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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



D2

FILE: EAC 05 197 51737 Office: VERMONT SERVICE CENTER Date: Feb 27 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:



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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 Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 private college. It seeks to employ the beneficiary as a men's head track and field coach. Accordingly, the petitioner 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 record includes: (1) the June 30, 2005 Form I-129 and supporting documents; (2) the director's July 21, 2005 request for further evidence (RFE); (3) the petitioner's representative's July 29, 2005 response to the director's RFE, including an amended petition requesting change of status processing rather than consular processing; (4) the director's August 9, 2005 RFE; (5) the petitioner's representative's August 16, 2005 response to the director's RFE; (6) the director's September 1, 2005 denial decision; and (5) the Form I-290B and documents in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

On September 1, 2005, the director denied the petition determining that the petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, the petitioner's representative submits two letters in support of the appeal.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 proffered position.

On the Form I-129, the petitioner indicated that the proffered position is that of a "men's head track/field coach" and that the individual in the position would "Coach, Recruit Student Athletes" and "Instruct & Train Student-Athletes (and recruit)." The petitioner provided its offer of employment that stated:

In this position, your responsibilities will include assisting in the coaching and recruiting of student athletes and assisting in the planning and organizing and administration of a Division I Intercollegiate program.

In your capacity as Men's Head Track/Field Coach, you are also considered an educator by the College. As an educator, you shall perform all of your duties in a manner that is consistent with the mission of the College. The academic well being, quality of life and overall development of our student-athletes, in concert with the mission of Providence College, and within the context of a Catholic liberal arts education is your primary concern.

The petitioner also provided a May 25, 2005 letter signed by its vice-president and general counsel that stated:

At Providence College, a coach is required to have a Bachelor's degree but not necessarily in a field related to sports unless the coach is involved in sports medicine or in the strength conditioning field.

The May 25, 2005 letter also listed seven coaching positions and the degree held by the individuals in the coaching positions. The degrees of the seven coaches included bachelor's degrees in accounting, marketing, liberal arts, management, sociology (2), and English literature.

The petitioner also provided a copy of a May 6, 2005 job posting for the proffered position that listed the essential functions of the position as:

1. Develop game/practice plans and communicate both verbally and in writing with current and potential students on various academic and social issues, etc. Provide verbal and written instruction to student-athletes on sport-specific skills and game-related tactics in one-on-one, small group, and large group sessions (i.e., during games, on-field practices and video review sessions). Comply with and uphold NCAA rules and guidelines and complete all necessary documentation.
2. Within guidelines issued by the athletic department, the Big East Conference, and the NCAA, perform work related to the recruitment and retention of student-athletes. Assess the abilities of potential student-athletes and make recommendations to the Head Men/Women's Track Coach for acceptance to the college. Such work requires exercise of independent judgment in scouting potential student-athletes.
3. Assess student-athletes' ability to effectively apply sport-specific skills and game-related tactics in game or practice situations subsequent to instruction by head or assistant coach(es).
4. Develop, implement, and monitor a conditioning program for student athletes. Counsel injured student-athletes and assist in and monitor their recovery.
5. Serve as direct liaison to the Office of Academic Services and partner with that office to advise student-athletes on academic issues. Counsel student-athletes on decisions regarding academic standing and academic problems.
6. Initiate fundraising efforts and public relation initiatives through contact with alumni and parents of student-athletes.
7. As needed, arrange for the procurement or purchase of needed equipment or services to support the training and education of student-athletes.

On July 21, 2005 the director requested further evidence including: evidence showing how the educational requirements of the proffered position and the beneficiary's education relate to the position itself; evidence showing that the petitioner hired individuals with a baccalaureate degree in a specific field of study as a standard minimum requirement; and, a list of individuals currently employed in the proffered position and the degree and field of study held by the employees.

In a July 29, 2005 response, the petitioner indicated that the beneficiary held a bachelor's of arts degree in sociology and a bachelor's of science degree in marketing and that the beneficiary's education and extensive experience in coaching qualified the beneficiary for the proffered position. The petitioner noted that it had previously stated that it required all coaches to hold a bachelor's degree. The petitioner further noted:

Since college coaches are college educators, they must have an education which allows them to communicate in a professional manner, to have the skills which they need to recruit talented student-athletes, market successfully their College to attract the top student-athletes, communicate with the administration, parents and supporters for their team. Coaches must also have business management skills in setting budgets for their teams and college experience in academic advising their student-athletes.

On August 9, 2005, the director issued a second RFE requesting, in part, an explanation of how the degree requirements of a baccalaureate degree in marketing related to the specific job requirements of the proffered position.

In an August 16, 2005 response the petitioner indicated that the beneficiary's degree in marketing related to the proffered position, as the position required the recruitment of athletes, i.e. selling the college to prospective talented athletes and their parents. The petitioner asserted that several of the beneficiary's marketing and business courses related to hiring, recruiting, and managing team administrative duties. The petitioner also provided a statement from the beneficiary indicating that the beneficiary believed his business background would assist him in the administrative aspects of the job including finances and the NCAA rules. The record also contains a letter from the director of the petitioner's track and cross country program contending that the beneficiary's degree in marketing and business background would assist the beneficiary in "selling" the program to parents and prospective athletes and managing and coordinating the budgetary issues.

On August 16, 2005, the director determined that the petitioner had not established that the proffered position required at least a four-year degree in a specific discipline, but rather the petitioner had only demonstrated that the proffered position required a four-year degree in general. The director determined that the evidence of record did not establish that the proffered position is a specialty occupation.

On appeal, the petitioner's representative notes that the beneficiary is a world-class athlete, a valuable coach, and has a bachelor's degree, a degree required for all coaches at Providence College. The petitioner's representative attaches an undated letter signed by the petitioner's Director of Track/Cross Country Program, indicating that the most important attributes of the successful applicant for the proffered position are being an All-American athlete, understanding the director's coaching philosophies, and being an international athlete. The Director also indicates that the position requires a four-year bachelor degree in a related field and that the beneficiary has a business degree which will assist in managing and operating a scholarship budget of over \$800,000. A second undated letter, also submitted on appeal, signed by the Athletic Director/Associate Vice-President of Providence College reiterated that the beneficiary held a bachelor's degree in business and that one of the beneficiary's responsibilities would be to manage an operations budget of over \$800,000.

Although the petitioner's letters submitted on appeal do not establish that the proffered position is a specialty occupation, a review of the totality of the record demonstrates that the nature of the duties of the particular position are specialized and complex and 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 AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With reference to coaches, the *Handbook 2006-2007* edition states:

Coaches organize amateur and professional athletes and teach them the fundamentals of individual and team sports. 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. . . . Coaches' additional tasks may include selecting, storing, issuing, and taking inventory of equipment, materials, and supplies. . . . College coaches consider coaching a full-time discipline and may be away from home frequently as they travel to scout and recruit prospective players.

Regarding the education and training for a coaching position, the *Handbook* states:

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.

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.

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Head coaches at public secondary schools and sports instructors at all levels usually must have a bachelor's degree. . . . Degree programs specifically related to coaching include exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

The *Handbook* does not provide information regarding the education necessary for coaches at the college level, but rather emphasizes the importance of knowledge regarding the sporting endeavor and experience as a participant and assistant coach. Further, the *Handbook* indicates that the education and training requirements for coaches varies greatly by the level and type of sport. The information in the *Handbook* is inconclusive regarding the necessity of a bachelor's degree in a specific discipline for a track and field coach at a private college. Thus, the record does not contain independent evidence establishing that a college level track and field coach is a position that requires the attainment of a bachelor's degree in a specialized field of study. Therefore, the petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether 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. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers 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." 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)). In this matter as observed above, the *Handbook* does not report that a private college coach requires a baccalaureate degree.

In addition, the petitioner has not submitted evidence from coaching associations that a degree is a minimum entry-level requirement or from other private colleges or individuals in the industry that attest that private colleges routinely employ and recruit only degreed individuals. The petitioner has not provided evidence that parallel positions in similar private schools requires a bachelor's degree or its equivalent in a specific discipline for entry into a coaching position.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has indicated that the proffered position requires the individual to be an educator and that the "academic well being, quality of life and overall development of our student-athletes" is the incumbent's primary concern. In addition, as the petitioner noted, a university-level coach:

[M]ust have an education which allows them to communicate in a professional manner, to have the skills which they need to recruit talented student-athletes, market successfully their College to attract the top student-athletes, communicate with the administration, parents and supporters for their team. Coaches must also have business management skills in setting budgets for their teams and college experience in academic advising their student-athletes.

It is the amalgam of educating at a university level, applying the knowledge to coach a particular sport at the university level, marketing the college's sporting program to prospective athletes, and using business management skills that make the position so complex and unique that only an individual with a degree can perform the work associated with the position. In this matter although the position does not appear to require a degree in a specific discipline, it does require the theoretical and practical application of a body of highly specialized knowledge in a field of human endeavor, education and sport, that is sufficient to satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(2). Accordingly, the AAO withdraws the director's determination to the contrary.

The AAO notes in brief that the petitioner has also provided evidence that it has employed other individuals in positions of "coach" for various sports and has required the individuals to have at least a bachelor's degree. Again, at first glance it does not appear that the petitioner has required the individuals to have a bachelor's degree in a specific discipline. However, when reading the job descriptions and employment offers to the individuals, the petitioner again describes positions that require a combination of advanced knowledge in endeavors relating specifically to the ability to coach and to educate. Thus, the petitioner has also established it has met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The AAO finds that the petitioner has established that it normally requires a bachelor's degree or its equivalent in a related discipline for university-level coaches.

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 at a college level and of

coaching of a specific sport 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 has also established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

Upon review of the totality of the record, the record sufficiently demonstrates 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 holds the equivalent of a bachelor's degree in marketing and sociology and is a candidate for a master's degree in business administration from a regionally accredited college or university in the United States. 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.