U.S. Department of Homeland Seurity

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

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JAN 1[illegible] 2004

FILE: LIN 02 198 53767 OFFICE: NEBRASKA SERVICE CENTER DATE:

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)

PUBLIC COPY

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, who affirmed his decision in a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an outdoor claycourt tennis facility which provides private lessons, group lessons, clinics, junior programs and special events. It currently employs 25 persons, has a gross annual income of $929,100, and seeks to employ the beneficiary as a tennis coach for a period of three years.

The director denied the petition because he found that the evidence failed to establish that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

The procedural history in this proceeding has included: (1) the filing of a Form I-129 with supporting documents; (2) the director's issuing a request for additional evidence, which, in part, solicited evidence regarding the specialty occupation issue upon which the director would ultimately deny the petition; (3) the petitioner's response to the evidence request, which included additional documentary evidence; (4) the director's denial of the petition, dated July 15, 2002; (5) a motion to reopen or reconsider, filed August 15, 2002; (6) the director's September 11, 2002 decision granting the motion but upholding his denial; (7) this appeal to the AAO, filed October 9, 2002, and (8) a notice of the appearance of a new counsel to represent the petitioner, dated September 4, 2003.

This decision will first review major descriptive information about the proposed duties, because the particular duties are the critical factor in determining whether a proffered position qualifies as an H-1B specialty occupation.

On the Form I-129, the petitioner described the proposed duties as:

> Instruct or coach players in fundamentals of tennis, game strategies, and techniques. Demonstrate techniques and methods of tennis. Observe players and analyze performance to determine level of competition.

A document entitled "Job Position: Professional Tennis Coach," submitted with the Form I-129, provided this information:

> SCOPE OF JOB: Tennis Coach is responsible for instructing individuals [in] the fundamentals of tennis. Tennis coach is responsible for evaluating

each player's strength and weaknesses to improve technique to prepare them [sic] for competition.

DUTIES AND RESPONSIBILITIES:

- Instruct or coach players in fundamentals of tennis, game strategies and techniques to prepare them for competition.
- Demonstrate techniques and methods of tennis.
- Observe players and analyze performance while they perform to determine need for improvement.
- Oversee daily practice of players to instruct them in areas of deficiency.
- Assess players[′] performance to determine level of competition and make recommendations to head coach.

REQUIRMENTS

Must have a Bachelor's Degree, or its equivalent, in Sports Science, Physical Education and Sports Medicine."

On appeal, counsel maintains that, contrary to the director's denial of the petition, the proffered position is a specialty occupation. Counsel maintains, in part, that the director did not consider all the evidence submitted with the motion, which, counsel contends, "should clearly demonstrate that the Tennis Coach position is a professional position due to the complexity of the duties." Counsel insists that the proffered position is "very unique as to the level of instruction provided" within a "comprehensive training program in which strict instruction by coaches produces tennis champions and requires extensive or specialized knowledge" in the following areas:

- teaching and training in various tennis techniques with most concentration at the junior level
- instructing students physically and mentally of [sic] all tennis fundamentals as well as technique
- determining the type and level of difficulty of exercise and instruction needed which includes an injury prevention program

- correcting student's techniques and recommend[ing] & teach[ing] through knowledge of sports, corrective techniques and physiology

- motivating students to learn

- developing ways to improve student's game with competitive drills, match play and professional instruction for preparation for tournament play

- able to relate well to students so they may be able to instruct them in all aspects of tennis principles as well as demonstrate technique

- applying the principles of biomechanics in stroke analysis, balance, coordination, force-motion, force-time, inertia, optimal projection, range of motion, segmental interaction and spin.

Section 214(i)(1) of the Immigration and Nationality 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Before discussing the evidence of record, it is worth emphasizing this point which is critical to the AAO's decision in this proceeding: Citizenship and Immigration Services (CIS) consistently and correctly interprets "degree" in 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.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), specifies that a "specialty occupation" is one that requires not only the theoretical and practical application of a body of highly specialized knowledge, but also attainment of a bachelor's degree or higher, or the equivalent, in "the specific specialty." Thus, the required degree must be in a specific specialty that contains a body of highly specialized knowledge that is necessary for performance of the proffered position. The definition of specialty occupation at 8 C.F.R. § 214.2(h)(4)(ii) mirrors the Act by stating that the required degree must be in "a specific specialty." Thus, CIS correctly interprets "degree" in all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) as one in a specific specialty that is directly related to the proffered position. This is a reasonable interpretation that is consistent with section 214(i)(1) of the Act. *See, Tapis International v. INS,* 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

As the following discussion will show, the evidence does not satisfy any of the H-1B specialty occupation criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. -8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for its authoritative information about particular occupations' duties and educational requirements. Here, the AAO consulted the 2002-2003 edition, and, like the director, found that the duties of the proffered position substantially comport with those of the coaches and sports instructor occupation, addressed at pages 126-129. The *Handbook* indicates that this occupation does not normally require a bachelor's degree in any specific specialty.

The *DOT* "SVP8" rating that counsel cites for the proposition that the proffered position requires "over 4 years up to 10 years of preparation" does not indicate that the position requires a bachelor's degree or higher, or the equivalent, in any field.

The Internet advertisements relating to tennis instructor, tennis professional, and college tennis coaching positions are consistent with the *Handbook* information: the tennis instructor and tennis professional employment opportunity advertisements cite USPTR/USPTA certification requirements, but no degree requirements; the college coaching advertisements specify a bachelor's degree requirement, but the vast majority of them do not require that the degree be in any particular specialty.

The petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.
-8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

A. Degree requirement common to the industry.

Factors often considered by Citizenship and Immigration Services (CIS) when determining the industry standard include: 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." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As indicated in section I of this decision, the *Handbook* does not convey an industry-wide degree standard. Furthermore, the documentary evidence about coaching positions in general and tennis coaching positions in particular, both in the petitioner's organization and in other tennis coaching organizations, does not establish a commonly required degree in any specific specialty directly related to tennis instruction.

B. Degree necessitated by the complexity or uniqueness of the position.

Upon review of the entire record, including all the petitioner's submissions and all statements by the petitioner and counsel, the AAO finds that the proffered position is not so complex or unique as to require a bachelor's degree or higher, or its equivalent, in a specific specialty. In fact, the submissions about it and related positions do not establish the need for any technical knowledge beyond what can be attained by tennis experience and specific certification courses.

The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.
-8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

The record establishes that the petitioner normally requires the minimum of a bachelor's degree for the type of position offered here. However, a review of the evidence concerning the petitioner's current employees reveals a wide spectrum of academic majors that do not share any body of highly specialized knowledge related to the proffered position. The evidence does not show that the petitioner has normally required at least a bachelor's degree in a specific specialty directly related to tennis instruction and coaching.

Accordingly, the evidence of record supports the director's not approving the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

The AAO has considered the entire record, including, but not limited to: the evidence about the levels of training and their specific instructional requirements; the duty descriptions and the comments of the owner and counsel about them; and the technical information about related biomechanics and kinematic analysis.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a bachelor's degree or higher in any other specific specialty. Rather, the petitioner's submissions indicate that the specialized knowledge required for the position proffered here is normally associated with tennis experience and professional certification courses and training. The evidence does not substantiate that performance of the

proffered duties requires "a Bachelor's Degree, or its equivalent, in Sports Science, Physical Education and Sports Medicine." In fact, the petitioner's current instructional staff hold degrees across a wide spectrum of disciplines that convey no specialized knowledge about tennis, including business administration/management, mathematics/psychology, social sciences/education, and public relations.

Accordingly, the record does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Thus, the director's decision should not be disturbed.

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.