



U.S. Citizenship
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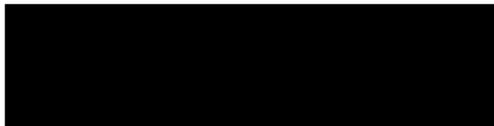


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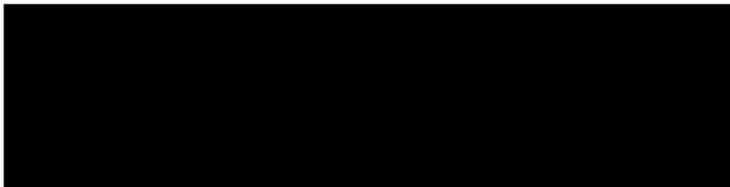
FILE: EAC 08 141 50520 Office: VERMONT SERVICE CENTER Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center 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 resort and conference center that has tennis programs. It seeks to employ the beneficiary as its head tennis professional 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's RFE; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue that the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS 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 specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as its head tennis professional. The support letter indicates the responsibilities of the proffered position include the following:

- Be in charge of the development and growth of the tennis program;
- Support the tennis center by assisting with operations;
- Promote programs and special events to the public;
- Organize and run a strength and conditioning program;
- Perform administrative, budgetary, material and organizational duties;
- Implement tennis programs, leagues and tournaments; and
- Evaluate and make recommendations to improve operations and balance multiple projects.

The petitioner states that the position requires at least a bachelor’s degree, but does not indicate that the degree must be obtained in a specific specialty. The beneficiary has a U.S. bachelor’s degree in economics from the University of Texas at Austin.

The director issued an RFE requesting additional documentation demonstrating that the proffered position is a specialty occupation, including a detailed statement of the proposed duties with percentages of time to be spent in each duty and evidence that a bachelor’s degree in a specific field of study is required. The director also requested evidence regarding the beneficiary’s qualifications, including an explanation of how his bachelor’s degree in economics qualifies him for the proffered position.

In response to the RFE, counsel provided documentation of the credentials of the person who previously worked in the proffered position, which indicates that this person holds a bachelor's degree in business administration. Counsel also includes a letter from the petitioner, which states, "[D]ue to the demanding nature of the position of Head Tennis Professional, our company requires the individual to possess at least a bachelor's degree *in any field* and at least two years experience. . . ." (Emphasis added.)

The letter from the petitioner in response to the RFE elaborates on the proffered duties and indicates that 60% of his time will be spent teaching tennis lessons, with 15% of his time to be spent on developing and growing the tennis program, 10% implementing tennis programs, 5% organizing a strength and conditioning program, 5% administrative support, and 5% evaluating and making recommendations to approve operations.

The petitioner also states that the beneficiary's credentials are relevant to the proffered position in several ways:

[F]irst, the attainment of a bachelor's degree shows that the individual is committed and goal oriented. This is a necessary attribute for an individual in such a position of authority and responsibility and in a department with goals of growth and development. Second, the attainment of a bachelor's degree from such a highly respected institution as the University of Texas at Austin ensures a well-rounded, well-educated individual with exposure to the many subjects and methods necessary for success in such a position with a range of responsibilities and duties. From marketing to accounting, administrative to athletic, the position requires a wide range of knowledge and ability to be successfully performed. And, third, [the beneficiary's] specific educational training in economics includes many specific courses relevant to business management such as marketing, accounting, organization behavior and administration, and the legal environment of businesses. All of which are necessary skills to be possessed in the current competitive job market.

Further, [the beneficiary's] long and acclaimed career as a tennis player and professional is invaluable to the proposed position as Head Tennis Professional. He has more than fourteen years of relevant and extensive experience as a player and professional athlete (tennis pro). Not only has he been the recipient of several honors and achievements from 1999 to the present, he has played on the professional tennis tour (Association of Tennis Professionals). During his time on the tour, he was ranked in both singles (#860) and doubles (#685) among the players in the world. A world-class athlete such as [the beneficiary] is a necessary asset to a program striving to offer world-class services to its customers such as [the petitioner]. . . .

The petitioner describes itself as a resort and conference center, but does not provide details regarding the clientele of the resort and conference center, such as whether the people who would take lessons from the beneficiary are amateurs or professional athletes. The petitioner also fails to provide details regarding its existing tennis programs and the reason for the expansion of these programs.

The director denied the petition, finding that the proffered position is not an H-1B specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation, resembling the occupation of Coach or Sports Instructor as provided in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and the Occupational Information Network *O*Net On-line Summary Report (O*Net On-line)*. For

the first time, on appeal, counsel provides an expert opinion letter from [REDACTED] Associate Professor of Kinesiology at the University of Georgia. This letter states, in pertinent part, as follows:

My overall conclusion is that the position of Head Tennis Professional at [the petitioner] qualifies as a ‘specialty occupation’ and *requires a minimum of a bachelor’s degree in a specific specialty such as physical education, sport science, kinesiology or other closely-related discipline*. This is most definitely the ‘industry standard’ for similar positions in parallel organizations, and of similar size and scope. A candidate may be found qualified for the job by virtue of *obtaining one of the bachelor’s degree listed above, or by a combination of formal education and experience which equates to a U.S. Bachelor’s degree in the relevant specialty*.

* * *

A Head Tennis Professional for a private, elite tennis program is required to handle a number of functions. Beyond teaching and coaching elite athletes during practice and tournaments, a Head Tennis Professional in this day and age also has to be recruiter, sports marketer, budgeter, administrator, and amateur psychologist. Furthermore, this job is no longer a seasonal one – it continues year round.

* * *

It is clear that *65% of the job has to do specifically with tennis conditioning and instruction* that would be associated with a degree in a sports-related discipline, and *35% of the job is spent performing high level administrative and marketing duties* that would be associated with a business degree. On both ends, the duties and responsibilities reflect a specialty occupation because of the theoretical and specialized knowledge required to adequately perform these duties. The position of Head Tennis Professional at [the petitioner’s facilities] clearly requires specialized knowledge that is only obtained through an earned bachelor’s degree in a specific specialty or through education and extensive experience in these areas. *A business degree is entirely relevant to the job duties listed above, as is experience in athletics.*

Based on my knowledge of similar elite tennis academies in the United States, the position of Head Tennis Professional *resembles the general occupation of Coach or Sports Instructor* as outlined in the [Handbook] and [O*Net OnLine]. These sources clearly state that jobs similar to the once [sic] described here require that the employee possess, at the least, a baccalaureate degree in a relevant field. Further, to be a Head Tennis Professional and work with elite athletes as this job requires, it is also imperative (almost mandated) that the coach possess former playing experience in the sport. It is rare that those without extensive, high level playing experience are hired for jobs such as these. . . .

* * *

Hence, it remains my contention that the proffered position typically requires a bachelor’s degree in a specialty such as physical education, sport science, kinesiology or similar discipline along with elite playing experience in the particular sport. Alternatively, an appropriate background through a combination of education in a non-

sports discipline (such as a business discipline) and relevant sports level experience is also normally an acceptable equivalent. . . .

(Emphasis added.)

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The proffered position appears to be a hybrid in that it entails duties relating to tennis instruction as well as administrative/marketing for the petitioner's tennis programs. The evidence provided demonstrates that the proffered position is more focused on tennis instruction than on the marketing side. However, because insufficient detail was provided with respect to the petitioner's tennis programs and clientele, it is difficult to determine whether the proffered position best fits under the *Handbook's* section on Athletes, Coaches, Umpires, and Related Workers, which includes sports instructors, or the section on Fitness Workers, which encompasses personal trainers and fitness directors.

The description of a sports instructor under the *Handbook's* (2010-11 Edition) section on Athletes, Coaches, Umpires, and Related Workers is as follows:

Sports instructors teach professional and nonprofessional athletes individually. They organize, instruct, train, and lead athletes in indoor and outdoor sports such as bowling, tennis, golf, and swimming. Because activities are as diverse as weight lifting, gymnastics, scuba diving, and karate, instructors tend to specialize in one or a few activities. Like coaches, sports instructors also may hold daily practice sessions and be responsible for any needed equipment and supplies. Using their knowledge of their sport and of physiology, they determine the type and level of difficulty of exercises, prescribe specific drills, and correct athletes' techniques. Some instructors also teach and demonstrate the use of training apparatus, such as trampolines or weights, for correcting athletes' weaknesses and enhancing their conditioning. Like coaches, sports instructors evaluate the athlete and the athlete's opponents to devise a competitive game strategy.

Coaches and sports instructors sometimes differ in their approaches to athletes because of the focus of their work. For example, while coaches manage the team during a game to optimize its chance for victory, sports instructors—such as those who work for professional tennis players—often are not permitted to instruct their athletes during competition. Sports instructors spend more of their time with athletes working one-on-one, which permits them

to design customized training programs for each individual. Motivating athletes to play hard challenges most coaches and sports instructors but is vital for the athlete's success. Many coaches and instructors derive great satisfaction working with children or young adults, helping them to learn new physical and social skills, improve their physical condition, and achieve success in their sport.

Even if the petitioner could demonstrate that the proffered position is closest to being a sports instructor, with respect to the education and training required for positions in this section, the *Handbook* states:

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

* * *

Although there may not be a specific education requirement, head coaches at public secondary schools and *sports instructors at all levels usually must have a bachelor's degree*. For high school coaching and sports instructor jobs, schools usually prefer, and may have to hire teachers willing to take on these part time jobs. If no suitable teacher is found, schools hire someone from outside. College coaches also usually are required to have a bachelor's degree. Degree programs specifically related to coaching include exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine. Some entry-level positions for coaches or instructors require only experience derived as a participant in the sport or activity.

(Emphasis added.) Although a bachelor's degree may be required, the *Handbook's* description under this section does not indicate that this degree must be in a *specific specialty*. Indeed, the *Handbook* states that there may not be a specific education requirement.

The *Handbook's* description of Fitness Workers indicates that the education and training required depends on the type of fitness work. Although an increasing number of employers are requiring fitness workers to have a bachelor's degree in a field related to health or fitness, the *Handbook's* description of this section does not support a finding that a bachelor's degree is normally required for entry into this occupation.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree *in the specific specialty* as the minimum for entry into the occupation, as required by the Act.

The *Handbook* description of sports instructors indicates that education and training requirements in these areas vary greatly. However, as stated above, even though the *Handbook* states that sports instructors usually

must have a bachelor's degree, the *Handbook* does not indicate that the degree must be in a *specific specialty* and, therefore, the AAO concludes that the *Handbook* does not establish that the proffered position requires a baccalaureate or higher degree in a specific specialty, as is required under 8 C.F.R. § 214.2(h)(4)(ii). The conclusion that the proffered position does not require a degree in a specific specialty is further supported by the petitioner's own statement that it requires the individual who is hired in the proffered position to possess at least a bachelor's degree *in any field*.

Moreover, on February 1, 2010, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Coaches and Scouts under the Department of Labor's Standard Occupational Classification code of 27-2022.¹ *O*Net Online* assigns Coaches and Scouts a Job Zone "Five" rating, which groups them among occupations for which most employers require a graduate school degree and at least five years of experience. As the petitioner does not require a graduate degree plus extensive experience for the proffered position, this is additional evidence that the proffered position does not best fit under the *Handbook's* section on Athletes, Coaches, Umpires, and Related Workers. However, in any event, *O*Net Online* does not indicate that degrees required by Job Zone Five occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position being a specialty occupation.

Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree *in a specific specialty*. To establish its degree requirement as an industry norm, on appeal, counsel for the petitioner has submitted an expert opinion letter from [REDACTED], as described previously. [REDACTED] letter, however, states that "[t]he proffered position typically requires a bachelor's degree in a specialty such as physical education, sport science, kinesiology or similar discipline along with elite playing experience in the particular sport." The minimum requirements for the proffered position as described by [REDACTED] therefore, conflict with the petitioner's statement that the proffered position requires a bachelor's degree in any field. Additionally [REDACTED]

¹ That site is <http://online.onetcenter.org/link/summary/27-2022.00>.

█ fails to provide the evidentiary basis for his conclusion regarding the normal, minimum education required for entry into the position, such that the *Handbook's* conclusions are credibly and adequately refuted. Moreover, █ describes the petitioner's tennis program as elite and states that the beneficiary would instruct athletes, but the petitioner has not provided any evidence regarding its clientele whom the beneficiary would allegedly instruct. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, the minimum requirements as described by █ would exclude the beneficiary as being qualified for the proffered position as the beneficiary has a bachelor's degree in economics, which is not a similar discipline to physical education, sport science, or kinesiology. Therefore, the letter from █ is not probative for these proceedings. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a result, the expert opinion letter does not establish the degree requirement in parallel positions that is necessary to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). No advertisements regarding the minimum requirements for similar positions with similarly-situated employers were provided.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for sports instructor positions, including degrees not in a specific specialty related to sports. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than other sports instructor positions that can be performed by persons without a specialty degree or its equivalent.

Counsel for the petitioner provided evidence that the person who previously held the proffered position with the petitioner had a bachelor's degree in business administration. Again, although some of the proffered duties entail marketing, the majority of the duties involve tennis instruction, and the petitioner has not demonstrated a nexus between the coursework that is taken towards a bachelor's degree in business administration or economics and tennis instruction. Further, the petitioner never states that the proffered position requires a person with a minimum of a bachelor's degree in a specific specialty. To the contrary, as described above, the petitioner states that the position requires a bachelor's degree in any field. Although the petitioner hired someone previously with a bachelor's degree in business administration to fill the proffered position, hiring one person previously who had a degree in a field that the petitioner has not demonstrated is related to the majority of duties to be performed does not prove that the petitioner requires someone with at least a bachelor's degree in a specific specialty.² As the record has not established a prior history of

² The AAO notes that, in any event, a degree in business administration alone is insufficient to qualify someone to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The coursework must

recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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. The AAO does not find that these duties, as described by the petitioner, reflect a higher degree of knowledge and skill than would normally be required of sports instructors whose responsibilities require them to teach tennis and support tennis programs.

It is not evident that the proposed duties, even as expanded in response to the RFE, are so specialized and complex as to require the knowledge usually associated with at least a U.S. bachelor's degree or its equivalent in a specific specialty. The *Handbook* chapter related to sports instructors as well as the chapter on fitness workers do not indicate that this occupation categorically requires a degree in a specific specialty or the knowledge usually associated with such a degree. Thus, it is incumbent upon the petitioner to document how the duties and performance requirements of its particular proffered position elevates it above other positions in the same occupational group that neither require nor are usually associated with a degree in a specific specialty. This the petitioner failed to do. The AAO, therefore, concludes that the evidence of record has not established the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements 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.

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

indicate that knowledge was obtained of the particular occupation in which the individual will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).