

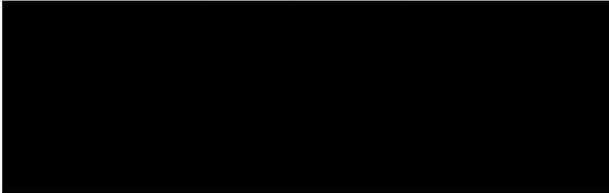


U.S. Citizenship
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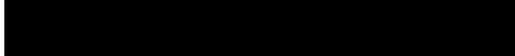
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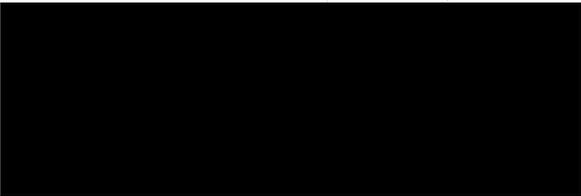
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FILE: LIN 04 163 52181 Office: NEBRASKA SERVICE CENTER Date: **JAN 27 2006**

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a soccer academy and sports consulting business. It seeks to employ the beneficiary as a director of coaching and 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 on the ground that the record failed to establish 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.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) the appeal (Form I-290B). The AAO reviewed the record in its entirety before issuing its decision.

In its initial submissions, including Form I-129 and an accompanying letter, the petitioner described itself as an organization that teaches youth from pre-school age through high school “the technical and tactical skills, team play, and exemplary sportsmanship of the game of soccer.” The petitioner states that it was established in 1999, has ten employees and gross annual income of \$267,645, and provides soccer training and consulting to organizations such as the Brazilian American Youth Soccer Association, the United States Youth Soccer Association, the United States Soccer Federation, the Great Lakes Soccer League, and the Southeast Michigan Soccer Association. The petitioner is seeking to employ the beneficiary as a director of coaching and, in response to the RFE, listed the duties of the position, and the percentage of time required by the various duties, as follows:

Coaching Education – 35%

- Prepare education materials to support technical manuals.
- Develop programs and resources to improve skill level of the coaches.
- Design and maintain the coaches and parents manuals.
- Develop coaching resource material to assist regular coach programs.
- Design the system for delivery of coaching programs.
- Coordinate the attendance of coaches for appropriate courses and clinics.
- Schedule regular coach meetings.
- Maintain a master record of all coaches’ qualifications.
- Select teams and coaches.
- Ensure that coaches plan at least two mandatory tournaments per semester.
- Participate in practice with coaches whenever possible.

Player Development – 30%

- Prepare an annual budget for the coaching and player development programs.
- Develop soccer programs and resources to improve the skill level of the players.
- Practice plan with emphasis on appropriate drills for age groups.
- Develop game strategies and tactics appropriate for level of team.
- Develop a player program with assistance of the player development director.
- Coordinate and schedule the winter training indoor program.
- Coordinate any participation of players in clinics that are internal and external to the club.

Consultant – 15%

- Consult with other soccer/sports clubs and organizations.
- Consult with parents.
- Consult and organize soccer clinics for parents.
- Prepare/update club documents.

Special Events – 10%

- Implement the children’s physical growth program.
- Coordinate and implement Olympic program for disabled players.

Coordinate summer camps in and out of state.
Coordinate player tryouts and evaluations.

League – 10%

Post game results as required by the specific team's league.
Inform any game scheduling changes.
Maintain a good rapport with officials.

According to the petitioner, the minimum qualifications for the proffered position include a bachelor of science degree in physical education as well as coaching and playing experience. The beneficiary meets these qualifications, the petitioner asserts, by virtue of his bachelor of arts in physical education from Cambridge State University in Honolulu, Hawaii, granted on September 27, 2001, approximately ten years of experience as a soccer coach and athletic director, and prior playing experience.

In his decision the director found that the job announcements in the record from other organizations advertising for director of coaching or similar positions did not establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. After stating that the duties of the proffered position combine coaching, planning, coordinating, consulting, and administrative skills, the director referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* indicating that there is no requirement of a baccalaureate or higher degree for positions in the coaching area, and that overall knowledge of a sport, usually gained through experience, is a paramount requirement for coaching positions. With reference to another DOL resource cited by the petitioner – the *Dictionary of Occupational Titles (DOT)* – the director declared that the *DOT* is not an adequate source of evidence that a position qualifies as a specialty occupation. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the evidence previously submitted by the petitioner establishes that the director of coaching position is a specialty occupation. The job announcements from other companies all state that a baccalaureate degree is required for the advertised positions, counsel points out, and the petitioner's own newspaper advertisement of the proffered position – “coaching director soccer” – likewise states that a bachelor's degree is required. The comprehensive list of duties provided by the petitioner, counsel contends, demonstrates that the duties are so specialized and complex that they require baccalaureate level knowledge to perform. Counsel also refers to the fact that the beneficiary has already been issued an H-1B visa for a prior job of a similar nature.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the

position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the director of coaching position – though it includes some broad administrative and coordinating functions as well as coaching-related tasks – accords with the *Handbook's* description of a coach. That occupation is described in the *Handbook*, 2004-05 edition, at 249:

Coaches organize, instruct, and teach amateur and professional athletes in fundamentals of individual and team sports Coaches train athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and stamina. Using their expertise in the sport, coaches instruct the athlete on proper form and technique in beginning and, later, in advanced exercises attempting to maximize the players' physical potential. Along with overseeing athletes as they refine their individual skills, coaches also are responsible for managing the team during both practice sessions and competitions, and for instilling good sportsmanship, a competitive spirit, and teamwork. They may also select, store, issue, and inventory equipment, materials, and supplies

With respect to the training and educational requirements of coaches, the *Handbook* states the following:

Education and training requirements for . . . coaches . . . vary greatly by the level and type of sport. Regardless of the sport or occupation, jobs require immense overall knowledge of the game, usually acquired through years of experience at lower levels

Id. at 251. While it does not specifically address coaching positions unaffiliated with educational institutions – like the proffered position in this petition – the *Handbook* does contain information on high school coaches hired from outside who do not have teaching positions within the school. According to the *Handbook*, “[s]ome entry-level positions for coaches . . . require only experience derived as a participant in the sport or activity” and that “[m]any coaches begin their careers as assistant coaches to gain the necessary knowledge and experience needed to become a head coach.” *Id.* Based on the foregoing information, the AAO concludes that prior experience in the sport may be the sole requirement for a coach unaffiliated with an educational institution, and that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into such a coaching position. Accordingly, the petitioner's director of coaching position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes five job announcements for director of coaching positions from soccer organizations similar to the petitioner. While all of the announcements state that a baccalaureate degree is required, none indicate that the degree must be in a specific job-related specialty. Two job announcements for coaching positions are from colleges, one of which states that a master's degree in a specific specialty is required. Those two organizations, however, are not similar to the petitioner in their line of business or scale of operations. The remaining three job announcements are from a rehabilitation and health center seeking a director of recreational activities; from a sports and hospitality sales and marketing firm seeking a manager; and from an employment agency seeking a fitness specialist. None of these companies are in the same line of business as the petitioner and none of the positions they are advertising are parallel to the

director of coaching position at issue in this petition. For these reasons the AAO determines that the job announcements in the record are not persuasive evidence that a baccalaureate degree in a specific specialty is a common requirement for director of coaching or closely related positions in the petitioner's industry. Accordingly, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the proffered position is newly created and the petitioner has no hiring history for it. Counsel refers to the petitioner's newspaper advertisement for a "coaching director soccer" as evidence of its degree requirement, but the advertisement states only that the applicant "must have a bachelor's degree" without indicating that the degree must be in any specific specialty. Thus, the record does not show that the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties are so specialized and complex that their performance requires knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has ten employees and a gross annual income of \$267,645. Though the director of coaching position, as its title indicates, does include some broad administrative and coordinating functions, the record does not establish that those duties are so specialized and complex that their performance requires baccalaureate level knowledge in a specific specialty.

Counsel points out that the beneficiary was previously granted H-1B status for a position with the Niagara County Community College in Sanborn, New York, as a part-time college instructor and athletic director. According to counsel, the beneficiary taught several courses in the college's Health and Physical Education Department including team handball, soccer, and advanced first aid and CPR. Pay statements in the record confirm that the beneficiary was employed by the college, but there is no documentary evidence confirming what duties he performed. Considering that the employer was an educational institution, and in view of counsel's claim that the beneficiary taught several courses, including first aid and CPR, it appears that the duties of the position may not be parallel to the duties of the director of coaching position at issue in this petition. The record does not establish that the previous approval of H-1B status for the beneficiary was based on similar evidence to that submitted in this proceeding. 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 petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Thus, the beneficiary's previous H-1B classification in another job with another employer has no legal bearing on the current H-1B petition, and provides no guideline for the AAO's adjudication of the instant appeal.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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