

Identification of the decision
Form I-290B, Notice of Appeal
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Administrative Appeals Office

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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**



D2

Date: **JUN 12 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Michael T. Kelly
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.

On the Form I-129 visa petition the petitioner stated that it is a country club. To employ the beneficiary in what it designates as a coach position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means 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 a particular position 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.

With the visa petition, counsel submitted evidence sufficient to show that the beneficiary earned a bachelor's degree and a master's degree, both in criminal justice, and both from ██████████. Counsel also submitted a letter, dated December 4, 2009, from the petitioner's assistant manager, and counsel's own letter, dated December 7, 2009.

In her December 4, 2009 letter, the petitioner's assistant manager stated that the petitioner would employ the beneficiary as a golf coach. She stated the duties of the proffered position as follows:

[The beneficiary] will prepare and execute lessons and instructional programs, coordinate training and physical activities, and provide instructional guidance to improve the golf abilities of her students. She will evaluate the players' strengths, weaknesses, and fitness ability in order to improve the athletes' technique and skill. She will be responsible for the administration of the players' files, which includes maintaining their personal information, golf records and achievements, contact information, and equipment specifications. She will assist in managing [the] Professional Golf Shop and preparing an inventory.

As to the educational requirement of the proffered position, the petitioner's assistant manager stated:

[The proffered] position is that of a Specialty Occupation, as it requires a specialized body of knowledge with that attained by at a minimum a Bachelor's Degree from an accredited U.S. university or the foreign equivalent.

The assistant manager also cited the Specific Vocational Preparation level (SVP) and the Job Zone level assigned to the proffered position by *O*NET OnLine*, a website operated by the Department of Labor (DOL), as evidence that the proffered position requires a minimum of a bachelor's degree or the equivalent.

In his own letter, counsel stated that the proffered position requires the theoretical and practical application of a highly specialized body of knowledge, and that someone with a bachelor's degree has that type of knowledge. Counsel also cited the DOL classification of coach positions in SVP 8.0 as evidence that such positions require a minimum of a bachelor's degree.

The AAO observes that neither the petitioner's assistant manager nor counsel asserted that the position requires a degree *in any specific specialty*. The failure of the petitioner even to allege that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

On December 30, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted: (1) a letter, dated January 22, 2010, from the petitioner's assistant manager; (2) a printout from stateuniversity.com pertinent to athletic coach positions; (3) an evaluation, dated January 19, 2010; (4) counsel's own letter, dated January 21, 2010; and (5) vacancy announcements printed from content of job search web sites.

The vacancy announcements will be addressed below.

In her January 22, 2010 letter, the petitioner's assistant manager provided the following more detailed description of the duties of the proffered position:

1. Responsible for the instruction and coaching of golf students at the club in the fundamentals, performance principles, conditioning, and strategies and rules of the sport of golf. Employee's duties will include teaching groups and private golf lessons, coach Adult and Junior Golf Teams; plan, organize and conduct practice sessions; provide training direction; adjust coaching techniques; responsible for the identification, instruction, and development of quality junior and adult players, which will enhance the reputation of the club attracting additional quality level competitors as well as adding to the membership levels; 40% of time involved
2. Assisting the Director of Golf in planning, organizing, and administration of the programs for the club. Employee will administer and officiate tournaments, exhibitions and inter-club and intra-club social events for residents/members; serve as organizer and instructor for the games; assist the management staff by developing and implementing a seasonal, monthly & weekly focus for programs, events, league teams, private lessons, and other such matters; 20% of time involved
3. Administering and enforcing club golf policies and procedures regarding play on Club golf course; Coordinating the work and activities of other employees; providing guidance and direction, setting performance standards and monitoring performance of golf department staff; provide leadership, motivation and instructional support to the teaching staff, members, and guests; communicate in a professional and proficient manner to the residents/members, staff, and guests; 15% of time involved
4. Responsible for marketing various programs such as camps; responsible for managing and supervising all the golf[-]related events and activities at [the petitioner]; plan the marketing of activities and programs, and insure proper implementation of all golf[-]related activities.; 15% of time involved
5. Assisting in managing the golf shop; monitoring budget and purchasing equipment supplies; responsible for the administration of player's files, which

includes maintaining their personal information, golf records and achievements, contact information, and equipment specifications.; 10% of time involved

The petitioner's assistant manager further stated that the petitioner, like other country clubs, requires a minimum of a bachelor's degree for its coaching positions, and that it requires this level of education "in any field as proof that they are capable of being further trained as a Head Golf or Head Tennis Professional." The AAO notes that, in so stating, the petitioner's assistant manager has made explicit that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, which is tantamount to asserting that the proffered position does not qualify as a position in a specialty occupation and that the proffered position may not be approved.

The petitioner's assistant manager also listed three people the petitioner has employed in ostensibly similar positions, and stated that each had "college degrees in any field and experience in tennis or golf." She further stated that one of the employees has a Juris Doctorate degree and a bachelor's degree in an unstated subject, that another has a bachelor's degree in biology and a doctorate in medicine, and that the third has a bachelor's degree in public relations. The petitioner's assistant manager did not reveal the nature of their experience in tennis or golf.

The document printed from the website of stateuniversity.com states that a bachelor's degree or a master's degree is necessary for athletic coaching positions. It does not state how that conclusion was reached, or list a source for that information. It contains no evidence that stateuniversity.com should be considered an authoritative source for the educational requirements of coaching positions. Further, it does not state that coaching positions require a minimum of a bachelor's degree or the equivalent *in any specific specialty*.

In the January 19, 2010 evaluation, the evaluator stated:

My overall conclusion is that the positions of Golf Coach (Instructor) at [the petitioner] qualifies as a 'specialty occupation' and requires a minimum of a bachelor's degree in a specific specialty such as physical education, sport science, kinesiology or other closely-related discipline. **However, if a candidate did not hold a baccalaureate degree in one of the aforementioned areas, it would be standard to require a BS or equivalent in any field coupled with experience playing golf at an elite level.** This is most definitely the 'industry standard' for similar positions in parallel organizations, and of similar size and scope. A candidate may be found qualified for the job by virtue of obtaining one of the bachelor's degrees above, **or by a combination of formal education and experience which equates to a U.S. Bachelor's degree in the relevant specialty.**

[Emphasis in the original.]

The AAO concurs with the evaluator that the proffered position would qualify as a specialty occupation position if it required a minimum of a bachelor's degree or the equivalent in a specific

specialty. The evaluator did not explain, however, why a bachelor's degree in any subject combined with elite-level golfing experience should be considered equivalent to a bachelor's degree in physical education, sport science, or kinesiology.¹ The evaluator's assertion that the proffered position may be filled by anyone with a degree in any of those three subjects, or by a person with a degree in any other subject with elite-level golfing experience, is at odds with his assertion that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, the evaluator's explicit statement that the beneficiary's degree in criminal justice "is in itself an appropriate degree for the position" indicates a lack of understanding of the H-1B specialty occupation concept and fatally undermines the competency of the evaluator to opine on whether a position qualifies as a specialty occupation.

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). Moreover, the evaluator's conclusion about the adequacy of the beneficiary's degree further indicates that the proffered position is not a specialty occupation position.

In her January 21, 2010 letter, counsel cited again cited the petitioner's assistant manager's letter, the evaluation provided, and Job Zone and SVP level of the proffered position as evidence that it qualifies as a specialty occupation position.

The director denied the petition on February 12, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel reiterated the assertion that the evidence demonstrates that the proffered position qualifies as a specialty occupation position. Counsel cited the revised description of the duties of the proffered position, the evaluation provided, the U.S. Department of Labor's (DOL) Occupational Outlook *Handbook (Handbook)*, and *O*Net Online* as evidence that the proffered position qualifies as a specialty occupation position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

¹ As a matter of common sense, the AAO also questions the evaluator's implicit assertion that a position coaching golf could be filled by anyone with a degree in one of the three subjects listed, but without experience in golf. However, as that is not the beneficiary's background, the AAO need not further address that issue.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

Counsel noted that DOL's O*NET service categorizes a coaches and scouts as Job Zone Five with an SVP of 8.0 and above and asserted that this establishes that the proffered position is in a specialty occupation.

Job Zone Five (Considerable Preparation Needed) indicates only that most positions thus classified require graduate school. It does not indicate that any specific category, coaches and scouts, for instance, requires graduate school or, for that matter, a bachelor's degree. Further, inclusion in Job Zone Five, even for those positions that may require a degree, does not indicate that any specific category, or any particular position, requires a bachelor's degree in any specific specialty, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

A classification of SVP 8.0 indicates that a position requires at least four years and as many as eight years of vocational preparation. The classification of coaches and scouts as SVP 8.0 and above indicates that a position in that SVP range may even require more than eight years of preparation. It does not, however, indicate any requisite split of those years of preparation between academic work and other preparation. It does not indicate that position thus classified necessarily requires any academic preparation at all.

Despite counsel's assertions to the contrary, the classification of coaches and scouts in Job Zone Five and SVP 8.0 and above, does not indicate that those positions, or the proffered position, require a minimum of a bachelor's degree or the equivalent in a specific specialty and qualify as specialty occupation positions.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In this instance, the petitioner may be able to meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the chapter entitled "Coaches and Scouts," the *Handbook* describes the duties of coach positions as follows:

- Plan, organize, and conduct practice sessions

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Analyze the strengths and weaknesses of individual athletes and opposing teams
- Plan strategies and choose team members for each game
- Provide direction, encouragement, and motivation to prepare athletes for games
- Call plays and make decisions about strategy and player substitutions during games
- Plan and direct physical conditioning programs that enable athletes to achieve maximum performance
- Instruct athletes on proper techniques, game strategies, sportsmanship, and the rules of the sport
- Keep records of athletes' and opponents' performance
- Identify and recruit potential athletes; arrange for and offer incentives to prospective players

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm> (last accessed May 29, 2012).

The duties the petitioner's assistant manager attributed to the proffered position are consistent with the duties of coaches as described in the *Handbook*. The AAO finds that the proffered position is a coach position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of coach positions:

Although there is no 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 are sometimes required, to hire teachers to take on these part-time jobs. If no suitable teacher is found, schools hire a qualified candidate from outside the school.

College coaches must usually 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 from participating in the sport or activity.

Although the *Handbook* indicates that coaches in various venues and at various levels tend to have bachelor's degrees, it does not state it as a categorical requirement or state that, even for those coaching jobs that may require a bachelor's degree, the degree must be in any specific specialty. Although it mentions several subjects specifically related to coaching, it does not state that a degree in one of those subjects is necessary in order to obtain a coaching position. The *Handbook* does not

indicate that coaching positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner's assistant manager ascribes to the proffered position indicate a need for knowledge of golf, skill in golf, skill in teaching golf, and ability to perform a few ancillary duties, but do not establish any particular level of formal education as minimally necessary to attain the knowledge required by those duties.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* does not report that the petitioner's industry normally requires golf coaches to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of golf coaches that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the country club industry.

The evaluation provided opined that a position as a golf coach at a country club would require either a minimum of a bachelor's degree or the equivalent in physical education, sport science, kinesiology, or a closely related field, or, in the alternative, a college degree in any field and elite-level experience playing golf.

Even if taken at face value, however, the evaluator did not assert that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The evaluator did not list the requirements for graduating with a degree in physical education, sport science, or kinesiology, nor did he analyze how, a degree in any subject plus experience in elite-level golf would impart the specialized knowledge received in the course of obtaining one of those degrees. No reason has been provided to believe that a bachelor's degree in any subject, coupled with experience playing elite level golf, would be equivalent to a minimum of a bachelor's degree or the equivalent in physical

education, sport science, or kinesiology, and the evaluator has not, therefore, demonstrated that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other coach positions in the country club industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The petitioner never asserted that the proffered position is more complex or unique than coach positions at other country clubs, and, in any event, provided no evidence on that point. Rather, the petitioner has asserted that coaching positions at country clubs require a bachelor's degree, and that the duties of the proffered position demonstrate that it requires a degree.

The duties of the proffered position, however, are duties that are likely common to country club golf coach. That is, the beneficiary would coach golf and perform a few ancillary duties, including marketing some of the petitioner's programs, managing and supervising golf-related events and activities, assist in managing the golf shop, monitoring the budget and purchasing equipment and supplies, maintaining files, etc.

Nothing about those duties, or any other evidence in the record, establishes that the proffered position is so complex or unique that it can be performed only by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. The petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner's assistant manager asserted that three people hired in similar positions have held degrees. The wide array of degrees they had, however, suggests that the positions they held did not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner has not, therefore, satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).³

³ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that 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.*

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Again, however, the duties of the proffered position, which consist of coaching golf and some additional duties, do not appear to be so specialized and complex that knowledge required to perform them is usually associated with any particular educational level. Coaching golf; administering and officiating at tournaments, exhibitions and social events; administering and enforcing club golf policies and procedures; coordinating the work and activities of other employees; etc., do not appear to be associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director did not err in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and the AAO also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue was not addressed in the decision of denial.

An examination of the various descriptions of the duties of the proffered position suggests that those duties might be closely related to physical education, kinesiology, etc., as suggested by the evaluator. The beneficiary, however, has a bachelor's degree in criminal justice.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not reach the issue of the beneficiary's qualifications.

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").

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

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. The appeal will be dismissed and the petition denied.

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