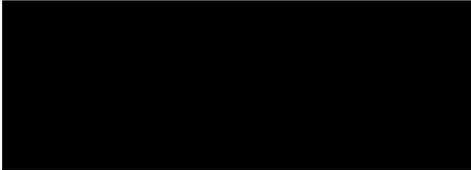


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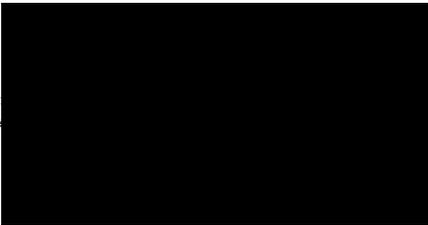
FILE: EAC 03 065 50174 Office: VERMONT SERVICE CENTER

Date: MAY 10 2006

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:



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 service center denied the nonimmigrant visa petition and rejected the subsequent appeal. 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 an athletic rowing club that seeks to employ the beneficiary as a director of rowing and program development. 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 the ground that the proffered position is not a specialty occupation, and rejected the subsequent appeal on the basis that it had not been signed by the affected party. On appeal, counsel submits a brief and additional evidence.

The AAO will first consider whether the director properly rejected the appeal.

The record contains a February 4, 2004 letter from the director of the Vermont Service Center which rejects the appeal on the ground that it had not been signed by the affected party. The letter states that [REDACTED] signed the appeal, and that the Form G-28, Entry of Appearance as Attorney or Representative, which was submitted with the appeal, had not been properly signed because it did not have the petitioner's original signature.

The director improperly rejected the appeal. The director denied the case under 8 CFR 103.3(a)(2)(v)(A)(I), which states that an appeal must be rejected as improperly filed if it is filed by a person or entity not entitled to file it. The appeal under consideration had been filed by [REDACTED] counsel for the petitioner. Counsel had not submitted a properly executed Form G-28 with the appeal: it lacked the petitioner's original signature. The regulation at 8 CFR 103.3(a)(2)(v)(A)(2)(i) states:

If an appeal is filed by an attorney or representative without a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28) entitling that person to file the appeal, the appeal is considered improperly filed. In such a case, any filing fee the Service has accepted will not be refunded regardless of the action taken.

The regulation at 8 CFR 103.3(a)(2)(v)(A)(2)(iii) applies with the instant appeal. It states:

If the reviewing official decides favorable action is not warranted with respect to an otherwise properly filed appeal, that official shall ask the attorney or representative to submit Form G-28 directly to the AAU. The official shall also forward the appeal and the relating record of proceeding to the AAU. The appeal may be considered properly filed as of its original filing date if the attorney or representative submits a properly executed Form G-28 entitling that person to file the appeal.

The regulation indicates that the director should have requested that counsel submit the Form G-28 directly to the AAO, and that the director should have forwarded the appeal and record of proceeding to the AAO. In accordance with the regulation, the AAO considers the appeal as properly filed as of its original filing date.

Thus, the AAO withdraws the director's rejection of the instant appeal, and considers it as properly filed as of May 27, 2003, the original filing date.

The AAO will now address whether the proposed position qualifies as 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.

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.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of rowing and program development. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail creating and implementing rowing programs for all levels and organizing the programs by season; hiring and supervising coaches and staff; creating a

master workout plan with coaches; organizing Regattas and transportation; creating systems that would allow programs to run smoothly such as boat usage and safety rules and maintenance schedules; serving as liaison between members and club management on rowing issues; implementing the club goal of building a network of rowing clubs; promoting the sport through fundraising for the national team; overseeing the boathouse and boathouse supervisor; creating a budget and fee structure for all aspects of the program; tracking budgetary issues for the rowing program, including accounting, equipment purchases; and tracking inventory. The petitioner's April 9, 2003 job description indicated that the minimum requirement for the position is a bachelor's degree and ten years of experience in rowing.

The director determined that the proffered position is not a specialty occupation. The director found the submitted letters, excerpt from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and job postings unpersuasive in demonstrating that a specific baccalaureate degree is the minimum requirement for entry into the proposed position. Referencing the court's decision in the case of *Defensor vs. Meissner*, 201 F.3d. 384 (5<sup>th</sup> Cir. 2000), the director stated that the ultimate employment of the alien must be examined to determine whether the position qualifies as a specialty occupation, and that the critical element is not the title of the position or 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 director found the *Dictionary of Occupational Titles (DOT)* did not establish that the proposed position is a specialty occupation.

On appeal, counsel states that the proposed position is a specialty occupation. Counsel contends that the director did not understand that the proffered position involves not only instruction in the sport of rowing but also "comprehension of the business aspects of managing athletics." According to counsel, the proposed position is a "union of sports business management skills and the highly specialized field of rowing." The submitted evidence, counsel asserts, focused mainly on the typical requirement of a bachelor's degree for those instructing in specific sports; it is unreasonable to conclude that the proposed position, which entails hiring, firing, and supervising rowing coaches, and creating the rowing program, could be hired with less education than a rowing coach. The submitted evidence from the *Handbook* and the letters from Sarah Lawrence College and the Montgomery Central Rowing and Sculling Club, counsel maintains, establishes that the industry standard for the positions of rowing coach and head coach, which are lower in level than the proposed position, is a bachelor's degree. The proposed position's job duties, counsel states, relate specifically to the beneficiary's bachelor's degree. Counsel states that the director erroneously found the submitted letters from [REDACTED] and Professor [REDACTED] unpersuasive in establishing that the proposed position is a specialty occupation. Counsel states that the petitioner submitted a list of its previously employed rowing coaches, and emphasizes that because a rowing coach does not require skills of sports management, it is lower in level than the proposed position. Counsel asserts that the director erroneously applied the industry standard of "sports instruction" to the proposed position instead of "sports management specialist." Finally, counsel describes the additional evidence submitted on appeal.

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). Therefore, the proffered position is not a specialty occupation.

The AAO notes that the record contains an approval notice issued on the beneficiary's behalf from another employer. This evidence does not establish that the proffered position is a specialty occupation simply because CIS has approved another petition, which may be similar, in the past. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988).

Now the AAO turns to consider 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 *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 determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the proposed position is more akin to a sports management specialist rather than a sports instructor. Some of the beneficiary's duties are similar to those of a coach or an instructor. The beneficiary will supervise coaches and create a master workout plan with them. The *Handbook* describes coaches as organizing, instructing, and teaching amateur and professional athletes in fundamentals of individual and team sports. They also select, store, issue, and inventory equipment, materials, and supplies. Instructors are described in the *Handbook* as filling the role of a coach in individual sports.

The *Handbook* reports that a bachelor's degree in a specific specialty is not required for a coach or instructor positions; however, public secondary school head coaches and sports instructors at all levels usually must have a bachelor's degree in a specific field and licensure. Because the petitioner is not a public secondary school, the beneficiary's duties associated with a coach and instructor would not require a specific baccalaureate degree.

The petitioner's April 9, 2003 letter states that 25 percent of the beneficiary's time will be devoted to administrative duties such as communicating with the public, advertising and marketing, handling press releases, newsletter articles, and general office organization; 25 percent to budgeting and financial

management; and 25 percent to scheduling boat assignments, training, regattas, travel, and rowing camps. The latter 25 percent fall within the category of coaching or instructing, which has already been discussed in this decision.

As described by the petitioner, the AAO finds that the administrative and budgeting and financial management duties would not require baccalaureate-level education in a specific field. A specific bachelor's degree would not be required to establish boat usage and safety rules and maintenance schedules. Nor would a specific bachelor's degree be required to serve as liaison between members and club management on rowing issues, promote the sport through fundraising, or oversee the boathouse and boathouse supervisor. The duties of purchasing equipment and tracking inventory are described in the *Handbook* as performed by coaches. The petitioner does not elaborate on the duty to build a network of rowing clubs or to develop a budget and fee structure for the program. Thus, the AAO cannot determine whether these duties would actually require baccalaureate-level education in a specific discipline. The petitioner therefore fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to letters, job postings, and programs at universities and a community college.

However, the submitted letters and job postings do not establish that the degree requirement is common to the industry in parallel positions among similar organizations. The letter from Wisconsin Men's Intercollegiate Rowing states that "to be eligible for hire at a major US university in the field of athletics, one, at the very least requires a BA/BS from a 4-year institution." This is not persuasive because the petitioner is not a major university in the field of athletics. The letter from Sarah Lawrence College states that its standard practice is to require a bachelor's degree and previous coaching experience for a head-coach position. The AAO notes that the petitioner is not a college; it is an athletic rowing club. The posting and letter from Montgomery Central Rowing & Sculling indicate that a candidate must have a bachelor's degree; however, they do not state that the degree must be in a specific specialty. The letter from the head coach at University of Portland Crew states that program directors in the athletics field "have a variety of degree concentrations, such as management, business administration, or physiology." Since this letter indicates that a wide variety of bachelor's degrees are acceptable for a program director position, it fails to show that a specific baccalaureate degree is required for the proposed position. The letter from Kevin Sauer, Head Rowing Coach at the University of Virginia, states:

a bachelor[']s degree plus experience related to athletics in a particular sport is the minimum requirement for hiring someone for the position of Director of Rowing. Moreover, here at Virginia we have only hired Head Coaches who possess a minimum of a bachelor[']s degree in a directly related field or bachelor degree plus directly related experience.

This letter suggests that although a bachelor's degree is required for a director of rowing position, the degree need not be in a specific specialty.

The postings from row2k and GMS Rowing Center do not indicate that the bachelor's degree must be in a specific specialty. Although the posting for a head coach, Northampton, Massachusetts, and the University of Central Florida's Athletics Department require a bachelor's degree, the former position is for a public high school position, which the *Handbook* explains requires a bachelor's degree, and the latter position is for a university. Both of these organizations differ from the petitioner.

The submitted information about the sports management program at the community college does not indicate that a bachelor's degree is required to enter into the sports management field; in fact, this evidence states that students holding an associate degree are prepared for immediate employment in the field. The evidence from Indiana University and Ohio University does not indicate that employers require candidates to possess a specific bachelor's degree to perform the duties of the proposed position. This evidence merely describes the programs and career options that are available with a sport industry, sport management, or recreational sport degree. The postings for the director of intramural sports and the aquatic program director indicate that a candidate must possess a master's degree in recreation or a closely related field; thus, this position's educational requirements differ from the proposed position.

Based on the above discussion, the submitted evidence fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. As already discussed in this decision, the beneficiary's administrative and budgeting and financial management duties do not require baccalaureate-level education in a specific field, and the beneficiary's duties which are similar to those of a coach or an instructor do not require a specific bachelor's degree.

No evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed in this decision, the beneficiary's administrative and budgeting and financial management duties do not require baccalaureate-level education in a specific field, and the beneficiary's duties which are similar to those of a coach or an instructor do not require a specific bachelor's degree.

As related in the discussion above, 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.

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