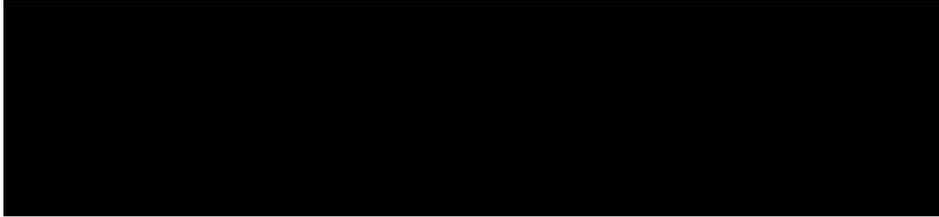


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U.S. Citizenship
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FILE: EAC 06 227 51145 Office: VERMONT SERVICE CENTER Date: NOV 15 2007

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:

SELF-REPRESENTED

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 director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a university that seeks to employ the beneficiary as the assistant women's tennis coach. 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 on August 24, 2006, concluding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

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

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.

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

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 proposed position.

According to the Form I-129, the petitioner indicated that in the position of assistant women's tennis coach, the beneficiary will "assist with coaching women's tennis." The petitioner also submitted a job description for the assistant women's tennis coach which outlined the proposed duties as follows:

Reports directly to head women's tennis coach.

Responsible for assisting in the development, planning, implementation, communication, and administration of the tennis program within the guidelines of authorized University and Department policies and procedures, support programs, budget, and according to NCAA and Conference rules and regulations.

Ability to communicate effectively with student-athletes and co-workers. Ability to represent the University in an intelligent and credible manner. Skill in coaching student-athletes. Knowledge of eligibility and recruiting rules and regulations.

Assist in developing the best possible tennis squad through recruiting of student-athletes. Identify, observe, evaluate, and select prospective student-athletes. Inform prospective student-athletes on matters concerning educational, career, and sport competition opportunities at the University. Assist during prospective student-athletes official visit to and from the University to ensure a safe, informative, and pleasant experience at the University.

Effectively manage and maintain team development through organization and planning, working closely with Head Coach.

Promote the total program through publicity and personal appearances.

Conduct effective correspondence within the entire scope of the tennis program. Answer mail and phone inquiries pertinent to the program.

Assist Head Coach in preparing a comprehensive budget for each fiscal year.

Effectively assist in planning and organizing team practice. Coach players individually or in groups, demonstrating techniques and game strategies. In absence of Head Coach, inform student-athletes and student managers of standard practice and game day operations to ensure that policies and procedures are followed. Evaluate players and team performances in both practice and games, identify individual and team strengths and weaknesses and develop standards of performance.

Organize and arrange schedule of matches each season.

Effective scouting of all opponents each season.

Supervise the management and coordination of all equipment and team uniforms.

Assist in planning all team travel. Provide team transportation requests to Associate Director of Athletics for Administration.

Academically advise and supervise student-athletes. Encourage student-athletes to maintain regular contact with the academic office in order to monitor academic progress, address academic difficulties, and enhance the educational experience. Inform the Assistant Director of Compliance of team roster additions and deletions to ensure that the student-athlete's playing status communicated to the Registrar.

Assist head coach with individual hitting with team.

Responsible for racquet stringing.

Attend camps and clinics which will improve development as a coach, teacher, and tactician of the sport of tennis.

After meeting head coach, coordinate and plan home events with Game Operations staff.

Report any injuries to head coach, team physician, and trainer as soon as known. Adequately follow up on treatment and handling of injury.

Assist in the development of media guides, programs, schedules, ads, and posters. Interview with media and sports information staff throughout the season.

Consult with Strength and Conditioning staff to assess the current strength and conditioning needs of the team and specific individuals. Assist in the team's complete strength and conditioning program, including the flexibility program before and after all workouts. Participate in the actual strength and conditioning program testing of the team in order to maximize the importance of a commitment to the program.

Keep informed about the state, regional, and national news relative to tennis programs.

The job description also states that the position of assistant women's tennis coach requires the individual who will fill the position to have obtained a bachelor's degree with experience or a master's degree.

The director determined that the petitioner had submitted insufficient evidence to process the petition. On August 15, 2006, the director requested that the petitioner submit the following documentation: (1) a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities, and the specific tasks that require the expertise of someone with a bachelor's degree; (2) evidence to establish that the position meets one or more of the standards of specialty occupation; (3) a list of individuals that the petitioner currently employs in this position, and the degree and field of study held by the employees; and, (4) evidence showing that the petitioner requires individuals with a bachelor's degree in a specific field of study to fill the position.

In its response, the petitioner submitted a copy of email correspondence from NCAA News Advertising to the petitioner's Human Resources Manager of Athletics. The email is the text of an advertisement posted for the position of Assistant Tennis Coach. The advertisement states that a bachelor's degree with experience, or master's degree is required.

The director denied the petition on August 24, 2006, concluding that the proposed position does not qualify as a specialty occupation position.

On appeal, the petitioner stated that "virtually all Division I Women's Tennis Coaches, including Assistant Coaches, have at least a bachelor's degree in a[n] area directly related to this highly specialized occupation." The petitioner also submitted a letter from the petitioner's Head Women's Tennis Coach which states that the petitioner is a Division I Athletic Department and a member of the Atlantic Coast Conference, "which is the strongest tennis conference in college tennis and most other intercollegiate sports." The Head Coach also contends that this "level of athletics requires specialized coaches who have at least a Bachelor's Degree and preferably a Master's Degree with playing or coaching experience at a similar level."

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of athletes, coaches, umpires, and related workers as discussed in the *Handbook*. In its discussion of the duties of athletes, coaches, umpires, and related workers, the 2006-2007 edition of the *Handbook* states the following:

Coaches organize amateur and professional athletes and teach them the fundamentals of individual and team sports. (In individual sports, *instructors* sometimes may fill this role.) 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. Before competition, coaches evaluate or scout the opposing team to determine game strategies and practice specific plays. During competition, coaches may call specific plays intended to surprise or overpower the opponent, and they may substitute players for optimum team chemistry and success. Coaches' additional tasks may include selecting, storing, issuing, and taking inventory of equipment, materials, and supplies.

Sports instructors teach professional and nonprofessional athletes individually. They organize, instruct, train, and lead athletes in indoor and outdoor sports such as bowling, tennis, golf, and swimming. Because activities are as diverse as weight lifting, gymnastics, scuba diving, and karate, instructors tend to specialize in one or a few activities. Like coaches, sports instructors also may hold daily practice sessions and be responsible for any needed equipment and supplies. Using their knowledge of their sport and of physiology, they determine the type and level of difficulty of exercises, prescribe specific drills, and correct athletes' techniques. Some instructors also teach and demonstrate the use of training apparatus, such as trampolines or weights, for correcting athletes' weaknesses and enhancing their conditioning. As coaches do, sports instructors evaluate the athlete and the athlete's opponents to devise a competitive game strategy.

Coaches and sports instructors sometimes differ in their approaches to athletes because of the focus of their work. For example, while coaches manage the team during a game to optimize its chance for victory, sports instructors—such as those who work for professional tennis players—often are not permitted to instruct their athletes during competition. 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, improve their physical condition, and achieve success in their sport.

The *Handbook* reports the following educational requirements for individuals seeking employment in this field:

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. Athletes usually begin competing in their sports while in elementary or middle school, and continue through high school and sometimes college. They play in amateur tournaments and on high school and college teams, where the best attract the attention of professional scouts. Most schools require that participating athletes maintain specific academic standards to remain eligible to play. Becoming a professional athlete is the culmination of years of effort. Athletes who seek to compete professionally must have extraordinary talent, desire, and dedication to training.

For high school coaching and sports instructor jobs, schools usually prefer to hire teachers willing to take on the jobs part time. If no one suitable is found, schools 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 knowledge and experience needed to become a head coach. Head coaches at large 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, a person usually needs years of coaching experience and a winning record in the lower ranks.

Head coaches at public secondary schools and sports instructors at all levels usually must have a bachelor's degree. (For information on teachers, including those specializing in physical education, see the section on teachers—preschool, kindergarten, elementary, middle, and secondary elsewhere in the *Handbook*.) Those who are not teachers must meet State requirements for certification to become a head coach. Certification, however, may not be required for coaching and sports instructor jobs in private schools. Degree programs specifically related to coaching include exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

For those interested in becoming a tennis, golf, karate, or other kind of instructor, certification is highly desirable. Often, one must be at least 18 years old and certified in cardiopulmonary resuscitation (CPR). There are many certifying organizations specific to the various sports, and their training requirements vary. Participation in a clinic, camp, or school usually is required for certification. Part-time workers and those in smaller facilities are less likely to need formal education or training.

The findings of the *Handbook* regarding athletes, coaches, umpires, and related workers demonstrate that a bachelor's degree or its equivalent is not normally a requirement for the proposed position. While certification may be "highly desirable," such certification is not equivalent to the attainment of a bachelor's degree or its equivalent in a specific specialty. Accordingly, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Turning now to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO finds that the petitioner has provided evidence sufficient to demonstrate that the individual in the proffered position will be required to apply a body of highly specialized knowledge in the role of a university-level coach. The nature of the specific duties in this matter requires the performance of certain facets of teaching sports at a college level

and the specialized or complex responsibilities that are associated with such duties. The nature of the specific duties of the university-level coach in this matter requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

Upon review of the totality of the record, the petitioner has sufficiently demonstrated that a university-level coach is a specialty occupation within the meaning of the regulations. The director's denial of the petition will be withdrawn.

The record reflects that the beneficiary obtained a bachelor's degree in health promotion and human performance and was awarded a master's degree in adult education from Auburn University, located in Alabama. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

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 been met.

ORDER: The appeal is sustained. The petition is approved.