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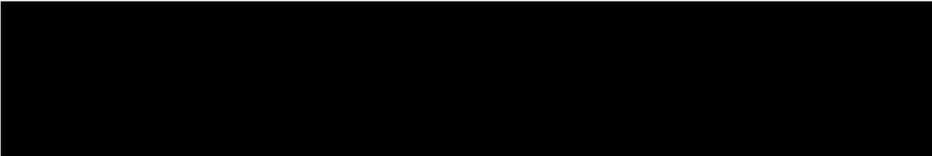
FILE: SRC 05 201 51393 Office: TEXAS SERVICE CENTER Date: MAR 03 2008

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a nonprofit organization which states that its mission is "the training and validation of University Diplomas." It was founded to help professionals in the development of their careers. The petitioner seeks to employ the beneficiary as a martial arts and physical fitness dean, and endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner is seeking the beneficiary’s services as a martial arts and physical fitness dean. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Schedule courses, recommend, prepare, and deliver lectures to undergraduate students on such topics as anatomy therapeutic recreation and conditioning theory;
- Compile, administer and grade examinations;
- Compile bibliographies of specialized materials for outside reading assignments;
- Initiate, facilitate and moderate classroom discussions;
- Keep abreast of field developments by reviewing current literature, talking with colleagues, and participating in professional conferences;
- Maintain regularly scheduled office hours in order to advise and assist students;
- Maintain student attendance records; and
- Plan, evaluate and revise curricula, course materials and methods.

The petitioner states that it prefers to hire an individual for the proffered position who possesses a master’s degree in physical fitness with a specialty in martial arts.

As noted above, section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation. The petitioner states that it is a nonprofit organization founded to

help professionals from around the world in the development of their careers. Its purpose (as generally stated) is to provide assistance and research, establishing business connections and opportunities to achieve its goals in Florida and the United States. The petitioner states that it offers degree validation services, but does not fully explain what those services entail. While the petitioner states that it will teach undergraduate students in a classroom setting, it has not established in the record that it has a facility with classrooms for teaching students, or that it has any students or teachers. The record does not establish the requirements for students to enter any programs that it may have, or that it has educational programs or classes offered to students. The record is absent evidence of any funding that may be available to support its stated goals or objectives. The record does contain copies of articles of incorporation, and a license from the Florida State Board of Nonpublic Career Education licensing the petitioner to offer the following programs of instruction: attorney's assistant; paralegal; legal assistant for foreign attorneys; medical assistant; and phlebotomy for people with experience in the medical field. The record does not establish, however, that the petitioner has ever offered any program of instruction in any of the listed fields. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner has failed to establish that it has employment available in a specialty occupation for the beneficiary upon his arrival in the United States. For this reason, the petition must be denied.

It is further noted that the duties of the proffered position, as stated by the petitioner, are presented in such vague and general terms that it is impossible to determine precisely what tasks the petitioner would perform on a daily basis. The petitioner states that the beneficiary would teach classes in anatomy, therapeutic recreation and conditioning theory. No documentation was presented detailing the curriculum for any such classes to be taught, or the complexity of the material to be presented to any students. The record, as previously stated, does not establish that the petitioner has students, teachers, programs of instruction, teaching facilities or funding for teaching programs. It is not possible to determine that the duties to be performed by the petitioner are so unique, or specialized and complex that knowledge associated with the performance of those duties is usually associated with a baccalaureate level education in a specific educational discipline. The petitioner presented copies of advertisements for various positions associated with education administration. None of those advertisements, however, are from institutions similar in nature and scope to that of the petitioner, and do not establish that a degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. The petitioner does not state that it normally requires a degree in a specific educational discipline for entry into the offered position, or that it has other teachers/instructors employed with a baccalaureate level education. Finally, the petitioner makes reference to Florida administrative regulations citing specialization requirements for certification in physical education (Grades K-8 and 6-12). Those regulations, however, are applicable to Florida public schools, and do not apply to the petitioner's nonprofit organization. The petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner submitted an experiential evaluation from a credentials evaluation service which states that the beneficiary's foreign education (completion of various seminars and graduation from a martial arts dojo), and work experience are equivalent to a master's degree in physical

education from an accredited college or university in the United States. Credentials evaluation services may evaluate foreign education only for equivalency purposes, not work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Work experience may only be evaluated, for the purpose of determining degree equivalence, by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not establish that the beneficiary's work experience was evaluated by someone with that authority. For this additional reason, the petition cannot be approved.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

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