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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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Date: DEC 09 2011 Office: CALIFORNIA SERVICE CENTER 

IN RE: 

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:

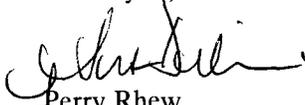


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 remain denied.

The petitioner provides fencing and Olympic instruction through its fencing academy. It was established in 1992, employs six personnel, and had earned a gross annual income of \$834,016 when the petition was filed. It seeks to employ the beneficiary as its fencing director 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 or that the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker, 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, Notice of Appeal or Motion, with counsel's brief, additional evidence, and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue in this matter 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 [1] 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 [2] 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 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as its fencing director. The October 9, 2009 letter submitted in support of the petition letter describes the proffered position as follows:

Coordinate and supervise recreational, developmental, and competitive saber programs; manage and supervise [the petitioner's] saber coaches; coordinate the Fencing Division of [the petitioner's] ongoing school programs, demonstration and saber fencing camps for all levels; serve as the lead coach for the [petitioner's] national and international saber teams; and plan and lead team practices and private lessons for pre-elite and elite athletes.

The petitioner states that the position requires at least a bachelor's degree in physical education or related field, and experience coaching and competing in fencing as well as knowledge of sports psychology, athletic training methodologies, fencing techniques, and domestic and international saber competition procedures.

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 or the equivalent in a specific field of study is required. The RFE also requested the petitioner's organizational chart.

In a November 3, 2009 response to the RFE, the petitioner reiterated that the fencing director's duties included:

- Coordinate and supervise recreational, developmental, and competitive saber programs;
- Manage and supervise saber coaches in our two clubs in San Jose and Mountain View;
- Coordinate the Fencing Division of our ongoing school programs, demonstration, and saber fencing camps for all levels;
- Serve as the lead saber coach for the national and international saber teams; and
- Plan and lead team practices and private lessons for pre-elite and elite athletes, with the goal of producing top U.S. athletes and world-class fencers.

The petitioner noted that it requires its coaches to have bachelor's degrees for numerous reasons. The petitioner indicated that as it conducts programs within public and private schools in the area, it deems it appropriate that those involved in the in-school programs, including the fencing director and coaches, possess the same minimum education as teachers who are employed by and teach at the public and private schools. The petitioner provided copies of contracts with: (1) a middle school for eight weeks of archery and eight weeks of fencing instruction to be provided in 2009; and (2) an elementary school for an after school enrichment program of fencing classes during the 2006-2007 school year. The record also included letters from various city recreation and community education facilities indicating that the petitioner had provided instruction at their facilities. The petitioner stated that the fact that its staff possesses bachelor's degrees creates a more successful image and demonstrates to clients that it values education. The petitioner also noted that the fencing director is a senior-level position. The petitioner's organizational chart shows the beneficiary reporting to the president/owner of the club and supervising one assistant fencing coach and one junior assistant coach. The organizational chart also shows that the

president/owner of the club is a temporary program director and coach and shows him supervising one assistant coach and three junior assistants.

The petitioner added that the fencing director is responsible for teaching physical education classes and developmental classes to the petitioner's students and is responsible for team practices, private lessons and administrative duties associated with the petitioner's program. The petitioner stated that it required the fencing director to possess a bachelor's degree in physical education, sport, or exercise science to have the "ability to plan physical education programs in a safe and logical manner [and] to plan team training programs in a scientific manner including peak training, periodization, sport psychology, etc." The petitioner provided a list of ten employees who all had bachelor's degrees although only two assistant coaches had bachelor's degrees in physical education/sport.

Counsel for the petitioner noted that the beneficiary would spend 60 percent of his time acting as head foil coach and the remaining 40 percent managing fencing programs and other fencing coaches as well as school outreach programs including program planning, training planning and additional planning and management of other club activities.

The record of proceeding also included four job postings: (1) for a fencing instructor for summer camps in New Jersey that listed a bachelor's degree as the education required; (2) for an adjunct fencing (among other sporting endeavors) instructor/coach at the [REDACTED] that required a master's degree in physical education, kinesiology, physiology of exercise or adaptive physical education, or a bachelor's degree in any of the above and a master's degree in other disciplines, or a fully satisfied (Life) California Community College Instructor's Credential in physical education; (3) for an athletic director at Western Oregon University that required a bachelor's degree but preferred a master's degree; and, (4) for a fencing instructor for Humboldt State University that required a bachelor's degree or appropriate training/certification for the activity being taught. In addition, the petitioner provided the credentialing requirements of San Jose State University Fencing Master's program which noted that a candidate for the master at arms level must hold an undergraduate degree from an accredited university. Credentialing information provided from Sonoma State indicated that a certification for a fencing master requires a written thesis and a practical and oral examination; no information regarding any necessary type of degree was provided.

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

On appeal, counsel asserts that because the petitioner's fencing director manages all the coaches and the coaches/instructors will work within the public school system, the fencing director must have a bachelor's degree in physical education, sport, or exercise so that all of the programs are planned and executed in a safe and successful manner and also because the coaches will seek guidance from the fencing director. Counsel references the Department of Labor's *Occupational Outlook Handbook's (Handbook)* section on coaches which indicates an expectation that head coaches will have advanced degrees. Counsel contends that the job advertisements submitted in response to the director's RFE confirm that a specialized bachelor's degree is standard in the industry for fencing directors. Counsel also references the credentialing requirements of San Jose State and Sonoma

University as evidence of an industry wide standard. Counsel avers that the position of fencing director is a specialty occupation because the petitioner requires that its fencing director possess at a minimum a bachelor's degree.

Counsel also provides a December 29, 2009 position evaluation prepared by [REDACTED]

[REDACTED] notes that the duties of the proffered position combine administrative functions and coaching that "integrates core coaching and athletic development duties with higher-level organizational responsibility" and thus opines: "the duties for (and profile of) the position describe a specialty-level occupation, requiring the application of the knowledge associated with the attainment of a bachelor's level degree in Sports Management, Physical Education, or a related discipline." [REDACTED] opines further: "it is a common industry practice for sports organizations at this level to hire specialists for the development of competitive programs, provision of coaching services, and direction of overall organizational initiatives and parameters, and (lest the whole purpose of the hiring be rendered futile) to hire qualified, bachelor's graduates for such positions."

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 related to coaching and sports instruction as well as supervising other coaches and coordinating saber programs, the Olympic Fencing Division, ongoing school programs, demonstration and saber fencing camps at all levels. Although the position requires supervising as well as some coordinating of programs, the petitioner has provided a broad statement in regards to the supervisory and administrative functions. The record of proceeding does not provide sufficient information regarding either of these functions to establish that the functions require a higher level of managerial or administrative skill associated with a theoretical and practical application of a body of highly specialized knowledge attained only through the completion of a bachelor's or higher degree in a specific specialty. Therefore, the AAO finds that the proffered position is closest to that of a coach or sports instructor as the *Handbook's* description of this occupation includes planning physical education programs and training programs in a scientific manner including peak training, periodization, and sport psychology. See Dept. of Labor, Bureau of Labor Statistics,

Occupational Outlook Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos251.htm> (last accessed December 2011).

The description of a sports instructor under the *Handbook's* 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.

Id. 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.*

Id. (emphasis added). Therefore, although a bachelor's degree may be required at public secondary schools and at colleges, 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 at all.

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's* 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 head coaches at public secondary schools and sports instructors at all levels 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 section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

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 alternatively requires a petitioner to establish that a bachelor's degree in a specific specialty, or its equivalent, 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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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*. Although the petitioner submitted advertisements for a fencing instructor for a summer camp, an adjunct fencing instructor/coach at a junior college, an athletic director at a university, and a fencing instructor at a university, the petitioner has not established that it is similar to the advertisers. The closest comparable organization is the New Jersey summer camp organization and that advertisement does not indicate that a bachelor's degree in a specific discipline is required to perform the duties of the fencing instructor's position. The junior college and universities are not similar to the petitioner's organization. Moreover, the two universities, one which advertised for an athletic director and one which advertised for a fencing instructor, only required general bachelor's degrees and again did not identify that the degrees must be in a specific discipline. Although we note the petitioner's submission of the credentialing requirements of San Jose University and Sonoma State for master at arms candidates, the credentialing requirements do not assist in establishing that the duties of the proffered position require a bachelor's degree in a specific discipline. Neither credentialing program lists position duties associated with being a candidate for a master at arms credential. Neither program requires a bachelor's degree in a specific field of study to become a candidate. These programs do not establish an industry standard for instructors/coaches in the fencing industry. Upon review of the job postings and the information submitted relating to credentialing programs the petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 petitioner's claim that because it conducts programs in elementary and secondary schools it is appropriate to require the same minimum educational level as the teachers in those schools is not probative. The school contracts do not require the petitioner's instructors to possess specific degrees. The petitioner's desire to present a successful image and to demonstrate the value of education does not establish that a particular position such as the fencing director must possess a bachelor's degree in a specific discipline to perform the duties of the position. The opinion of [REDACTED] also fails to establish that the petitioner's fencing director position is so complex or unique that it can only be performed by an individual with a degree in a specific discipline. Although [REDACTED] emphasizes throughout his opinion that the proffered position incorporates coaching and administrative duties, he does not appear to take into account that the petitioner is a six-person organization with an established director/owner. Furthermore, [REDACTED] does not provide the basis for his claims regarding the managerial portion of the proffered position's duties. He does not indicate that he visited the petitioner's locations, interviewed the petitioner, or reviewed the petitioner's specific fencing programs. Thus, there is an inadequate factual foundation established to support his opinions. 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). The record establishes that the proposed duties do not exceed the scope of a typical sports instructor and the general

administration necessary to run one or more fencing classes and to supervise one or more assistant coaches.

The petitioner did not submit any information regarding other workers, if any, who fill or previously filled positions similar to the one proffered in this petition. Although the petitioner provided its job postings indicating that it required a master's degree in physical education or a related field for its fencing director, the petitioner's desire that the successful applicant have a degree in a specific discipline does not establish the position as a specialty occupation. The petitioner's opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). As the record in this matter has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty or its equivalent and the record does not include sufficient evidence establishing the petitioner's "need" to hire only degreed individuals in a specific discipline, 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 in a specific specialty or its equivalent. Again, the petitioner failed to demonstrate that the proffered position's supervisory or administrative duties or its peripheral involvement in the educational system requires the performance of duties that are specialized and complex and thus would require the attainment of a baccalaureate or higher degree in a fitness-related field. Moreover, the *Handbook* states that sports instructors can design customized training programs for individuals, motivate athletes, and help athletes learn new physical and social skills, which encompasses the duties listed in the petitioner's position description. *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos251.htm> (last accessed December 2011). Therefore, 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 design training programs, motivate athletes, and help athletes learn new physical skills.

It is not evident that the proposed duties, even as expanded in [REDACTED] positional evaluation 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's* chapter related to sports instructors does not indicate that this occupation categorically requires at least a bachelor's degree or the equivalent 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 at least a U.S. bachelor's degree in a specific specialty or its equivalent. Again, the petitioner's desire to present a successful image and demonstrate its commitment to education is not sufficient to elevate the duties of the proffered position to a position that is specialized and complex and thus requires a theoretical and practical application of a body of highly specialized knowledge attained only with the completion of a bachelor's or higher degree in a specific specialty. Upon review of the totality of the record of proceedings, the petitioner 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).

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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