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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 212 54630 Office: NEBRASKA SERVICE CENTER

Date: JAN 05 2005

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:



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 service center director 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 non-profit youth soccer club, and seeks to employ the beneficiary as an athletic trainer/coach for youth soccer. 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 director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an athletic trainer/coach for youth soccer. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: participate in pre, post and mid season meetings with the training/coaching staff; demonstrate a model practice routine; support a systematic approach to training and play that is both rigorous and fun; help design professional development training for coach/trainers and training assistants as needed; coach and train at least one boys and one girls team per season; help develop and participate in clinic-style practices for all levels with other training/coaching staff; observe games at all levels and provide feedback to coach/trainers for subsequent practices; be available to substitute for a coach/trainer at practices or games; conduct summer training camps U-9 through high school; conduct regularly scheduled club-wide specialty clinics for all teams: goal keeping, ball control, pass and shoot, etc.; provide input to the operations committee on a training manual; help design annual club tryouts and participate as an evaluator; help develop a mentoring program for aspiring young coach/trainers from high schools and the community; attend operations committee meetings and the petitioner’s board meetings as appropriate; and assist in selecting, acquiring, and/or creating appropriate training equipment. The petitioner requires a bachelor’s degree or its equivalent in physical education, athletic training, education or a related field for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those provided by “athletes, coaches, umpires, and related workers” as detailed in the *Handbook*. The *Handbook* notes that the education and training requirements for coaches vary greatly by the level and type of sport. Public and secondary school coaches and sports instructors must have a bachelor’s degree to meet state licensure requirements for public school teachers. There is no standard degree requirement, however, for coaches in the industry outside of a formal educational environment. Many

individuals enter into the coaching profession based upon personal experience and athletic training without any education at the baccalaureate level. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted the following opinion letters: Dr. [REDACTED] Assistant Professor of Physical Education, DePaul University; [REDACTED] DePaul University Head Coach, Men's Soccer, U.S. Olympic Development Program Trainer; [REDACTED] Director, *Chicago Fire* Academy Administration (the developmental youth soccer program of the *Chicago Fire* professional soccer team); [REDACTED] director of Referee Education of the Illinois Youth Soccer Association (IYSA); [REDACTED] Director of Youth Development for Trevians SC (a developmental soccer club in the Chicago, Il area); and [REDACTED] Director of Coaching and Player Development, [REDACTED]

[REDACTED] All of these individuals assert that it is their understanding that the petitioner is a premier youth developmental soccer club in the Chicago, Il area that provides high-level training for its youth who aspire to progress from elite local soccer competition to Olympic developmental programs, college, and professional ranks, etc. Each opinion essentially asserts that it is standard in the industry to require a bachelor's degree in sports science, physical education, kinesiology or related fields for entry into the proffered position. The opinions of all these individuals are based upon the writer's personal education and experience. None of the opinions cite any additional basis for the opinion such as any labor or industry study, survey, or other verifying information. The opinions shall, therefore, be given little evidentiary value as they are contrary to the findings set forth in the *Handbook*. As previously noted, the education and training requirements for coaches and related workers vary greatly by the level and type of sport. Coaches in public educational environments are normally required to possess an appropriate bachelor's degree because of state licensing requirements for teachers/instructors. Coaches outside of that environment, however, including coaches of professional athletes, are generally not required to possess a baccalaureate level education and many gain their positions based upon their experience in a particular sport, as well as coaching experience gained at lower levels for advanced or high-level coaching positions. Two of the above-cited opinions (Trevians SC, and the Chicago Lakefront Soccer Club) purport to be from similar organizations to that of the petitioner, and both assert that they require a minimum of a baccalaureate level education for positions similar to that of the proffered position. Neither, however, provide any documentary evidence supporting that proposition and the opinions in that regard are thus, also of little evidentiary value. The petitioner has failed to establish the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard as it appears that the proffered position is new to the organization. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position appear to be routine for coaches/trainers in the industry. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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