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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 186 52859 Office: VERMONT SERVICE CENTER Date: MAY 17 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a personal fitness business, with 22 employees. It seeks to hire the beneficiary as an exercise and sports training specialist. The director denied the petition because he determined the proffered position did not meet any of the criteria required for classification as a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as an exercise and sports training specialist. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s May 30, 2003 statement submitted at the time of filing; and the petitioner’s response to the director’s June 22, 2003 request for evidence.

At the time of filing, the petitioner stated that it was looking for a trainer with a fitness and soccer background, but did not provide a specific listing of the duties that would be performed by the beneficiary. In response to the director’s request for additional information regarding the duties of its position, the petitioner provided the following overview of the duties of its employment, stating that the beneficiary would be required to:

- Work daily with adult and junior clients on strength training, range of motion, cardio vascular endurance, anaerobic endurance, speed, agility, quickness and coordination (Six to eight one-hour sessions daily);
- Develop speed agility and quickness programs for junior soccer players and evaluate these athletes to determine specific weaknesses (One to two hours daily); and
- Assess current clients’ programs and make adjustments based upon the needs of their sport (One to two hours daily).

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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.Min. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director found the proffered position to be closely aligned to the occupation of athletes, coaches, umpires and related workers, as discussed in the DOL *Handbook*, and concluded that the occupation did not impose a baccalaureate or higher degree, or its equivalent, as a minimum requirement for entry into the profession. Following a review of the 2004-2005 edition of the *Handbook*, the AAO finds the proffered position to be that of a sports instructor/trainer and agrees that it falls within the occupational title of athletes, coaches, umpires and related workers. In pertinent part, the *Handbook*, at page 250, states:

Sports instructors teach professional and nonprofessional athletes on an individual basis. They organize, instruct, train and lead athletes of indoor and outdoor sports.... Because activities are as diverse as weight lifting, gymnastics, and scuba diving, and may include self-defense training such as karate, instructors tend to specialize in one or a few types of activities.... Using their knowledge of their sport, physiology, and corrective techniques, they determine the type and level of difficulty or exercises, prescribe specific drills, and correct the athlete's techniques. Some instructors also teach and demonstrate use of training apparatus, such as trampolines or weights, "while correcting athletes' weaknesses and enhancing their condition....

Coaches and sports instructors sometimes differ in their approach to athletes because of the focus of their work.... Sports instructors spend more of their time with athletes working one-on-one, which permits them to design customized training programs for each individual....

The AAO also concurs with the director's finding that the occupation of sports instructor does not require the attainment of a baccalaureate or higher degree or its equivalent for entry into the profession. The *Handbook*, at page 251, 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 sports instructors, certification is highly desirable for those interested in becoming a tennis, golf, karate, or any other kind of instructor. Often, one must be at least 18 years old and CPR certified. There are many certifying organizations specific to the various sports, and their training requirements vary depending on their standards. 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.

Based on its determination that the proffered position is that of a sports instructor and having found the *Handbook* to identify no baccalaureate or higher degree requirement for employment, the AAO concludes

that the position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three criteria remaining. While the petitioner has submitted no evidence to establish the proffered position as a specialty occupation under the second regulatory criterion -- that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty -- it has provided documentation intended to prove that it requires all its trainers to hold degrees, thus satisfying the requirements of the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) -- the petitioner normally requires a degree or its equivalent for the proffered position.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, in response to the director's request for evidence the petitioner submitted a copy of its newspaper advertisement for the proffered position and a written statement asserting it had never hired a staff trainer, of which it then had ten, who did not hold the minimum of a baccalaureate degree in exercise science or sports training. As the newspaper advertisement relates only to the proffered position it cannot serve as proof of the petitioner's normal hiring practices. Neither can the petitioner's statements regarding its hiring practices serve as evidence of those practices. Simply going on record without supporting documentary evidence is not sufficient for the purposes of meeting the petitioner's burden of proof in these proceedings. *Matter of Sofficci*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner offers copies of four diplomas, which document two individuals as holding both bachelor's and master's degrees. These diplomas, however, do not establish that it is the petitioner's normal practice to require its trainers to hold baccalaureate degrees. The record does not document that either individual is employed by the beneficiary as a trainer, nor that the degrees awarded to them are in fields directly related to the training profession. However, even if the petitioner had established two of its trainers as holding training-related degrees, it has stated that it employs ten individuals in a training capacity. As a result, evidence establishing the degrees of just two trainers would be insufficient proof of the petitioner's overall hiring practices. Therefore, the record does not establish that the proffered position qualifies as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish a proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that the nature of the position's duties is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree in the specialty. In assessing whether the record in the instant case provides evidence that meets the specialized and complex threshold of the fourth criterion, the AAO has again reviewed the duties of the proffered position, as described by the petitioner in response to the director's request for evidence.

In response to the director's request for evidence, the petitioner stated that providing health and fitness and/or sports training to its clients was a "very intricate responsibility" and that a degree requirement was essential to ensure that its trainers had the background necessary to understand the potential for injuries and problems. However, the duties described by the petitioner do not appear to reflect a higher degree of knowledge and skill than would normally be required of a sports instructor, nor do they represent an amalgam of jobs that would require different skills and qualifications. Instead, they fall within the range of responsibilities routinely handled by those who train professional and nonprofessional athletes, a field in which individuals are expected to have significant knowledge and experience in their areas of expertise. Lacking any evidence that the petitioner's employment is more complex or specialized than other sports instructor positions, the AAO finds the petitioner has also failed to establish that the proffered position qualifies under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.