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U.S. Citizenship  
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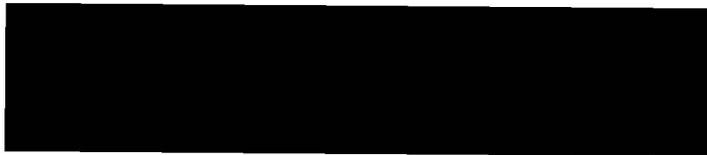
FILE: LIN 05 136 50689 Office: NEBRASKA SERVICE CENTER Date: **SEP 26 2006**

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 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 director of the Nebraska Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will be denied.

The petitioner is a nonprofit community service organization that seeks to employ the beneficiary as a Program Director/Curriculum Coordinator. 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 based on a finding that the petitioner had failed to establish the proffered position was 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 a field 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", a position must satisfy 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.

U.S. 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, Petition for a Nonimmigrant Worker (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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

It is noted that the petitioner’s Form I-129 and initial company letter and attachments state that the beneficiary’s position title is “Curriculum Coordinator/Administrator” rather than “Program Director/Curriculum Coordinator”. A March 15, 2005 letter signed by Addie Smits, Director of Group Services, YMCA Camp Duncan indicates that as a Curriculum Coordinator/Administrator, the beneficiary would be responsible for coordinating program and instructional material content when necessary. The letter indicates further that the beneficiary would be responsible for developing, implementing and administering fitness and recreation programs and curriculum standards for YMCA Camp Duncan, and that he would additionally be responsible for interviewing, training and supervising staff coaches and counselors. The letter states that the beneficiary would also supervise staff and assign their duties, and that he would organize community outreach programs, act as liaison with the community on fitness and sports programs, set schedules and organized events and programs, and that he would be responsible for preparing budgets and preparing reports to be presented to company management.

A May 11, 2005, letter signed by counsel, and written in response to an April 14, 2005, CIS letter requesting additional evidence reiterates the above job description and specifies further that the beneficiary would be responsible for developing various outdoor and indoor activity curriculums for camp participants, including activities on high ropes and in an indoor planetarium (Star Lab). The letter specifies further that the beneficiary would use his biology degree and his specialized certificate training in the operation of Star Lab to conduct Star Lab classes and for curriculum development and instructional training on various environment-related issues. Counsel indicates that the Curriculum Administrator/Coordinator duties parallel those of an Instructional Coordinator and/or Teacher according to the Department of Labor’s *Occupational Outlook Handbook*. Counsel indicates further that the Curriculum Administrator/Coordinator position requires a bachelor’s degree and that the beneficiary holds a related Bachelor of Science degree in Biology and has the equivalent of a Bachelor’s degree in Physical Education.

A May 9, 2005, letter signed by [REDACTED] states that [REDACTED] looked at the YMCA position of Curriculum Administrator offered to the beneficiary, and that the position is equivalent to that of a Course Coordinator in U.S. universities and taught by university professors, or a Course Administrator position in U.S. high schools, which requires a Bachelor’s degree.

[REDACTED] indicates that the proffered position duties include developing curriculums, designing classes and teaching several classes in science. In response to the RFE, counsel also includes some of these duties in connection with the Star Lab. [REDACTED] does not state in his letter that the degree need be in a particular specialty. Moreover, the duties mentioned in [REDACTED] letter are not mentioned in any of the job descriptions originating with the YMCA. The record additionally does not contain the YMCA Curriculum Administrator position announcement or description referred to in [REDACTED]’s letter. It is thus unclear what job description [REDACTED] relied upon in order to formulate his opinion. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with

other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO finds that [REDACTED] letter does not establish that the proffered position is equivalent to a Curriculum Administrator, Course Coordinator or Course Administrator requiring a baccalaureate degree, and that the letter fails to establish the proffered position is a specialty occupation under any of the above specified criteria.

The petitioner's June 15, 2005 letter submitted on appeal states that the beneficiary will work for YMCA Camp Duncan as a Program Director/Curriculum Coordinator. The record contains an undated vacancy announcement, submitted on appeal, for a Program Director/Curriculum Coordinator – Group Services position at YMCA Camp Duncan. The AAO notes that the proffered position vacancy announcement describes assistant duties with significantly less responsibility than those initially claimed under the Curriculum Administrator and Curriculum Administrator/Coordinator position titles. According to the Program Director/Curriculum Coordinator – Group Services vacancy announcement, the beneficiary would perform duties that involve assisting the Director of Group Services in all aspects of the department. As Program Director, the beneficiary would host and provide outdoor programs for weekend groups at the YMCA Camp, and he would be involved in program development, outdoor education and recruitment of school groups. The beneficiary would also assist in recruiting, hiring, training, and evaluating part-time staff in the department. Additional responsibilities would include assisting with the YMCA Camp Duncan annual budget and campaign, and assisting with the maintenance of the camp store, camp equipment and camp supplies, and helping to open and shut down the program once seasons end.

The petitioner asserts on appeal that the education requirement for the proffered position is a baccalaureate degree in education, recreation, social services or science, and that all YMCA Program Director positions require a baccalaureate degree. The petitioner indicates that the beneficiary has a baccalaureate degree in biology, with a minor in physical education, and that the beneficiary's education is necessary to perform the Program Director/Curriculum Coordinator duties. In support of this assertion, the petitioner submits a July 2005, vacancy announcement for the YMCA of Talbot County, Inc., Youth Program Director position, reflecting that candidates for the position must have a bachelor's degree. The petitioner also submits a June 2005, vacancy announcement for the Steele Creek Branch, YMCA Program Director position reflecting that candidates must have a four-year degree in a related field and/or four years of work experience in the field.

As previously mentioned, the "degree" requirement set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A) refers not to any baccalaureate or higher degree, but rather to a baccalaureate or higher degree in a specific specialty that is directly related to the proffered position. It is noted that the Steele Creek Branch YMCA vacancy announcement has a general baccalaureate degree requirement, and in the alternative, a work experience requirement, and the Talbot County, Inc. YMCA vacancy announcement has only a generalized baccalaureate degree requirement, rather than a specific degree requirement related to the proffered position. The June 2005, letter from the YMCA of Metropolitan Chicago states that a degree in a variety of fields such as education, recreation, science or social services, will suffice for the Camp Duncan Program Director/Curriculum Coordinator position. Moreover, it is noted that the YMCA Camp Duncan vacancy announcement submitted on appeal contains no baccalaureate degree requirement at all. Rather, the vacancy announcement states only that a (general) four-year degree from an accredited college or university is preferred, but not required.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Upon review of the record, the AAO finds that the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position, that a degree requirement is common to the industry in parallel positions among similar organizations, or that the duties of the position are so specialized and complex that attainment of a baccalaureate or higher degree is usually required to obtain knowledge for the position, as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The AAO finds first, that the vacancy announcement evidence provided by the petitioner fails to establish that a baccalaureate or higher degree is required for the YMCA Camp Duncan Program Director/Curriculum Coordinator position, or for parallel positions among similar organizations. In addition, the AAO routinely consults the Department of Labor's *Occupational Outlook Handbook, 2006-2007 Edition (Handbook)* for information about the duties and educational requirements of particular occupations. As determined by the director, the AAO finds that the duties of the proffered position are not similar to the *Handbook* description of duties provided for Instructional Coordinator or Teacher. Rather, the duties appear to fall within those provided for a Recreation Worker, as set forth in the *Handbook* at pages 400-402.

The *Handbook* states that:

*[R]ecreation leaders . . . are responsible for a recreation program's daily operation, primarily organize and direct participants. They may lead and give instruction in dance, drama, crafts, games, and sports; schedule the use of facilities; keep records of equipment use; and ensure that recreation facilities and equipment are used properly. Workers who provide instruction and coach groups in specialties such as art, music drama, swimming, or tennis may be called activity specialists. Recreation supervisors oversee recreation leaders and plan, organize, and manage recreational activities to meet the needs of a variety of populations. These workers often serve as liaisons between the director of the park or recreation center and the recreation leaders. Recreation supervisors with more specialized responsibilities also may direct special activities or events or oversee a major activity, such as aquatics, gymnastics, or performing arts. Directors of recreation and parks develop and manage comprehensive recreation programs in parks, playgrounds, and other settings.*

. . . .

*Camp counselors lead and instruct children and teenagers in outdoor-oriented forms of recreation, such as swimming, hiking, horseback riding, and camping. In addition, counselors provide campers with specialized instruction in subjects such as archery, boating, music, drama, gymnastics, tennis, and computers. In resident camps, counselors also provide guidance and supervise daily living and general socialization. Camp directors typically supervise camp counselors, plan camp activities or programs, and perform the various administrative functions of a camp.*

*[M]ost recreation workers spend much of their time outdoors . . . . Recreation directors and supervisors, however, typically spend most of their time in an office, planning programs and special events. Directors and supervisors generally engage in less physical activity than do lower level recreation workers.*

Educational requirements for recreation workers range from a high school diploma – or sometimes less for those seeking many summer jobs – to graduate degrees for some administrative positions in large public recreation systems.

The present record does not establish that the duties to be performed by the beneficiary are 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. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties as defined, appear to fall under the description of a Recreation Leader, Activity Specialist and Camp Counselor. The duties appear to be routine in the Recreation Worker industry, and are performed by individuals without degrees and/or with degrees in a wide range of educational disciplines. Accordingly, the AAO finds that the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner also failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that a degree requirement is common to the industry in parallel positions among similar organizations or, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As previously discussed, the YMCA of Metropolitan Chicago letter, as well as the Steele Creek Branch and Talbot County, Inc., YMCA vacancy announcements fail to establish a baccalaureate or higher degree requirement in a specialty. The petitioner has therefore failed to establish that a degree is normally required in parallel positions among similar organizations. The petitioner additionally failed to demonstrate that the proffered job description is unique or complex, or beyond that of a Recreation Worker. Moreover, as discussed above, the petitioner's YMCA Camp Duncan vacancy announcement reflects that although a (general) baccalaureate degree is preferred, the petitioner does not require a baccalaureate degree for the proffered position. Consequently, the submitted evidence fails to establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

It is noted that the record contains no evidence of the petitioner's past hiring practices for the proffered position. The requirement that the petitioner establish that it normally requires a degree or its equivalent for the position, as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), has therefore also not been met.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. For the reasons discussed above under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has failed to establish that the proffered position is so complex or specialized that it can be performed only by an individual with a baccalaureate or higher degree.

The burden of proof in the present proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the appeal will be dismissed accordingly.

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