

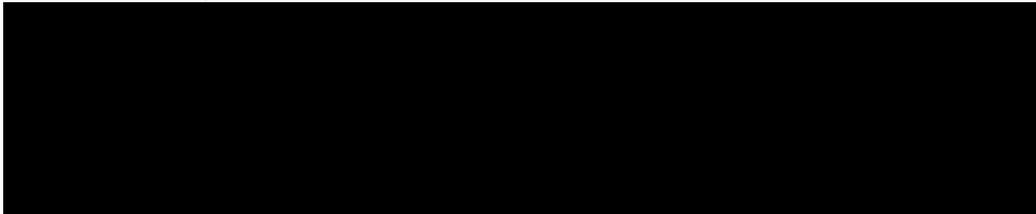
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 232 57511 Office: LINCOLN SERVICE CENTER Date: JAN 27 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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a research university that seeks to employ the beneficiary as an assistant women's tennis coach. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief, supplemental briefs, and additional evidence.

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, a brief, supplemental briefs, and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as assistant women's tennis coach. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 promoting the philosophy and objectives of the athletics program; assisting with scouting and recruiting student-athletes; coaching student-athletes which includes evaluating their performance in practice and competition and providing leadership and instruction in deficiencies and monitoring their conditioning and training; assisting in planning and administering the off-season training program; counseling team members in academic, disciplinary, and personal matters; participating in collecting and analyzing tactical and statistical data about opponent teams and assisting in designing game plans and strategies; attending preparatory meetings and implementing the strategies developed during the meetings; advising and counseling student-athletes to comply with financial aid rules and regulations; and assisting in monitoring student-athletes' academic progress and eligibility status. For the proposed position the petitioner requires a bachelor's degree and relevant experience.

The director determined that the proffered position is not a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proposed position is similar to a sports coach, and that that occupation does not require a bachelor's degree in a specific specialty. The director found the submitted job postings unpersuasive in establishing that the proposed position qualified as a specialty occupation. The director further found that the petitioner does not require a bachelor's degree in a specific specialty for the proposed position. According to the director, the proposed duties do not require a baccalaureate or higher degree as they are not complex, unique, or specialized.

On appeal, counsel states that the submitted job postings, information from the National Collegiate Athletic Association (NCAA) website, and letters reflect that the proposed position requires a bachelor's degree, thereby qualifying it as a specialty occupation. Counsel asserts that neither the Act nor the regulations state that a coaching position requires a degree in coaching. According to counsel, universities and colleges do not offer a baccalaureate degree in coaching. Counsel asserts that the director ignored the regulatory language that allows for the equivalent of a baccalaureate degree when a specific degree is not available in a field. Counsel discusses how the beneficiary's experience and bachelor's degree in business administration will be useful in carrying out her duties. Counsel states that an Oregon district court decision indicates that CIS does not have the authority to impose its own definition of a specialty occupation. Counsel refers to prior AAO decisions to show that the proposed position qualifies as a specialty occupation.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

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 them is usually

associated with the attainment of a baccalaureate or higher degree. As described by the petitioner, the proposed duties are specialized and complex, requiring knowledge that is associated with a baccalaureate degree or higher in a specific specialty. Although counsel asserts that universities and colleges do not offer a baccalaureate degree in coaching, the *Handbook*, a resource that the AAO routinely consults regarding the educational requirements of particular occupations, indicates that “degree programs specifically related to coaching include exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.” Baccalaureate degrees in these specialties are appropriate for the proposed position; a baccalaureate degree in business is not suitable because the primary duties of the proposed position are not related to business.¹ The petitioner has established that the proposed position qualifies as a specialty occupation.

The petition may not be approved, however, as the evidence in the record is insufficient to demonstrate that the beneficiary is qualified to perform the proposed position, which requires a baccalaureate degree in exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, sports medicine, or a related field. As the director did not address this issue, the petition will be remanded in order to allow the director to determine whether the beneficiary is qualified to perform the services of the specialty occupation. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of an assistant women’s tennis coach, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The director’s September 22, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.

¹ The record contains several letters indicating that a bachelor’s degree in business administration is appropriate for the proposed position. However, this evidence conflicts with other evidence in the record such as the job announcement for the proposed position (labeled as Exhibit 3), an October 2, 2004 letter from the petitioner’s Assistant Athletic Director, and a letter from the petitioner’s personnel director, all of which clearly indicate that the petitioner does not require a baccalaureate degree in a specific discipline for the proposed position.