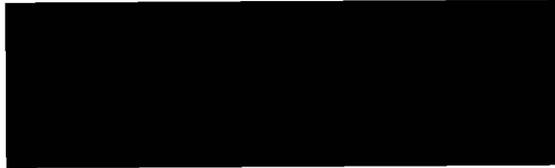




U.S. Citizenship
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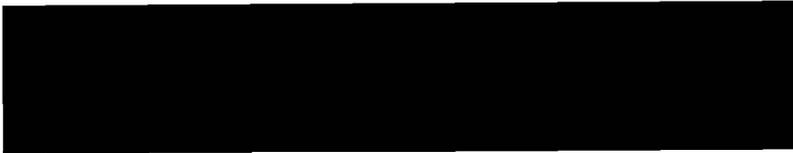
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FILE: WAC 05 001 53833 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2006**

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, Chief
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 involved in the scouting, recruitment, and management of baseball players. It seeks to employ the beneficiary as a professional baseball scout. 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a professional baseball scout. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Evaluate the athletic skills of baseball players in order to determine fitness and potentiality for major/minor league baseball teams;
- Review player’s exhibitions and past performance records; and
- Provide reports to management with results of scouting assignments and offer recommendation of players for future recruitment;

The petitioner requires a minimum of a bachelor’s degree in physical education, or its equivalent, for entry into the proffered 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 essentially those provided by professional scouts under the heading of “athletes, coaches, umpires, and related workers” as detailed in the *Handbook*. The *Handbook* notes that jobs as scouts require experience playing a sport at the college or professional level that enables them to spot young players who possess extraordinary athletic abilities and skills. Most beginning scout jobs are as part-time talent spotters in a particular area or region. Hard work and a record of success often lead to full-time jobs responsible for bigger territories. Some scouts advance to scouting director jobs or various administrative positions in sports. There is no degree requirement for professional scouts in the industry. 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. In support of that assertion the petitioner refers to the Department of

Labor's *O*NET* for its discussion on coaches and scouts. The *O*NET* places the profession in job zone five, which assigns the position an SVP rating of eight. It further states that a bachelor's degree is the minimum formal education required for occupations in this category, and that many occupations require graduate school. The petitioner's assertions in this regard are not persuasive. Neither the *O*NET's* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. The petitioner has failed to established the referenced regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The petitioner has not established the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The duties of the proffered position appear to be routine for professional baseball scouts 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 duties of the position are routinely performed in the industry by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Finally, the petitioner notes that the beneficiary has previously received H-1B approval for the identical position with another employer. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. **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, the AAO is limited to the information contained in the record of proceeding. *See 8 C.F.R. § 103.2(b)(16)(ii).* It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS 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 professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a professional baseball scout. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

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.

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.*