U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D2

FILE: WAC 04 258 51202 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2006

IN RE: Petitioner:
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:

[redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a tennis academy. It desires to employ the beneficiary temporarily in the United States on a part-time basis as a tennis coach, at a salary of $25 per hour, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. 214.2(h)(4)(iii)(A) and denied the petition.

Counsel submits a brief in support of the appeal. In his brief, counsel states that the Service erred in determining that the instant position does not constitute a specialty occupation. Counsel states that the nature of the specific duties is so specialized and complex that the petitioner requires a degree or its equivalent for the position.

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), defines an H-1(b) temporary worker as:

> an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

> *Specialty occupation* means 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 regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

(*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 proffered position.

The record of proceeding before the AAO contains: (1) Form I-290B and supporting documentation; (2) the director's denial letter; and (3) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary's services as a tennis coach. In determining whether a position qualifies as a "specialty occupation" for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on September 24, 2004. The petitioner's statement in support of the non-immigrant petition provided a description of the proffered position. In the proffered position, the beneficiary will be teaching tennis to students of all ages. Her duties will be divided into two parts: the first part is teaching private lessons and the second part is teaching tennis camps.

The duties of the position are described in the petitioner's letter of support. According to this evidence, in the tennis camps, the beneficiary will be working with another group of four to five coaches, following the guidance of the owner of the tennis academy. The beneficiary will explain and demonstrate principles, techniques and methods of regulating movement of body, hands and feet to achieve proficiency in tennis play. She will observe students during practice to detect and correct mistakes. She will advise on tennis technique, the tactic of the tennis game, explain and enforce safety rules and regulations, assign homework including exercises with tennis ball, running, fitness exercise, tennis racquet imitation and jumping rope exercises.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (*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." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The petitioner states that the proffered position is that of a tennis coach. The AAO finds that the beneficiary's duties in the proffered position primarily parallel the responsibilities of a sports instructor. The *Handbook*, 2006-07 edition, gives the following information about the training of a sports instructor:

> Education and training requirements for athletes, coaches, umpires, and related workers vary greatly by the level and type of sport. . . . 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). . . . Part-time workers and those in smaller facilities are less likely to need formal education or training. . . .

Therefore, a baccalaureate or higher degree or its equivalent is not normally the minimum requirement for entry into this particular position. The *Handbook*, 2006-07 edition, does not state that a bachelor's degree is required to perform the duties of the occupation. Further, the petitioner has not demonstrated that the duties of the proffered position would require a bachelor's degree in a precise and specific course of study that relates directly and closely to the position in question. Therefore, while the petitioner may require a bachelor's degree, the proffered position does not require a bachelor's degree, or its equivalent, in a specific specialty for entry into the occupation. Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. §214.2(h)(4)(iii)(A)(*1*).

The record does not include any evidence that a degree requirement is common to the industry in parallel positions among similar organizations. The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation establishing that a baccalaureate degree in a specific specialty is common in the proffered position among similar tennis organizations. Therefore, the petitioner has not demonstrated that a degree requirement is common to the industry in parallel positions among similar organizations under the first alternative prong of 8 C.F.R. §214.2(h)(4)(iii)(A)(*2*).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has not established that the proposed duties require a degree in a specific specialty. The record does not include any evidence or documentation establishing the complexity or uniqueness of the proffered position. The petitioner has not distinguished the position as unique from or more complex than any other sports instructor, a position for which the *Handbook* does not require a degree in a specific specialty.

The AAO turns next to consideration of the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*). Counsel states that the beneficiary must have a specialized and complex knowledge of tennis technique, physical fitness training and tactics of the tennis game. The petitioner states that the beneficiary is qualified for this position because of her combination of academic and experience-based training. However, the record does not contain evidence of the petitioning entity's past employment history of hiring persons with a degree or its equivalent for the position. Counsel states in his brief that all of the petitioner's tennis coaches have extensive resumes that qualify them for this position; however, the record of proceeding does not contain any of these resumes showing the attainment of a bachelor's degree or its equivalent, in a specific specialty. Counsel states that one of the tennis coaches, [redacted] who is also listed as the director on Form I-129, has been teaching tennis since 1979 and is a highly experienced and team-oriented coach, who has trained several top players. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not contain a copy of Peter Tafarella's bachelor's degree or its equivalent and evidence of the several top players he has worked with and trained. Consequently, the petitioner has not established that the employer normally requires a degree or its equivalent for the position. The petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The AAO now considers the merits of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). The Petition for a Nonimmigrant Worker (Form I-129) reflects that the petitioner employs nine persons. Form I-129 also reflects the petitioner's gross annual income as of the petition's filing date at $350,000 The petitioner has not presented evidence of any training contracts, upcoming events or tournaments that demonstrate the academy's ranking, special awards presented to the academy, current rankings of its coaches and students or any other evidence to show that the skills utilized in its daily operations are so specialized and complex that the knowledge required to perform the duties of the proffered position is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty. Simply going on 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 Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner has not established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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