelor's degree."

In a letter dated April 28, 2005 authored by [REDACTED] opined: "[i]t is a coach's responsibility to know and correctly apply teaching approaches, pedagogical philosophies, and motivation. Such theoretical knowledge regarding approaches, philosophies, and motivation is only attained at the university level." [REDACTED] further opined: "[the] position of Gymnastics Coach is a specialty occupation because it requires the theoretical and practical application of a body of highly specialized knowledge including both the athletics of gymnastics and the knowledge of teaching approaches, philosophies, and motivation, usually obtained at the university level."

On June 13, 2005, the director denied the petition. The director first observed that the approval of a prior petition appeared to be in error, and then citing case law, noted that this was a new petition and that CIS is not required to approve applications or petitions where eligibility has not been demonstrated. The director considered the two letters submitted in response to the RFE and observed that although both writers had extensive experience in gymnastics, the record did not contain evidence that either writer possessed a bachelor's degree in athletics or a closely related field. The director found that it is widely known that family fitness centers do not require gymnastic coaches to have a bachelor's degree to perform the duties of the position. The director noted that a coach is required to have overall knowledge of a sport, knowledge usually acquired through years of experience at lower levels. The director determined that the petitioner had not submitted evidence satisfying any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel for the petitioner noted that [REDACTED] has a "bachelor's" degree from the Tashkent State College of Choreography in the Republic of Uzbekistan and provided a second letter authored by [REDACTED]. Counsel provided two additional letters from individuals who are gymnastic coaches and who also have "bachelor's" degrees. Counsel also submitted a letter from the petitioner's proprietor listing the petitioner's coaches and their educational training. Counsel asserted that the director erred when finding that family fitness centers do not require gymnastic coaches to have bachelor's degrees. Counsel submitted an

excerpt from the Department of Labor's *O\*NET Online (O\*NET)* indicating a JobZone rating of five for the occupation of coach.

In the July 8, 2005 letter authored by [REDACTED] indicates that without her degree from the Tashkent State College of Choreography, she could not have achieved her many successes. [REDACTED] explains that gymnastic coaches are called upon to work with children, aspiring gymnasts, and competitive gymnasts and that a different approach is required from the coach at each stage. [REDACTED] opines: "[i]n order for the gymnastics coach to be all things to gymnasts at all phases of development, specialized knowledge is required." [REDACTED] indicates that the gymnastics coach must use knowledge of human anatomy, biology, and physiology to evaluate the strength of a gymnast and use psychology to analyze the gymnast's mental capacity and that the knowledge to perform these tasks is normally associated with the knowledge required to obtain a bachelor's degree.

In the July 5, 2005 letter authored by [REDACTED] states that he has a bachelor's degree from Tbilisi State University in Tbilisi, Georgia and a special advanced degree from the Georgia National Institute for Physical Education and Sports and is a gymnastics coach. [REDACTED] opines:

My tasks require that I analyze information and evaluate results in order to develop the best solution. In order to do this in the context of gymnastics coaching knowledge gained on the university level is required. Such knowledge consists of a knowledge of the principles of and methods for curriculum and training design, teaching, and instruction for individuals and groups, and the measurement of training effect. These tasks also require an understanding of human behavior and performance; individual differences and ability; personality and interest; learning and motivation; psychological research methods; and assessment.

[REDACTED] concludes: "the duties of a gymnastics coach. . . . are complex enough to be designated a specialty occupation because the knowledge required to accomplish them is attainable only at the university level."

In the July 1, 2005 letter authored by [REDACTED], [REDACTED] indicated that he held an advanced degree in gymnastics from the Georgia National School for Gymnastics and Physical Education and an educator degree from the Georgia State Institute of Foreign Languages and is an assistant gymnastics coach at the University of Ohio. [REDACTED] opined that a gymnastics coach is: a trainer who must understand human physiology, anatomy, biology, and chemistry; an evaluator who must assess both physical and mental strengths and weakness of gymnasts requiring knowledge of human physiology and psychological principles; and an educator who has knowledge of pedagogical techniques required for gymnasts. [REDACTED] concluded: "[t]he roles of the gymnastics coach cannot be effectively achieved without a level of education associated with the attainment of a bachelor's degree."

In an August 1, 2005 letter, the petitioner's proprietor, [REDACTED] indicated that of the 17 gymnastics coaches employed at the petitioner, eight have bachelor's degrees and the remaining nine individuals have experience equivalent to such degrees.

On December 6, 2005, the director denied the petition determining that the letters submitted did not establish that the individual must possess a degree in a specialized area in order to perform the duties of the position. The director also provided an example of the educational levels of the owners/coaches of a successful gymnastics academy, which showed that one of the owners, [REDACTED] had a bachelor's degree in journalism/public relations, a degree unrelated to physical education, and a second owner, [REDACTED] had no degree. The director concluded that the evidence submitted did not overcome the grounds on which the denial had been based.

On appeal, counsel submits two letters and excerpts from the websites of two other gymnastics facilities. A January 31, 2006 letter authored by the petitioner's proprietor indicates that the petitioner aspires to compete successfully at a national level and that in order to achieve this the petitioner needs a coach who possesses the specialized knowledge and experience to continue to maintain this level. Counsel also submits a February 1, 2006 letter authored by [REDACTED], vice-president of USA Gymnastics, who claims to also be writing on behalf of the United States Gymnastics Federation (USGF). [REDACTED] states: "USGF strongly recommends that gymnastics professionals hold a Bachelor's Degree in a related field and is currently working diligently to provide educational opportunities for gymnastics professionals in order to develop USA coaches with the type of expertise [the beneficiary] possesses."

Counsel's submission of the websites of two gymnastics facilities provided a brief overview of the facilities and listed the coaches and staff of each organization. A review of the websites shows that one organization employs eight coaches and that two of the coaches have physical education degrees and one has a biology degree and the remainder do not have bachelor's degrees; the second organization lists over 30 employees and of those who teach/coach gymnastics one coach has a degree in kinesiology, two in psychology, several have unrelated degrees or are working on obtaining a degree or have a foreign degree, and the vast majority (at least eighteen of the coaches and the head coach) do not have degrees. Counsel indicates that it has never been the petitioner's contention that a bachelor's degree is always required to run a successful gymnastic coaching business, but that the skills required are so specialized that they are usually associated with the attainment of a bachelor's degree.

The evidence in the record is insufficient to establish that a gymnastic coaching occupation is a specialty occupation. The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With reference to coaches, the *Handbook* 2006-2007 edition states:

*Coaches* organize amateur and professional athletes and teach them the fundamentals of individual and team sports. 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. . . . Coaches' additional tasks may include selecting, storing, issuing, and taking inventory of equipment, materials, and supplies. . . . College

coaches consider coaching a full-time discipline and may be away from home frequently as they travel to scout and recruit prospective players.

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* continues:

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 children and young adults; demonstrate the use of training apparatus; prescribe specific drills and design customized training programs for individuals; design flexibility and strength programs and study muscle tones to determine the level of difficulty; apply knowledge of the sport, physiology, and mechanics; and coach and instruct amateur and professional athletes.

The *Handbook* 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; a reasonable requirement as public school coaches are usually teachers performing coaching duties part-time. The *Handbook*, however, does not provide specific information regarding the education necessary for private coaches, but rather emphasizes the importance of knowledge regarding the sporting endeavor and experience as a participant and assistant coach. Further, the *Handbook* indicates that the education and training requirements for coaches vary greatly by the level and type of sport. The information in the *Handbook* does not indicate the necessity of a bachelor's degree in a specific discipline for a private gymnastics coach.

The petitioner has submitted letters from several coaches who indicate that they hold degrees and have been coaching gymnastics for many years. These individuals offer their opinions that a gymnastics coaching position is a specialty occupation requiring a bachelor's degree to perform the duties of the position. However, the record does not establish these coaches' authority to speak to the national hiring practices of U.S. employers. Although these individuals have been coaching gymnastics for many years, coaching a particular sport does not establish one's knowledge about national hiring practices. In addition, their claims are not supported by documentary evidence and their opinions are not substantiated by a factual foundation. 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 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). The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation, from websites, published training materials, and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. The opinions of the coaches are insufficient to overcome the general information in the *Handbook* regarding the varied educational levels expected for private coaches.

Thus, the record does not contain independent evidence establishing that a private gymnastic coach is a position that normally requires the attainment of a bachelor's degree in a specialized field of study. Therefore, the petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - whether 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. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers 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 this matter as observed above, the *Handbook* does not report that a gymnastics coach requires a baccalaureate degree. Moreover, although the record is unclear regarding the authority of [REDACTED] to speak on behalf of the

USGF, she indicates only that USGF strongly recommends that gymnastics professionals hold a bachelor's degree in a related field, not that such a degree is required.

Moreover, neither the petitioner nor the information about the other gymnastics organizations in the record demonstrates that a bachelor's degree in a specific discipline is required to perform the duties of this occupation. The petitioner indicated that of the 17 gymnastics coaches it employed, eight have bachelor's degrees and the remaining nine individuals have experience equivalent to such degrees. However, the petitioner does not provide documentary evidence of the bachelor's degrees held by eight of its employees, nor does the petitioner indicate the specific discipline of study, if any. In addition, multiple years of experience is not necessarily equivalent to a four-year course of study at a university; such experience must be properly evaluated to result in a conclusion that the experience is equivalent to a four-year course of study at a university level. Further, the information in the record concerning the three gymnastics facilities confirms that a bachelor's degree in a specific field of study is not common to the industry in parallel positions among similar organizations. As the director noted in a brief statement regarding the [REDACTED] facility and as the websites of two other gymnastic facilities showed, a bachelor's degree in a discipline related to the occupation is not normally required for the position of gymnastic coach. The record does not contain evidence establishing that gymnastic facilities "routinely employ and recruit only degreed individuals."

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The AAO acknowledges the letters from several coaches asserting that the duties of a gymnastics coach are complex and that: (1) the gymnastics coach must use knowledge of human anatomy, biology, and physiology to evaluate the strength of a gymnast and use psychology to analyze the gymnast's mental capacity; (2) the gymnastics coach is a trainer who must understand human physiology, anatomy, biology, and chemistry; (3) the gymnastics coach is an evaluator who must assess both physical and mental strengths and weakness of gymnasts which requires knowledge of human physiology and psychological principles; and (4) the gymnastics coach is an educator who has knowledge of pedagogical techniques required for gymnasts. However, the coaches do not substantiate their conclusions. Neither the petitioner nor the coaches explain the routine hiring of individuals who do not have a college-level education to perform these same duties. The petitioner does not submit documentary evidence or otherwise distinguish how the duties of the proffered position are more unique or complex than the duties routinely performed by those gymnastic coaches that do not have a bachelor's or higher degree.

The petitioner has not established either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that it normally requires a degree or its equivalent for the position. The AAO usually 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 when considering whether the petitioner has established this criterion. In this matter as observed above, the petitioner acknowledges employing 17 coaches and notes that only eight of the coaches have bachelor's degrees. Also as found above, the petitioner does not provide copies of the individual's diplomas or evidence that the

employees' degrees are in specific disciplines that relate directly to their positions. In addition the petitioner does not explain or distinguish the duties of those employees who have degrees and those who do not. Further, the AAO again notes that experience in a particular field does not automatically equal the knowledge gained through a four-year course of study at a university. Moreover, the AAO observes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Turning now to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO finds that the petitioner has not provided evidence sufficient to demonstrate 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. Again, the AAO acknowledges the letters submitted by the various coaches reciting their opinions that a gymnastics coach must be able to understand and apply a highly specialized body of knowledge. However, although coaching gymnastics at some levels may require immense experience, the record does not substantiate that the knowledge gained through coaching experience is equivalent to a four-year formal period of academic study at an accredited university. The petitioner has not established that the nature of the specific duties of a gymnastics coach 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 petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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