



U.S. Citizenship
and Immigration
Services



D2

FILE: EAC 04 013 54511 Office: VERMONT SERVICE CENTER Date: JUN 27 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:
[Redacted]

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 sports and recreational facility, and seeks to employ the beneficiary as a recreational development director and coach. 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 spend 35 per cent of his time in sports/event management, 35 per cent of his time in business development, and 30 per cent of his time with coaching responsibilities. The beneficiary’s duties are more specifically described in the petitioner’s support letter of September 30, 2003, and its response to the director’s request for evidence. The petitioner requires a minimum of a bachelor’s degree in athletic administration, sports studies, recreation or a related field for entry into the offered position.

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 varied, but essentially involve those of coaches, recreation supervisors, and general managers 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 educational requirements for recreation workers/supervisors range from high school diplomas, or sometimes less for summer jobs, to graduate degrees for some administrative positions in large public recreation systems. Full-time professional positions usually require a college degree with a major in parks and recreation or leisure studies, but a bachelor’s degree in any liberal arts field, as opposed to a degree in a specific educational discipline, may be sufficient for jobs in the private sector.

Finally, with regard to the beneficiary's duties as recreational development director, the AAO finds that these duties are most often filled by general managers. The *Handbook* notes that the formal education and experience of general/operations managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the above mentioned occupations. A degree in a wide range of disciplines, and/or appropriate experience, will qualify an individual to perform the varied duties of the position. The petitioner has 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, and in support of this assertion submits copies of numerous job advertisements and documentation concerning the educational backgrounds of coaches and similar positions in a variety of organizations. The documentation submitted, however, does not establish an industry wide educational standard for the offered position. In fact, the submitted documentation confirms the findings of the *Handbook*, that similar positions are filled by individuals with degrees in a wide range of educational disciplines, and by individuals with coaching experience that do not have a bachelor's degree. It should further be noted that many of the advertisements and web cites referenced are not from organizations similar in nature or scope to that of the petitioner. The petitioner has, therefore, failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree in a specific specialty for the proffered position, and states that two of its golf coaches possess sports related or health science degrees. The petitioner has not, however, supplied documentary evidence of any such degree held by these individuals. Nor has the petitioner submitted documentation to confirm the degree, if any, held by similar coaches or employees. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position appear to be routine for coaches and the above listed management positions 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) or (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.

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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.