



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 13 2014

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Swim and Tennis Club." In order to employ the beneficiary in what it designates as a "High Performance Tennis Coach & Early Development Specialist" position, the petitioner seeks to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal. We reviewed the record in its entirety before issuing our decision.¹

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Specialty occupation means an occupation which [(1)] 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 [(2)] 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, a proposed position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "High Performance Tennis Coach & Early Development Specialist" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 27-2022, Coaches and Scouts from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree with a major in Exercise Science/Wellness and a minor in English from [REDACTED] Alabama.

Counsel also submitted: (1) an offer of employment dated March 22, 2013; (2) a letter, also dated March 22, 2013, from the petitioner's general manager; (3) a print-out of content from the petitioner's website pertinent to other employees of the petitioner; and (4) a print-out pertinent to the meaning of Job Zone Four in the context of the Foreign Labor Certification (FLC) Data Center.

The March 22, 2013 offer of employment states the following duties of the proffered position:

1. Responsible for the instruction and coaching of junior tennis students in 10 & Under/Early Development Program at the club in the fundamentals, performance principles, technique, conditioning, and strategies and rules of the sport of tennis. Duties will include managing and running on-court development of current High Performance Juniors. This will include skill specific drills to hone skills to top players; dead ball feeding for shot accuracy; live ball feeding for shot recognition; hitting in to provide a higher level for junior players. You will supervise match play to ensure game style development; manage the 10 & Under/Early Development Program and will be responsible for planning, organizing and conducting practice sessions; You will provide training direction; adjust coaching techniques; responsible for the identification, instruction, and development of quality junior players, which will enhance the reputation of the club attracting additional quality level competitors; **40% of time involved**
2. Responsible for off court development of High Performance Juniors. You will create & implement Physical Fitness Plan for Juniors; coordinate Fitness Sessions and identify weaknesses; test conditioning periodically for endurance, agility and power; create and implement Mental Skills Workbook; coordinate mental skills to apply to on court tough situations; provide nutritional information and oversight for players; assist with racket and string selection and custom options; **30% of time involved**
3. Responsible for talent identification in the 10&Under Program. You will aid in developing and recognition of development of junior players under 10, and will assist in creating a developmental pathway of under 10 players to High Performance. You will create and implement a travel squad of under 10 players to compete in various events around the city, state, and section; **20% of time involved**
4. Responsible for programming for Junior Curriculum, marketing and advertising various programs such as camps, mixers and drills to promote the Under 10 High Performance Program; responsible for managing and supervising tennis related events and activities for Junior players of all levels; planning, executing and managing a year-round Junior Development Instructional Program. You will be also responsible for developing World Class Training Center for all ages and for adjusting curriculum to allow for more top level U10's & U12's; **10% of time involved**

The March 22, 2013 letter from the petitioner's general manager reiterates that duty description. As to the educational qualifications of the proffered position, that letter repeatedly states that the position requires a bachelor's degree, but not that it requires a bachelor's degree in any specific specialty.

The content from the petitioner's website identifies some of the petitioner's employees, their positions, and some of their credentials for their positions.

[REDACTED] the petitioner's President/Partner, has numerous achievements pertinent to tennis. The information pertinent to him does not, however, indicate that he has a college degree.

[REDACTED], the petitioner's Vice-President/Owner, has a master's degree in business administration with concentrations in marketing and public relations, as well as various achievements pertinent to tennis.

The information about [REDACTED] the petitioner's Director of Tennis, indicates that he has many achievements pertinent to tennis and was an athlete at [REDACTED], but not that he has a college degree.

The information about [REDACTED] Academy Director, indicates that he has many achievements in tennis, including playing at the collegiate level at [REDACTED] but does not indicate what degree he received, if any.

Information about [REDACTED] Academy Head Professional, indicates that he has many achievements in tennis, but not that he has any college degree.

Information about [REDACTED] Adult Director, indicates that she graduated from [REDACTED] and has many achievements in tennis. It does not identify the degree she received.

Information about [REDACTED] Adult Head Director, indicates that he played collegiate tennis at [REDACTED] and has many other achievements in tennis, but does not indicate whether he graduated from [REDACTED] or, if he did, what degree he received.

Information about [REDACTED] Staff Professional – Developmental Specialist, indicates that he played collegiate tennis, has many other achievements in tennis, and graduated from [REDACTED]. It does not reveal what degree he received.

Information about [REDACTED] Academy Head Professional, indicates that he has numerous achievements in tennis and graduated from the [REDACTED] but does not reveal what degree he received.

Information about [REDACTED] Associate Tennis Professional, indicates that he has numerous achievements in tennis and graduated from [REDACTED] but does not reveal what degree he received.

Information about [REDACTED] Academy Head Professional, indicates that he has numerous achievements in tennis, including playing tennis at [REDACTED] where he received a bachelor's degree in marketing.

Information about [REDACTED] Adult Head Professional, indicates that he has many achievements in tennis including playing collegiate tennis, and that he received a bachelor's degree in political science from [REDACTED]

The print-out pertinent to the meaning of Job Zone Four indicates that positions in that job zone require considerable preparation, that they require "a minimum of two to four years of work-related skill, knowledge, or experience," and that "Most [such] occupations require a four-year bachelor's degree, but some do not."

On September 10, 2013, the service center issued an RFE in this matter. The service center requested additional evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted (1) an undated letter from [REDACTED] President; (2) a letter, dated October 22, 2013, from [REDACTED] Director of Club Operations of [REDACTED] (3) a letter, dated October 28, 2013, from [REDACTED] Associate Director of Tennis at the [REDACTED] (4) a letter, dated October 29, 2013, from the petitioner's general manager; and (5) a letter, dated October 30, 2013, from counsel.

The undated letter from [REDACTED] President, states that he is also tennis director at the Country Club of [REDACTED] in Georgia. He further states, "Clubs that are looking for tennis professionals need to have professionals that are competent and well-rounded in education primarily for their off-court responsibilities," and that "Club directors in Georgia have an [sic] general standard of employing Teaching professionals that require a University degree." He did not state that such positions require a bachelor's degree in any specific specialty.

In his October 22, 2013 letter, [REDACTED] Director of Club Operations at [REDACTED] stated:

To qualify for a position of a Tennis Professional, Tennis Coach, or High Performance Tennis Coach with our academy, the successful candidate would need to have earned a Bachelor's Degree or its equivalent in a related field. Our Academy currently employs six Tennis Professionals, Coaches, and High Performance Tennis Coaches, and all of them have earned a BA degree or its equivalent.

He did not indicate what degrees his tennis professionals and coaches have earned, what alternative qualifications he considers to be equivalent to a bachelor's degree, or what subjects he considers to be sufficiently closely related to such positions.

In her October 28, 2013 letter, [REDACTED] Associate Director of Tennis at the [REDACTED] Club, stated:

To qualify for a position of a Tennis Coach with our Club, the successful candidate would need to have earned at least a Bachelor's Degree or its equivalent in a related field. Our Club currently employs four full time Tennis Coaches, and all of them have earned a BA degree or its equivalent.

Ms. [REDACTED] did not indicate what degrees those tennis coaches have earned, what alternative qualifications she considers to be equivalent to a bachelor's degree, or what subjects she considers to be sufficiently closely related to such positions.

In his October 29, 2013 letter, [REDACTED] the petitioner's general manager, provided a spreadsheet containing additional information pertinent to the petitioner's employees' educational backgrounds and other qualifications.

The spreadsheet pertinent to the petitioner's employees shows that [REDACTED] has a bachelor's degree in business administration, [REDACTED] has a bachelor's degree in psychology, [REDACTED] has bachelor's degrees in political science and geography, [REDACTED] has a bachelor's degree in industrial management, [REDACTED] has a bachelor's degree in supply chain management, and that [REDACTED] has a bachelor's degree in English.

The spreadsheet provides information pertinent to other employees who were not previously mentioned. It states that [REDACTED] a High Performance Tennis Coach, has a bachelor's degree in kinesiology for exercise science, that [REDACTED] an Early Development Specialist, has a bachelor's degree in professional tennis management and marketing. It further asserts that [REDACTED] a tennis professional not previously mentioned, has the equivalent of a bachelor's degree in physical education based on 14 years of professional experience in a related field. It does not state what that related field was or provide any other information about that professional experience.

The spreadsheet also states that [REDACTED] has the equivalent of a bachelor's degree in physical education based on three years of college education and 12 years of experience teaching tennis and that [REDACTED] has the equivalent of a bachelor's degree in physical education based on 13 years of professional experience in a related field. It does not reveal what that related field was.

In his October 30, 2013 letter, counsel asserted that the evidence submitted demonstrates that the proffered position qualifies as a specialty occupation position.

The director denied the petition on February 25, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted the Form 290B appeal and an addendum. Subsequently, counsel submitted a brief. In both the addendum to the appeal and the brief counsel asserted that the evidence submitted is sufficient to demonstrate that the proffered position qualifies as a specialty occupation position.

IV. ANALYSIS

As a preliminary matter, the petitioner's claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular

position. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 27-2022, Coaches and Scouts from O*NET. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Coaches and Scouts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of coaches and scouts:

What Coaches and Scouts Do

Coaches teach amateur and professional athletes the skills they need to succeed at their sport. Scouts look for new players, evaluating their skills and likelihood for success at the college, amateur, or professional level. Many coaches are also involved in scouting.

Duties

Coaches typically do the following:

- Plan, organize, and conduct practice sessions
- Analyze the strengths and weaknesses of individual athletes and opposing teams
- Plan strategies and choose team members for each game
- Provide direction, encouragement, and motivation to prepare athletes for games
- Call plays and make decisions about strategy and player substitutions during games
- Plan and direct physical conditioning programs that enable athletes to achieve maximum performance
- Instruct athletes on proper techniques, game strategies, sportsmanship, and the rules of the sport
- Keep records of athletes' and opponents' performance
- Identify and recruit potential athletes
- Arrange for and offer incentives to prospective players

Scouts typically do the following:

- Read newspapers and other news sources to find athletes to consider

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

- Attend games, view videotapes of the athletes' performances, and study statistics about the athletes to determine talent and potential
- Talk to the athlete and the coaches to see if the athlete has what it takes to succeed
- Report to the coach, manager, or owner of the team for which he or she is scouting
- Arrange for and offer incentives to prospective players

Coaches teach professional and amateur athletes the fundamental skills of individual and team sports. They hold training and practice sessions to improve the athletes' form, technique, skills, and stamina. Along with refining athletes' individual skills, coaches are also responsible for instilling in their players the importance of good sportsmanship, a competitive spirit, and teamwork.

Many coaches evaluate their opponents to determine game strategies and to establish specific plays to practice. During competition, coaches call specific plays intended to surprise or overpower the opponent, and they may substitute players for optimum team chemistry and success.

Many high school coaches are primarily academic teachers who supplement their income by coaching part time.

Sports instructors differ from coaches in their approaches to athletes because of the focus of their work. For example, coaches manage the team during a game to optimize its chance for victory, but sports instructors are often not permitted to instruct their athletes during competition.

Like coaches, though, sports instructors hold practice sessions, assign specific drills, and correct athletes' techniques. They spend more of their time working one-on-one with athletes, designing customized training programs for each individual.

Sports instructors typically specialize in teaching athletes the skills of an individual sport, such as tennis, golf, or karate. Some sports instructors, such as pitching instructors in baseball, may teach individual athletes involved in team sports.

Scouts evaluate the skills of both amateur and professional athletes. Scouts seek out top athletic candidates for colleges or professional teams and evaluate their likelihood of success at a higher competitive level.

Most of the duties the petitioner's general manager attributed to the proffered position are consistent with the duties of coaches and sports instructors as described in the *Handbook* chapter pertinent to coaches and scouts. On the balance, we find that the proffered position is a position described in the coaches and scouts chapter of the *Handbook*.

The *Handbook* states the following about the educational requirements of coach and scout positions:

How to Become a Coach or Scout

Coaches and scouts typically need a bachelor's degree. They must also have extensive knowledge of the sport. Coaches typically gain this knowledge through their own experiences playing the sport at some level. Although previous playing experience may be beneficial, it is not required for most scouting jobs.

Education

High schools typically hire teachers at the school for most coaching jobs. If no suitable teacher is found, schools hire a qualified candidate from outside the school. For more information on education requirements for teachers, see the profile on high school teachers.

College and professional coaches must usually have a bachelor's degree. This degree can typically be in any subject. However, some coaches may decide to study exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

Scouts must also typically have a bachelor's degree. Some scouts decide to get a degree in business, marketing, sales, or sports management.

Other Experience

College and professional coaching jobs also typically require experience playing the sport at some level.

However, scouting jobs typically do not require experience playing a sport at the college or professional level. Employers look for applicants with a passion for sports and an ability to spot young players who have exceptional athletic ability and skills.

Licenses, Certifications, and Registrations

Most state high school athletic associations require coaches to be certified. Certification often requires coaches to be a minimum age (at least 18 years old) and be trained in cardiopulmonary resuscitation (CPR) and first-aid. Some states also

require coaches to attend classes related to sports safety and coaching fundamentals prior to becoming certified.

Although most public high school coaches need to meet these state requirements in order to become a coach, certification may not be required for coaching and sports instructor jobs in private schools.

Certification requirements for college coaching positions also vary.

Additional certification may be highly desirable or even required in order to become an instructor in scuba diving, tennis, golf, karate, or other individual sports. There are many certifying organizations specific to the various sports, and their requirements vary.

Part-time workers and those in smaller facilities or youth leagues are less likely to need formal education or training and may not need certification.

Advancement

Many coaches begin their careers as assistant coaches to gain the knowledge and experience needed to become a head coach. Large schools and colleges that compete at the highest levels require a head coach with substantial experience at another school or as an assistant coach.

To reach the ranks of professional coaches, a candidate usually needs years of coaching experience and a winning record in the lower ranks or experience as an athlete in that sport.

Scouts may begin working as talent spotters in a particular area or region. They typically advance to become supervising scouts responsible for a whole territory or region.

Important Qualities

Communication skills. Because coaches instruct, organize, and motivate athletes, they must have excellent communication skills. They must effectively communicate proper techniques, strategies, and rules of the sport so every player on the team understands.

Decision-making skills. Coaches must choose the appropriate players to use at a given position at a given time during a game and find a strategy that yields the best chance for winning. Coaches and scouts also must be very selective when recruiting players from lower levels of athletics.

Dedication. Coaches must attend daily practices and assist their team and individual athletes in improving their skills and physical conditioning. Coaches must be dedicated to their sport, as it often takes years to become successful.

Interpersonal skills. Being able to relate to athletes helps coaches and scouts foster positive relationships with their current players and recruit potential players.

Leadership skills. Coaches must demonstrate good leadership skills to get the most out of athletes. They also must be able to motivate, develop, and direct young athletes.

Resourcefulness. Coaches must utilize the talent on a team to achieve the best chances for winning. For example, a coach may change players during the game to meet the defensive needs of the team.

Id. at <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4> (last visited Nov. 6, 2014).

The *Handbook* states, "Coaches and scouts typically need a bachelor's degree." It does not state that the requisite degree must be in any specific specialty. The *Handbook* does not support the assertion that coach and scout positions qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

The petitioner submitted a print-out regarding Job Zone Four as an indication that the proffered position qualifies as a specialty occupation position. O*NET indicates that Job Zone Four positions require considerable preparation.³ It states that most such positions require a bachelor's degree, but some do not. It does not indicate that a particular position, because it is included in Job Zone, requires a bachelor's degree. Further, even as to those Job Zone Four positions that require a bachelor's degree, O*NET does not indicate that the requisite bachelor's degrees must be in a

³ For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

The record of proceeding does not contain any persuasive documentary evidence from any relevant authoritative source establishing that the proffered position's inclusion in the occupational category of Coaches and Scouts would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of tennis and of teaching tennis, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Counsel appears to cite the various letters from others in the industry as evidence that the proffered position qualifies as a specialty occupation position. However, those letters, considered in sum, do not provide strong support for that position.

The undated letter from [REDACTED] President, states that clubs seeking tennis professionals require a bachelor's degree. He does not indicate that the degree must be in any specific specialty. Further, he stated that the degree requirement is imposed because tennis clubs "need to have professionals that are competent and well-rounded in education primarily for their off-court responsibilities." Again, the requirement of a college degree with no specific major, for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm'r. 1988).

[REDACTED] stated, in his October 22, 2013 letter, that all of [REDACTED] tennis professionals have bachelor's degrees, but did not identify the subjects in which they have degrees. He further stated that to qualify for a tennis professional position at that club, a candidate would need to have a bachelor's degree "or the equivalent" in a "related field." He did not indicate what credentials he would consider to be equivalent to a bachelor's degree or identify the array of fields he would consider to be sufficiently closely related to be an adequate educational qualification for a tennis professional position.

Similarly, [REDACTED] stated that [REDACTED] four full-time tennis coaches all have bachelor's degrees, but did not list the subjects in which they obtained degrees. She also indicated that to qualify for a tennis coach position with that club, a candidate must have a bachelor's degree "or its equivalent in a related field," but without stating what credentials would be considered equivalent to a bachelor's degree or what array of fields would be sufficiently closely related to a tennis professional position to qualify one for such a position. As such, we cannot determine that the proffered position requires a bachelor's degree or the equivalent within the meaning of the salient regulations (*See* 8 C.F.R. § 214.2(h)(4)(iii)(C)) or that a degree that would qualify one for such a position must be in a specific specialty.

Thus, the evidence of record does not establish that parallel positions with similar organizations in the petitioner's industry commonly require a minimum of a bachelor's degree in a specific specialty or its equivalent, and the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is

required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level II position from the Coaches and Scouts category, an indication that the proffered position is a position for an employee who performs moderately complex tasks that require limited judgment. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* does not indicate that Coaches and Scouts positions require a specialized degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation that may be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁴

The petitioner's evidence states that one of the petitioner's tennis professionals has a degree in kinesiology for exercise science and one has a degree in professional tennis management and marketing. The petitioner's evidence also states that other tennis professionals in its employ have the equivalent of bachelor's degrees, but provides insufficient evidence to support that assertion. Further, the petitioner did not submit documentary evidence of the claimed degrees.

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, the petitioner claims that it employs tennis professionals who have degrees in a variety of majors such as marketing, psychology, political science, geography, industrial management, supply chain management, English, business administration, and business administration with a concentration in marketing and public relations. Thus, the petitioner's own evidence makes plain that the petitioner does not require a minimum of a bachelor's degree *in a specific specialty* or its equivalent for its tennis professional positions.

The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

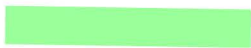
Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as instructing and coaching junior tennis students, supervising play, providing training direction, overseeing off-court development, etc., contain no indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of coach and scout positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁵ The evidence does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

⁵ The duties as described lack sufficient specificity to distinguish the proffered position from other coach and scout positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Further, the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.



V. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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