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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2011

IN RE: [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:
[REDACTED]

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 of the 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 be denied.

The petitioner is a boys and girls residential facility and school. It seeks to employ the beneficiary as its fitness and activities instructor 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; (5) Form I-290B, with counsel's brief and previously submitted evidence; and (6) the AAO's RFE issued on October 4, 2010. The AAO notes that the petitioner did not respond to the AAO's RFE. 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 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 fitness and activities instructor. The support letter describes the proffered position as follows:

This position provides leadership in helping each participating student achieve a high level of skill, an appreciation for the values of discipline and sportsmanship and an increased level of self-esteem. Major responsibilities include knowledge in health promotion at every stage of fitness and development to meet the needs of various youth and an understanding of the functions and vital process of the human body to effectively design and deliver personal nutrition and fitness training programs. This position must create instructional programs and lead various physical activities and advise participants in the skills necessary for successful performance.

The petitioner states that the position requires at least a bachelor's degree in a fitness-related field such as exercise science, exercise physiology, sports medicine, physical education, biomechanics or kinesiology. The beneficiary has a U.S. bachelor's degree in exercise science from the University of Nebraska.

In arguing why the proffered position is a specialty occupation, the petitioner states as follows:

The students served by [the petitioner] are faced with life challenges not associated with most children. . . . Our programs aim to build all aspects of that child's life: education, fitness and wellness, self esteem, and social skills. They are intertwined. Our highly structured programs require highly trained individuals to oversee the children's progress. We have found through our research that children show the best progress when these areas of their lives are directed by trained education individuals.

Our Community Education Services and Support programs provide education and treatment services to youth during the regular school day in partnership with the public education system. The youth served are in the community and not in [the petitioner's] placement. Some services focus primarily on youth with educational deficits or behavioral problems who have struggled or failed in mainstream or other school settings. Specially trained [petitioner's] teachers and administrators provide instruction for these children in an environment that meets their unique behavioral, emotional, and educational needs. Teachers and administrators implement the [petitioner's] Education Model, a structured, proven system for improving youth behavior and responsiveness to education. [The petitioner] also provides assessment services that address a student's in-school and out-of-school functioning across individual, family, peer, school and community domains. If a student needs more intensive services, [the petitioner] may provide them, or may refer the student, and possibly his or her family, to resources in their community.

Because we have found that fitness and wellness are closely intertwined with a child's progress, self esteem, and ultimate life success, we believe that only a person with a bachelor's degree or higher in this specialty area is suitable to lead this important function. The Fitness and Activities Instructor will supervise the Recreation Aides (which are not degreed positions) and direct and plan programs for the children based upon that child's unique educational, emotional, and behavioral needs.

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 an organizational chart.

In response to the RFE, the petitioner described the proffered duties in conjunction with providing life skills and therapeutic services to at-risk youth with potential behavior issues:

- Provide leadership in helping each participating student achieve skills, strength, agility, discipline, sportsmanship, and an increased level of self-esteem.
- Instruct, mentor, treat, and coach groups and individuals in exercises and activities.
- Motivate youth, execute a treatment plan, and provide strength through leadership and team inclusion.
- Assist youth in anger management and self-discipline.
- Identify treatment and training needs.
- Construct instructional programs and lead recreational activities.
- Monitor and communicate youth progress.
- Demonstrate physical activities.
- Communicate effectively with youth.
- Advise individual participants.
- Provide youth with information and resources regarding nutrition, weight control and other lifestyle issues.
- Take precautions to protect students, equipment, materials, and facilities.
- Assist activity director/administrator when necessary in scheduling student counseling and treatment.
- Maintain complete and accurate treatment records.
- Establish performance criteria.

The petitioner did not break down these duties into percentages, as was requested in the RFE.

The petitioner also provided a letter dated April 14, 2009. This letter states as follows:

Please be advised that the job description used in support of the original filing for a H1B Visa petition for [the beneficiary] was not the correct job description that accurately reflects the essential duties of the position.

A major focus of this program is teaching older youth functional skills – often referred to as independent-living skills that can help them achieve success in school, their families, and work settings. As indicated above, [the petitioner] has a continuum of care. However, it is the out-of-home placements in our treatment homes that require the skills of [the beneficiary]. The village contains both a junior high school and a high school. There is also a field house and dozens of recreational activities going on throughout the year. Because the youth living in [the petitioner's facilities] require constant treatment and attention, the position [the beneficiary] would be performing requires a unique set of skills.

Specifically, the position is responsible for a wide-range of life skills and therapeutic services to at-risk youth with potential behavioral issues. The position requires the employee to provide leadership in helping each participating student achieve a high level of skills, strength and agility, and an appreciation for the values of discipline and sportsmanship as well as an increased level of self-esteem. Besides therapeutic approaches, the position requires the incumbent to instruct, mentor, treat, and coach both groups and individuals in various exercises and activities that will achieve the therapeutic goal of that group or individual. It will also require the applicant to plan, conduct, and supervise various activities as well as develop and implement lifestyle management programs for youth and groups of youth. The individual will advise youth on the skills they need in order to achieve success on any lifestyle goals set for them. . . .

* * *

The job clearly requires the applicant to have at least a baccalaureate degree in physical education or the related. The individual must work with youth on their therapeutic treatment goals by providing youth with constructional activities that promote mental growth as well as obtaining physical fitness. He/She will identify specific treatment needs for youth in the areas of nutrition, weight control, and lifestyle issues. This is not “just a gym teacher” position. There are serious issues facing our youth, and [the beneficiary] is an ideal candidate to help care for the youth being treated within the village of [the petitioner]. . . .

The petitioner submitted materials regarding its mission, but did not submit an organizational chart.

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

On appeal, counsel argues that the petitioner’s organization and the programs offered by the petitioner are unique. Counsel describes the petitioner’s function as follows:

[The petitioner] is a unique entity. [The petitioner] cares for more than 700 children on an annual basis in its 900 acre campus, and provides direct care to more than 47,000 children and assists nearly 1.4 million each year through its youth care and health care programs. . . .

* * *

The literature makes clear that [the petitioner] is not just another program, but is unique in that it incorporates a behavioral model into every day living and all aspects of a youth’s life. This *therapeutic* model includes nutrition, exercise, and discipline through the various activities. . . .

* * *

[W]e were not able to find positions in similar organizations because, as described above, there are no similar organizations. . . .

On appeal, counsel provides copies of advertisements for similar positions at other types of employers as well as additional information about the petitioner's athletics and co-curricular activities. Additionally, counsel provides a letter from the petitioner on appeal that states as follows:

[T]he position that [the beneficiary] will occupy requires taking a psychotherapeutic approach aimed at identifying and modifying faulty, negative thinking styles and the maladaptive behaviors associated with those thinking styles. Treatment involves a combination of behavior analysis (based on the theories of learning) and cognitive therapy (based on the theory that our cognitions or thoughts control a large portion of our behaviors) as we work through issues with youth. . . .

[T]he Life Skills and Fitness position is crucial to the young people who need these therapies because this person delivers the treatment in the environment of athletic practice, training, and official competition. These are prime environments in which to teach character, values and problem solving. The Life Skills and Fitness Coach¹ position fills roles as a teacher, a mentor, and a treatment caregiver. They work along with our clinical and medical team and who also implement our evidence-based model. To say that it is an unusually responsible position is to say the least. This position has much more responsibility than the "recreational leader" referred to by the USCIS. It takes specific skills and a specific education to be successful at this position. The Life Skills and Fitness Coach position is not there to help the kids have a good time. The position implements our model as described above. The coach imparts a menu of specific therapies that will impact the youth future employment, social interaction, and family skills. . . .

Counsel also provided literature regarding the petitioner's admissions and highlighted the petitioner's co-curricular activities with which the beneficiary would be involved. These are described as opportunities offered outside of the classroom. The literature states as follows:

¹ The AAO notes that the title of Life Skills and Fitness Coach is different from the one initially proffered in the petition, which is for a Fitness and Activities Instructor. As stated previously, in response to the RFE in a letter dated April 14, 2009, the petitioner states that "[t]he job description used in support of the original filing for a H-1B visa for [the beneficiary] was not the correct job description that accurately reflects the essential duties of the position." Even though the job titles are different, the AAO finds that the position description provided in response to the RFE does not conflict with the position description originally submitted with the petition. Therefore, despite the petitioner's statement to the contrary, it appears that only the job title, and not the position description, has changed. The AAO finds that the new job title and position description submitted in response to the RFE do not indicate that there has been a material change to the position offered.

Athletics and other co-curricular activities are another way to teach life skills, values, and ethics to our students.

Our programs provide character development through an established curriculum called Competing with Character[.] Student athletes receive character training and have multiple opportunities to exhibit and practice sportsmanship. Members of our coaching staff are specifically trained in [Competing With Character] and use the skills they've learned in their regular instruction.

Our coaches are expected to be leaders of high character and to role model positive skills and behavior to our student athletes at all times. . . .

This documentation demonstrates that the beneficiary will be working with youth in extra-curricular activities outside of school.

The petitioner submitted a letter on appeal stating as follows:

The position that [the beneficiary] will occupy requires taking a psychotherapeutic approach aimed at identifying and modifying faulty, negative thinking styles and the maladaptive behaviors associated with those thinking styles. Treatment involves a combination of behavior analysis (based on the theories of learning) and cognitive therapy (based on the theory that our cognitions or thoughts control a large portion of our behaviors) as we work through issues with youth. . . .

* * *

The Life Skills and Fitness position is crucial to the young people who need these therapies because this person delivers the treatment in the environment of athletic practice, training, and official competition. These are prime environments in which to teach character, values and problem solving. The Life Skills and Fitness Coach position fills roles as a teacher, a mentor, and a treatment caregiver. They work along with our clinical and medical team and who also implement our evidence-based model. To say that it is an unusually responsible position is to say the least. This position has much more responsibility than the "recreational leader" referred to by the USCIS. It takes specific skills and a specific education to be successful at this position. The Life Skills and Fitness Coach position is not there to help the kids have a good time. The position implements our model as described above. The coach imparts a menu of specific therapies that will impact the youth future employment, social interaction, and family skills. We view the position as a professional team member playing a role in the youth's specialized treatment plan. . . .

Although the AAO agrees with the petitioner that the proffered position is not that of a recreational leader, because the proffered position contains a counseling/clinical component (although exactly how much is not clear since the petitioner did not break down the proffered duties into percentages) that does not appear to relate to the degree requirement stated by the petitioner, the AAO did not find that the petitioner had submitted sufficient evidence to

demonstrate that the proffered position requires at least a bachelor's degree in a specific specialty related to the position duties. Therefore, on October 4, 2010, the AAO issued an RFE to give the petitioner an additional opportunity to provide sufficient documentation to demonstrate that the proffered position is a specialty occupation requiring at least a bachelor's degree or its equivalent in a specific specialty. The AAO requested that the petitioner provide the following evidence in order for it to determine whether the proffered position is a specialty occupation:

1. An organizational chart listing all employees of the petitioner and their job titles, demonstrating the hierarchy of the petitioner's organization and where the proffered position will fit in relation to the other workers employed by the petitioner;
2. A description of the duties the beneficiary will perform on a day-to-day basis in a typical week, including a breakdown of responsibilities by percentages;
3. Titles and detailed position descriptions for the person who will directly supervise the proffered position as well as any employees to be supervised by the beneficiary;
4. An explanation of whether the proffered position is a newly created position and, if so, the reasoning behind creating the position;
5. Copies of the degrees of other employees the petitioner currently employs or previously employed in positions similar to the one proffered (if relevant) and, if these employees do not have at least a bachelor's degree in a fitness-related field, copies of experience letters from their previous employers and other documentation evidencing education received and relevant work they performed prior to joining the petitioner and providing the dates this work was performed;
6. An explanation of how the coursework taken towards a bachelor's degree in a fitness-related field is relevant to the duties that must be performed for the proffered position;
7. Any other documentation the petitioner wishes to provide evidencing that the proffered position is a specialty occupation requiring at least a bachelor's degree in a specific specialty.

The petitioner failed to respond to the RFE. The AAO therefore makes its decision based on the evidence of record as of the date this decision is issued.

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 coaching and sports instruction as well as counseling at-risk youth. However, the petitioner has not demonstrated a nexus between the beneficiary’s coursework taken towards his bachelor’s degree in exercise science and the proffered duties related to counseling troubled youth, which the petitioner claims makes this position unique. 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 designing customized training programs for individuals, motivating athletes, and helping athletes learn new physical and social skills, which encompasses the duties listed in the petitioner’s position description.

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.

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.) Therefore, 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 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 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 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 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.

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 on appeal for health fitness specialists, by counsel's own admission these employers are not similarly-situated to the petitioner.

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, as discussed previously, although the petitioner argues that the proffered position is unique from or more complex than other sports instructor positions that can be performed by persons without a specialty degree or its equivalent, the petitioner failed to demonstrate a nexus between the factors that may make the proffered position unique (such as counseling troubled youth) and the petitioner's requirement of a bachelor's degree in a fitness-related field, even though the AAO provided the petitioner with an additional opportunity to submit such evidence on appeal.

The petitioner did not submit any information regarding its other workers, if any, who fill or previously filled positions similar to the one proffered in this petition. As the record 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, 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. Again, the petitioner failed to demonstrate a nexus between the duties it claims are specialized and complex and 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. 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 and social skills.

It is not evident that the proposed duties, even as expanded in response to the RFE and on appeal, 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 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. 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).

Beyond the decision of the director, the AAO finds that the petitioner failed to submit requested evidence, thereby precluding a material line of inquiry. As discussed earlier, the petitioner did not provide additional documentation that was specifically requested by the AAO to provide further information that clarifies whether the proffered position is a specialty occupation. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Therefore, the petition will be denied for this additional reason.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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