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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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prevent clearly unwarranted
invasion of personal privacy

File: WA-99-125-54893 Office: California Service Center

Date: 29 NOV 2001

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit aquatics/swimming program with 15 employees. It seeks to employ the beneficiary as an assistant swim coach for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree was required for the proffered position. On appeal, counsel contends the petitioner normally requires a baccalaureate degree or its equivalent for the position of Assistant Coach. Counsel further asserts that a baccalaureate degree is a minimal normal requirement for the position and asserts that the Department of Labor's Dictionary of Occupational Titles (DOT) supports his position. Counsel submits a letter from the petitioner and a computer printout of the occupational profile of positions as coaches and scouts from the DOL's O*Net (Occupational Information Network).

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Direct, coordinate training program. Plan, organize, conduct and supervise daily practice sessions. Observe, analyze swimmers' aquatic body moves and techniques. Instruct and demonstrate proper techniques to individuals or in groups. Organize, conduct swim meets for individuals and group competitions.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position of assistant swim coach would normally require a bachelor's degree in physical education or a related field. Counsel asserts that, according to the DOT, the proffered position is a specialty occupation. However, a reference in the DOL's DOT, Fourth Edition, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

Counsel states the DOL's O*Net also indicates that a bachelor's degree is the minimum formal education required for positions as coaches and scouts. However, the Department of Labor's Occupational Outlook Handbook is given much more weight than the DOT or O*Net in determining whether an occupation is within the professions. This is because the Handbook provides specific and detailed information regarding the educational and other requirements for occupations.

A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at page 179 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a sports and physical training instructor and coach. The usual requirement is experience as a player/participant or coach. A baccalaureate degree is required for coaches and sports instructors in schools but there is no indication that a degree in a

specialized area is required. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, while the petitioner claims on appeal that 14 of 16 employees of Novaquatics Swimming have at least a bachelor's degree, the petitioner has not submitted the resumes or academic credentials of those employees to show that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as physical education for the offered position. Third, the petitioner did not present any documentary evidence that organizations similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.