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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 02 274 54091 Office: NEBRASKA SERVICE CENTER Date: APR 0 9 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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 service center director denied the nonimmigrant visa petition and subsequently affirmed his decision in a motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded to the director for further consideration of the beneficiary's qualifications.

The petitioner is a non-profit hockey franchise in the Ontario Hockey League that seeks to employ the beneficiary as director of hockey operations. 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 because the proffered position is not a specialty occupation. On motion, counsel submitted job advertisements for various sports management positions. The director did not find these advertisements to be sufficient to establish that parallel positions in similar business entities require a baccalaureate degree in a specific specialty. On appeal, counsel submits Form I-290B with additional comments. Citizenship and Immigration Services (CIS) notes that, although counsel indicated that a brief would be submitted to the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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 letter dated May 20, 2002, that responds to the director's request; (4) the director's denial letter; (5) the petitioner's December 18, 2002 motion to reconsider/reopen; (6) the director's January 14, 2003 decision on the motion to reconsider/reopen; and (7) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as its director of hockey operations. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; the petitioner's November 14, 2002 response to the director's request for further evidence; and the petitioner's motion to reconsider/reopen. In the petitioner's response to the director, the beneficiary's duties are described as follows:

> The director of hockey operations is responsible for coordination of the off-ice production of all hockey events. This requires the synchronization of all other departments within the organization who have a vested interest in the promotion of the hockey franchise. The director of hockey operations works specifically with the individuals in the following positions: President, Vice-President of Marketing and Sales, Facility Manager, Director of Media and Community Relations, Director of Group Sales, and the Director of Season Tickets. All of these individuals have at [a] minimum a bachelor's degree in their field of specialization. . . . The Director of Hockey Operations is also responsible for overseeing the work of the organization's entire Hockey Operations Staff.
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> The individual holding the position of Director of Hockey Operations is also responsible for working with and supervising numerous people who are not directly associated with the organization. Such individuals include members of the media and trades people involved with promotional events. . . . The director of Hockey Operations is required to create and implement marketing and promotional efforts for the organization in a safe, legal, and socially justifiable manner. . . . As such, it is essential that the individual holding such a title has received educational instruction in the marketing and promotion of sport [sic] as well as legal issues as they pertain to a sporting environment. It is also a requirement for this position that the individual have previous experience in game day operations at the highest level.

The petitioner stated that the percentage of time that the director of hockey operations would spend in the duties of the job would vary depending on the time of the hockey season and the needs of the organization. The petitioner then stated that the beneficiary would spend 90 per cent of his time working with peers, subordinates and supervisors who have obtained a baccalaureate degree.

The director found that the proffered position was not a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, the petitioner submitted a memorandum from Jeff Sauvé, Director of Hockey Operations for the Vaughan, Ontario hockey association. Mr. Sauvé provided documentation that he has a master's degree in sports management, and stated that such a degree was a requirement for his job. He stated further that the vast majority of persons that he works with on a regular basis have degrees in their specialty or a great deal of experience in their field. In addition the petitioner submitted seven job advertisements taken off the Internet for jobs ranging from a director of marketing and promotions for a collegiate sports department to a marketing coordinator for the Huntsville Flight, a team in the National Basketball Development League, the minor league for the National Basketball Association (NBA). The petitioner also submitted an email from Eric Olsavsky, manager of TeamWork Online, a recruiting firm for sports positions.

The director affirmed his prior decision on motion. The director determined that while all the job advertisements submitted by the petitioner required a baccalaureate degree, none of them identified a baccalaureate degree in a specific specialty as a requirement for entry into the position. The director commented that the job advertisement for the American Golf Corporation listed four distinct academic areas in its identification of a required baccalaureate degree. In addition, the director stated that the letter from Jeff Sauvé lacked evidentiary documentation such as the job vacancy announcement that identified that a baccalaureate in a specific specialty was a prerequisite for the position, or copies of the academic degrees of Mr. Sauvé's fellow workers.

On appeal, counsel states that a substantial amount of documentation has already been submitted to the record to establish that the proffered position is a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

With regard to the parallel positions in similar firms, the petitioner submitted a letter from R. Ron Sertz, an owner and director of operations of another hockey team, and a letter from Jeff Sauvé, director of hockey operations for the city of Vaughan, Ontario's hockey association. The petitioner also submitted a letter from David Branch, Commissioner, Ontario Hockey League. Mr. Branch that in the OHL it is a standard policy that directors of hockey operations have at least the equivalent of a bachelor's degree in sport management or a related field of study. With regard to the first two letters, the assertions of the two letter writers with regard to their particular hockey company or association would not establish an industry-wide standard. However, the letter from Commissioner Branch addressed the academic requirements for an entire hockey league. Although Commissioner Branch did not provide copies of the actual academic degrees of all OHL directors of hockey operations, by virtue of his position, he is viewed as a recognized authority. His comments, therefore, do provide some weight as to the industry-wide standard for directors of hockey operations.

In addition, with regard to documentation to support the complexity or uniqueness of the proffered position, the job description provided by the petitioner indicates a multi-layered position requiring extensive liaison with both the beneficiary's superiors, supervisory responsibilities for the entire hockey operations staff, as well as the handling of media, and other external groups. With regard to the promotions and events coordination duties mentioned in the petitioner's job description, the position description from Eric Olsavsky and the job advertisement from the Huntsville Flight team provides more insight into the uniqueness of the beneficiary's events coordination duties. In sum, based on Commissioner Branch's letter and the uniqueness of the position, it does not appear excessive that the petitioner would require a baccalaureate degree in a specific specialty for the proffered position. The petitioner has established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Thus, the offered position qualifies as a specialty occupation.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the petitioner must establish that the beneficiary holds a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Following an extensive review of the materials submitted to the record, the petitioner did not submit an educational equivalency document that establishes that the beneficiary's studies in Canada were the equivalent of a U.S. baccalaureate or higher degree in sports management. Accordingly the petitioner has not established that the beneficiary is qualified to perform the proffered position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation. However, the petitioner has not fulfilled the statutory requirements with regard to the beneficiary's qualifications. Accordingly, the AAO shall withdraw the director's January 14, 2003 decision, and remand the decision to the director for further consideration of the beneficiary's qualifications. The director may request additional evidence that is deemed necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director shall enter a new decision.

ORDER: The director's January 14, 2003 decision is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.