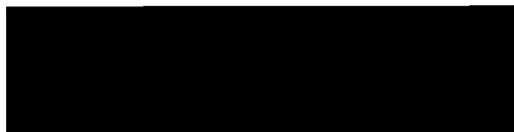


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



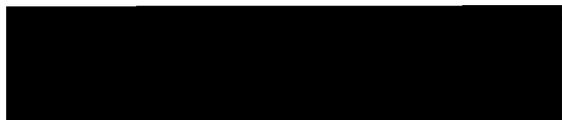
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 02 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

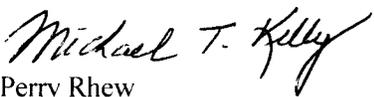


INSTRUCTIONS:

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,

for 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an operator of indoor soccer leagues and clinics that seeks to employ the beneficiary as a soccer clinician/league coordinator. Thus, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

In denying the petition, the director determined that the proffered position was not a specialty occupation. On appeal, counsel for the petitioner submits Form I-290B and a brief statement in support of its eligibility.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) documentation submitted in response to the director's request; and (4) Form I-290B accompanied by a brief statement by the petitioner.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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.

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 alien, and determine whether the position qualifies as a specialty occupation. *Cf. 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 petitioner operates indoor soccer leagues and clinics, and currently employs 2 persons. In a letter of support dated March 25, 2009, the petitioner claimed that the job duties of the beneficiary as a soccer clinician/league coordinator would be as follows:

Organizes and manages all soccer clinics and manages training staff with the CFC Arena. Responsible for creating a soccer curriculum, coaching and training players to reach higher level for all age groups U6-U14; schedule practices, clinics, etc. for all teams within the CFC Organization.

The petitioner concluded by stating that “Our educational requirement for this position: Requires a bachelor’s degree in Sports Management or equivalent.”

Finding that the record contained insufficient evidence of eligibility, the director issued an RFE on April 20, 2009. The director specifically addressed the issue of whether the proffered position was a specialty occupation, and requested that the petitioner submit additional evidence to establish eligibility under this criterion. In addition, the director requested information pertaining to the training and qualifications of the beneficiary.

In a response dated May 22, 2009, the petitioner addressed the director’s request. The petitioner provided additional details regarding the proffered position, and amended the title of the position to “head soccer coach,” noting that the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* did not contain the original job title of soccer clinician/league coordinator. The petitioner further stated that, in accordance with the job description, one of the beneficiary’s duties was that of coach, and his duties also included managing all other coaches in the organization. The petitioner concluded that to manage coaches, “you have to be at a higher level than they are.” The petitioner also provided a statement from the beneficiary attesting to his experience and qualifications, as well as additional letters from peers in the industry attesting to the beneficiary’s reputation.

On June 1, 2009, the director denied the petition. The director found that the duties of the proffered position, do not require a bachelor’s degree. Citing the *Handbook*, the director noted that coaches at public secondary schools usually must have a bachelor’s degree, but a degree in a specific specialty is not required. Moreover, the director noted that persons hired for position of coach that are not teachers merely require certification for entry into the position. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submits Form I-290B accompanied by a brief, and contends that the director’s findings were erroneous. Specifically, the petitioner contends that since a bachelor’s degree, without mandating a specific major, is sufficient for entry into the proffered position, the director’s finding that a degree in a specific specialty is erroneous. The petitioner further contends that the proffered position requires specialized knowledge and focuses on the SVP Rating of 8 given to the proffered position by the *Dictionary of Occupational Titles*.

Upon review of the record, the AAO concurs with the director’s decision and finds that the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position is a specialty occupation.

As a preliminary matter, the AAO will first address the petitioner’s change to the title of the proffered position in response to the RFE. On Form I-129 and in its March 25, 2009 letter of support, the petitioner claims that the proffered position is that of soccer clinician/league coordinator. In response to the RFE, the petitioner contends that the actual title of the position should have been head soccer coach, since the previously-submitted title was not contained in the resources normally consulted by USCIS.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. *See* 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. *See generally Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

In this matter, while the petitioner seeks to materially change the title of the proffered position, a review of the description of the duties of the proffered position indicates that the position of soccer clinician/league coordinator is most akin to the *Handbook's* description of coaches. Therefore, while the AAO independently concludes that the proffered position is akin to that of a coach for purposes of this evaluation, the petitioner should note for future reference that it may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Id.*

The AAO will now consider the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement 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. Factors often considered by USCIS when determining these criteria 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)).

In determining whether a position qualifies as a specialty occupation, USCIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations.

In response to the RFE and on appeal, the petitioner contends that it seeks to employ a person who will function as an upper-level head coach. Referring to the *Handbook*, the petitioner states that it indicates that public secondary-school head coaches and sports instructors at all levels usually must possess a bachelor's degree. The petitioner concludes, therefore, that the proposed position qualifies as a specialty occupation.

The *Handbook* describes coaches as organizing, instructing, and teaching amateur and professional athletes in fundamentals of individual and team sports. They also select, store, issue, and inventory equipment, materials, and supplies. With respect to the educational requirements for a coach position, the *Handbook* reports:

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, jobs require immense overall knowledge of the game, usually acquired through years of experience at lower levels.

Education and training. Most athletes, coaches, umpires, and related workers get their training from having played in the sport at some level. All of these sports-related workers need to have an extensive knowledge of the way the sport is played, its rules and regulations, and strategies, which is often acquired by playing the sport in school or recreation center, but also with the help of instructors or coaches, or in a camp that teaches the fundamentals of the sport.

* * *

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.

* * *

Most public high school coaches need to meet State requirements for certification to become a head coach. Certification, however, may not be required for coaching and sports instructor jobs in private schools. College coaches may be required to be certified. For those interested in becoming scuba, tennis, golf, karate, or other kind of instructor, certification is highly desirable and may be required. There are many certifying organizations specific to the various sports, and their requirements vary. Coaches' certification often requires that one must be at least 18 years old and certified in cardiopulmonary resuscitation (CPR). Participation in a clinic, camp, or school also usually is required for certification. Part-time workers and those in smaller facilities are less likely to need formal education or training and may not need certification.

As indicated by the *Handbook*, public secondary-school head coaches usually must have a bachelor's degree, and head coaches at other institutions do not require a baccalaureate-level degree. However, the *Handbook* does not indicate that a degree in a specific specialty is required for entry into the proffered position. Moreover, the *Handbook* indicates that "some entry-level positions for coaches or instructors require only experience derived as a participant in the sport or activity." Therefore, a bachelor's degree in a specific specialty is not required for the position of coach.

Counsel contends on appeal that this finding is erroneous, noting that the position of coach requires specialized knowledge and there is no indication in the *Handbook* that “anyone with any degree can do this job.” The petitioner further states that its requirement of a bachelor’s degree in sports management or equivalent satisfies the regulatory requirement that the bachelor’s degree be directly related to the specialty occupation.

The petitioner’s assertions are not persuasive in establishing the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Although the *Handbook* reports that public secondary-school head coaches usually require a bachelor’s degree, a degree in a specific specialty is not required. More importantly, however, is the fact that the petitioner is not a public secondary school, and therefore comparison to the requirements of coaches at higher-level institutions of education is inappropriate.

Based on the above discussion, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

In this matter, while the petitioner submits various personal references for the beneficiary from colleagues as well as head coaches at Fairfield University and the University of New Haven, none of these letters address the criterion at issue, which is that a specific degree requirement is common to the industry. Moreover, it should be noted that the proffered position is not that of a head coach at an institution of higher education but rather that of a coach in an organization offering recreational league play and instruction for all ages. Therefore, even if these letters attested that such a degree requirement existed, they would not represent parallel positions among similar organizations in the industry. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the above discussion, the submitted evidence fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a degree requirement is common to the industry in parallel positions among similar organizations.

Moreover, the petitioner fails to submit evidence to address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Although counsel on appeal contends that various college degree programs, such as sports and recreational management, are offered for individuals pursuing a career in coaching, the existence of such programs is irrelevant in establishing whether or not the proposed position is so complex or unique that it requires a bachelor’s degree in a specific specialty. Consequently, the submitted evidence fails to establish that the proffered position is so complex or unique that it can be performed only by an individual with a

degree under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Furthermore, as already discussed in this decision, the beneficiary's duties would not require a bachelor's degree in a specific specialty.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that it normally requires a degree or its equivalent for the position. The petitioner claims that it has hired individuals with a degree or its equivalent for lower-level, part-time positions. In addition, the beneficiary submitted a letter in response to the RFE providing the names and degrees of his subordinates.

The evidence in the record is insufficient to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). While the subordinates of the beneficiary may have bachelor's degrees, the petitioner does not specify their field of specialty, nor does the petitioner furnish evidence of their educational credentials or proof of their employment to corroborate these claims. Again, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed in this decision, the *Handbook's* information and the evidence in the record show that the proffered position does not rise to the level of an occupation that would require a bachelor's degree in a specific specialty. Neither the descriptions of the proffered position and its duties nor any other evidence in the record of proceeding establishes the degree of specialization and complexity required by this criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.