



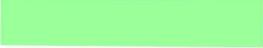
U.S. Citizenship
and Immigration
Services

(b)(6)



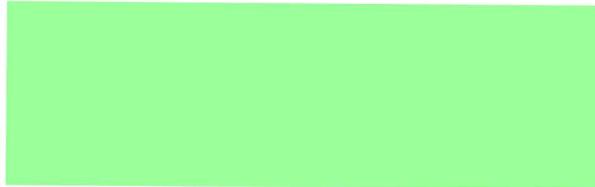
DATE: **JAN 02 2014**

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

for
Ron Rosenberg
Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on February 15, 2013. In the Form I-129 visa petition, the petitioner describes itself as a state university established in [REDACTED], with 2,330 employees. In order to employ the beneficiary in what it designates as an “assistant men’s tennis coach” position, the petitioner seeks to classify him 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 on May 7, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director’s decision was erroneous because it was not in accord with the relevant law and regulation as applied to the facts of the instant case. The petitioner submits a brief and additional evidence in support of the appeal.

The record of proceeding before the AAO contains: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s response to the RFE; (4) the director’s denial letter; and (5) the petitioner’s Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director’s decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary’s services as an assistant men’s tennis coach to work on a full-time basis at a salary of \$2,253.33 per month.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of “Coaches and Scouts” - SOC (ONET/OES) code 27-2022, at a Level I (entry level) wage.

In a general job description, dated November 2005, that accompanied the Form I-129, the petitioner provided the following description of duties for a position entitled “Assistant Coaches”¹:

- Assists the head coach in the organization and supervision of practices and contests.
- Maintains standards of performance consistent with departmental academic and athletic expectations as reflected in the mission statement, goals, objectives, departmental guidelines, and performance appraisal procedures.

¹ The header for the general job description states, “This is a **job description**. It does not necessarily indicate that this position is open for employment.”

- Assists in implementing a successful recruiting program to attract outstanding student-athletes to attend [REDACTED]
- Conducts all aspects of the program within the rules, regulations, and procedures of the conference, the NCAA [National Collegiate Athletic Association], the departmental policy manual, and the university.
- Attends and participates in department and staff meetings as requested/required.
- Coordinates and implements with the head coach eligibility requirements to ensure full compliance with governing rules and regulations, proper administration of financial aid for both prospective and enrolled student-athletes, facilitates scheduling, and contest administration and game operations as necessary.
- Communicates regularly and maintains a positive and constructive working relationship with support staff in sports information, student services, sports medicine, equipment room, business office, facilities/operations, compliance, athletic advancement, marketing, ticket office, video coordinator and weight room to assist in implementation of an efficient and effective program and department.
- Engages in fund-raising activities for the program in conjunction with the head coach, athletic advancement and its representatives.
- Represents the university at professional meetings, alumni gatherings, campus activities, and civic affairs as requested by the head coach. Encourages an effective outreach program with student-athletes that provides benefit to the on and off-campus community.
- Maintains as appropriate effective relationships with parents, alumni, friends of the program, and others toward the positive image and promotion of the program.
- Remains in full compliance with NCAA, University, and [REDACTED] rules.
- Complies with all NCAA rules and regulations, and acknowledges this compliance as part of an annual evaluation process.
- Signs an NCAA Compliance Statement annually.

This general job description also stated that the minimum requirements for an assistant coach position with the petitioner are: "Bachelor's degree required; two years experience at the college, junior college, high school level or professional level; must have knowledge of NCAA rules and regulations."

The Form I-129 petition was accompanied by an undated letter that was signed by the petitioner's Associate Athletic Director, [REDACTED] and the head coach of the men's soccer team, [REDACTED]. In this letter, Ms. [REDACTED] declared that it was the policy of the petitioner's Athletic Department "to employ as Head and Assistant Coaches only those individuals that have earned an undergraduate degree." Ms. [REDACTED] also noted that the petitioner prefers that coaches have a master's degree, but requires a bachelor's degree. The letter provided a listing (it cannot be

(b)(6)

determined whether this is a partial or full listing, and whether this listing is current or not) of the petitioner's assistant coaches and the degrees these coaches possess. Notably, the letter states that the assistant men's tennis coach has a B.A. from [REDACTED] in philosophy and that the assistant women's tennis coach has a B.S. from [REDACTED] in general studies. The degrees listed in the letter for the other assistant coaches include bachelor's degrees in a variety of majors such as psychology, geography and anthropology, computer information systems, criminal justice, industrial education, physical education, health education, information systems management, social science, athletic training, elementary education, human performance, sport management, and sport and leisure management, and master's degrees in physical education, student personnel, and sports management. The petitioner did not submit copies of any of these degrees into the record of proceeding.²

Finally, the petitioner submitted a printout dated January 24, 2013, of an on-line job posting for a position with the same title as the proffered position, as listed on its website at [REDACTED] from September 17, 2012 to October 26, 2012. The petitioner's job posting stated that the proffered position's minimum requirements are: "Bachelor's degree, one to two years collegiate coaching (experience may be obtained through graduate assistantship or temporary experience), knowledge of NCAA rules."

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of his master's degree in public administration, bachelor's degree in business administration, experience as an assistant coach for three other NCAA athletic programs over a six-year period, and substantial playing experience. The petitioner provided a copy of the beneficiary's diplomas from [REDACTED] indicating that he was granted a Bachelor of Business Administration degree and a Master of Public Administration degree.

In addition to the aforementioned evidence that was provided along with the Form I-129, the petitioner provided several job vacancy announcements for various coach positions at a range of U.S. universities and colleges.

Upon review of the documentation, the director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on March 13, 2013. The director requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation and outlined the evidence to be submitted.

On April 25, 2013, the petitioner responded to the director's RFE and provided a brief and additional evidence. In the brief in response to the RFE, the petitioner provided the following revised description of the duties of the proffered position:

The duties of the position require knowledge that is typically part of a program of

² The AAO notes that 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

study in Business Administration, including knowledge of business principles and practices, marketing, fund-raising, financial accounting, organizational and fiscal management. These skills and knowledge are vital and relevant as applied in an athletic program, along with knowledge of specific tennis and sports-related administration, recruiting and training. In addition, the position requires understanding of the academic environment, systems, performance guidelines, and administration.

The job description for the position offered to the beneficiary requires a Bachelor degree as well as experience in an NCAA tennis athletic program. An analysis of the job description reveals how the duties are directly related to the disciplines of business administration and sport-specific knowledge.

The duties are as follows:

30% - *Assists the head coach in the organization and supervision of practices and contests[.]*

2% - Maintains standards of performance consistent with departmental academics and athletics expectations as reflected in the mission statement, goals, objectives, departmental guidelines, and performance appraisal procedures[.]

20% - Assists in implementing a successful recruiting program to attract outstanding student-athletes to attend [REDACTED]

10% - Conducts all aspects of the program within the rules, regulations, and procedures of the conference, the NCAA, the departmental policy manual, and the university.

5% - Attends and participates in department and staff meetings as requested/required.

5% - Coordinates and implements with the head coach eligibility requirements to ensure full compliance with governing rules and regulations, proper administration of financial aid for both prospective and enrolled student-athletes, facilitates scheduling, and contest administration and game operations as necessary.

5% - Communicates regularly and maintains a positive and constructive working relationship with support staff in sports information, student services, sports medicine, equipment room, business office, facilities/operations, compliance, athletic advancement, marketing, ticket office, video coordinator and weight room to assist in implementation of an efficient and effective program and department.

(b)(6)

5% - Engages in fund-raising activities for the program in conjunction with the head coach, athletic advancement and its representatives[.]

2% - ***Represents the university at professional meetings, alumni greetings, campus activities, and civics affairs as requested by the head coach.***

5% - Encourages an effective outreach program with student-athletes that provides benefit to the on and off-campus community.

5% - Maintains as appropriate effective relationships with parents, alumni, friends of the program, and others toward the positive image and promotion of the program.

2% - ***Remains in full compliance with the NCAA, University, and [redacted] rules.***

2% - ***Complies with all NCAA rules and regulations, and acknowledges this compliance as part of an annual evaluation process.***

2% - ***Signs an NCAA Compliance Statement annually.***

As noted above, the duties in bold print, composing approximately 45% of the Beneficiary's duties, relate directly to compliance with the complex regulations of the NCAA, the Conference, and the University. An additional 25% of the beneficiary's time (underlined duties) is devoted to managing the program. The remaining 30% of time is spent (italics) addressing not only the fundamentals and techniques of the sport, but also ensuring compliance with rules and management during the actual sporting activities.

The petitioner also provided the following documentation: (1) a copy of the decision reached by the court in *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000); (2) a letter from Dr. [redacted] Chief of Staff for the petitioner, dated April 11, 2013, stating that the petitioner requires "each of our Head and Assistant Coaches to have an earned baccalaureate degree" and "substantial coaching or playing experience in the sport for which the individual is hired to coach." Dr. [redacted] also stated that in the petitioner's view "such combination of education and experience is the equivalent to a bachelor's degree in coaching with a concentration in a particular sport and/or sports[-]related discipline"; (3) an opinion letter dated October 3, 2011 by [redacted] Ph.D., Professor, Department of [redacted] in [redacted] regarding (a) whether the position of intercollegiate tennis coach at an unspecified college qualifies as a specialty occupation, and (b) whether the unspecified individual referenced in the letter has the appropriate education and athletic experience for the job²; (4) an undated list of

² The AAO notes that Dr. [redacted] letter dated October 3, 2011, was written on behalf of another unidentified individual who possessed a bachelor's degree in psychology and extensive experience in tennis

(b)(6)

what the petitioner's letter in response to the RFE states are its "current full-time permanent employees in a similar position (22 total) including their educational background, all of whom have a minimum of a Bachelor's degree and experience in the field coached." The list indicates that the assistant tennis coach, [REDACTED] has a BS in [REDACTED] and that the head tennis coach has a BS in [REDACTED]. The list indicates that the degrees for the other assistant or head coaches include bachelor's degrees in a variety of majors such as public health, physical education, business administration, psychology, history, and sport management, and master's degrees in physical education, education, and behavioral studies, and a doctorate degree in human performance; (5) copies of the transcripts of the petitioner's full-time coaches; (6) copies of the on-line job "posting previews" for ten different coach positions with the petitioner (including a posting for a position with the same title as the proffered position) that were posted and closed in 2012, as printed from the petitioner's website at [REDACTED] on April 10, 2013; (7) a variety of on-line job postings for various coach positions at a range of U.S. universities and colleges, as printed from the website at <http://ncaamarket.ncaa.org/jobs/> on April 9, 2013; and (8) additional evidence.

The director reviewed all of the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on May 7, 2013. The petitioner submitted an appeal of the denial of the H-1B petition.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

and was applying for a head tennis coach position at an undisclosed college in the United States, rather than being written on behalf of the beneficiary in the instant case.

³ The AAO notes that in the undated letter from [REDACTED] and [REDACTED] that was submitted with the petition, the name [REDACTED] was listed under assistant women's tennis coach as having a B.S. from [REDACTED] in general studies. It is unclear whether this is the same individual referenced in the list submitted in response to the RFE. However, the baccalaureate majors listed for the name [REDACTED] are different in each document.

(b)(6)

- (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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] 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 [(2)] 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, a proposed 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

(b)(6)

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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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. 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.

To make its determination as to whether the proffered position qualifies as a specialty occupation, the AAO turns to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in an assistant men's tennis coach position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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. 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

(b)(6)

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 AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational category "Coaches and Scouts."

The AAO reviewed the chapter of the *Handbook* entitled "Coaches and Scouts," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that these positions comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled "How to Become a Coach or Scout" states, in pertinent part, the following about this occupational category:

Coaches and scouts must have immense knowledge of the game, which they usually get through their own experiences playing the sport at some level. Although some jobs require a bachelor's degree, some entry-level coaching positions require only experience as an athlete or competitor in the sport. Scouting jobs often require experience playing a sport at the college or professional level, which makes it possible to locate young talent.

Education and Training

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.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

(b)(6)

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Coaches and Scouts," available on the Internet at <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4> (last visited Dec. 31, 2013).

The *Handbook* does not indicate that coaching positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. Although the *Handbook* indicates that coaches in various venues and at various levels tend to have bachelor's degrees, it does not state that the degree must be in any specific specialty. Moreover, while the *Handbook* mentions several degree programs related to coaching, it does not state that a degree in one of those majors is necessary in order to obtain a coaching position. Thus, this is not indicative of an occupation for which there is a normal requirement for at least a baccalaureate or higher degree, in a specific specialty, or its equivalent.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

As previously noted, in response to the RFE, the petitioner provided an opinion letter dated October 3, 2011 from [REDACTED] in which he opined that the position of intercollegiate tennis coach at an unspecified college qualifies as a specialty occupation. The AAO notes again that this particular letter was written on behalf of another unidentified individual who possessed a bachelor's degree in psychology and extensive experience in tennis and was applying for a head tennis coach position at an undisclosed college in the United States, rather than being written on behalf of the beneficiary in the instant case. Specifically, [REDACTED] stated the following, in pertinent part:

My overall conclusion is that the position of Tennis Coach at [text crossed off with black marker] 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 such as Psychology. And again I emphasize, 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 or coaching tennis 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

(b)(6)

virtue of obtaining one of the bachelor's degrees listed above, **or by a combination of formal education and experience which equates to a U.S. Bachelor's degree in the relevant specialty.** In order to be employed, an overwhelming amount of intercollegiate sports coaches only need a Bachelor's Degree from an accredited institution. Coupled with playing experience at an elite level (intercollegiate or professional), the chances are high universities would view this as a necessary prerequisite for a head coaching job. The paradigm framing hiring practices in college athletics is that high-level playing experience makes one a good coach. The paradigm is so strongly subscribed to [sic] that a candidate with pro and/or intercollegiate playing or coaching experience and a Bachelor's Degree would place him ahead of another candidate with a PE/Coaching/Sports Studies/Kinesiology degree who lacked that elite-level playing or coaching experience.

However, Dr. [REDACTED] letter dated October 3, 2011 is of limited probative value as the letter was not written on behalf of the beneficiary in the instant case, but instead was written on behalf of another unidentified individual who possessed a bachelor's degree in psychology and extensive experience in tennis and was applying for a head tennis coach position, with undisclosed job duties, at an indeterminate college or university in the United States.

On appeal, the petitioner provided another opinion letter from Dr. [REDACTED] dated May 31, 2013. In his letter dated May 31, 2013, Dr. [REDACTED] stated the following, in pertinent part:

[I]t is my expert opinion that this occupation clearly qualifies as a specialty occupation (per USCIS regulations) and requires the theoretical and practical application of a body of highly specialized knowledge associated with the attainment of a baccalaureate or higher degree in a *specific* specialty, or the equivalent, as the industry standard for entry into the occupation in the United States. [The beneficiary] has the equivalent of a U.S. Bachelor's degree in Kinesiology (or a related sports field such as Sport Management or Athletic Coaching Education) as taught at a regionally accredited U.S. college or university based on his: (a) formal education, (b) playing experience as an intercollegiate athlete, and (c) experiences as a coach and teacher of elite, intercollegiate athletes and the accompanying accreditation that is required by the *National Collegiate Athletic Association (NCAA)* for such a role. Alternatively, were my assessment of his education deemed inconclusive or unacceptable based on USCIS regulations, it is also my opinion that [the beneficiary's] experience at [the petitioner] as an [REDACTED] and as a [REDACTED] in combination with his formal education is further evidence that he has the background and experiences that are without a doubt fully equivalent and in fact exceed the requirements of a U.S. four-year baccalaureate degree in Kinesiology or a sports related field such as Sport Management or Athletic Coaching Education.

My overall conclusion is that the position of [REDACTED] at [the petitioner] qualifies as a 'specialty occupation' and requires a minimum of a bachelor's degree in a specific specialty such as Kinesiology or other closely-related

discipline such as Sport Management or Athletic Coaching Education. It is especially important to point out that the person filling this position will be coaching at a university, meaning he/she will be coaching the highest level of amateurs that are elite athletes in their own right. Thus, the nature of this particular position requires an accomplished and qualified individual in the field and I can unequivocally state that the position qualifies as a specialty occupation. Further, this is most definitely the 'industry standard' for similar positions at other U.S. colleges and university [sic], which can easily be verified by simply looking at job postings and by researching the qualifications held by those currently university coaching positions throughout the United States. Hence, I again emphasize, *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 or coaching tennis at an elite level. . . .*

It should be noted that jobs of this type, coaching at the intercollegiate level, are rather unique in terms of what is considered an appropriate background for qualified candidates. By this I mean the academic standard for coaches and sports instructor-type jobs at this level are a bachelor's degree in the field or a bachelor's degree with a certificate in coaching or some combination of education and comparable experience. A candidate may be found qualified for the job by virtue of obtaining one of the bachelor's degrees listed above, *or by a combination of formal education and experience which equates to a U.S. Bachelor's degree in the relevant specialty.* In order to be employed, an overwhelming amount of intercollegiate sports coaches only need a Bachelor's Degree from an accredited institution. Coupled with playing experience at an elite level (intercollegiate or professional), the chances are high that universities would view this as a necessary prerequisite for an assistant coach position. . . .

Dr. [REDACTED] attached a copy of his twenty-six page curriculum vitae to his opinion letter. He described his qualifications, including his educational credentials, professional experience, academic and professional achievements, and organizations that he belongs to and/or has served on. He also provided information regarding his research interests and his publishing history.

Based upon a complete review of Dr. [REDACTED] opinion letter and curriculum vitae, the AAO first finds that Dr. [REDACTED] has not established that he in fact possesses expertise or specialized knowledge regarding the specific issue on which he opines in both of his letters, namely, the qualification of the proffered position (or a similar position in the same occupational category) as an H-1B specialty occupation as defined by the applicable statutory and regulatory provisions earlier cited in this decision. Further, neither the letter nor the accompanying curriculum vitae establishes a sufficient factual foundation for the AAO to defer, or accord probative weight, to Dr. [REDACTED] view on the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge that would be helpful to the AAO with regard to understanding the current recruiting and hiring practices of the petitioner or similar organizations for assistant men's tennis coach positions.

Also [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on the particular issues upon which he opines in this proceeding. Further, there is no indication that the professor has published any work or conducted any research or studies pertinent to the educational requirements for such positions in the petitioner's industry for similar organizations, and there is no indication that the professor has been recognized by any professional organizations as an authority on those specific requirements.

Also, [REDACTED] did not provide any documentation to establish his credentials as a recognized authority on the relevant industry-hiring standards. He claims to possess expertise in the field of kinesiology, but he did not identify the specific elements of his knowledge and experience that he may have applied in reaching his conclusions here. For example, the opinion letter contains no evidence that it was based on scholarly research conducted by [REDACTED] in the specific area upon which he is opining. Moreover, he does not provide documentary evidence establishing why USCIS should defer to him in the specific area in which he is opining; nor does he provide an adequate factual and analytical foundation for the ultimate conclusion regarding the education required for the position (for example, statistical surveys, authoritative industry publications, professional studies, supportive DOL publications, or synopses of personal observations of the actual performance of the proffered position within the petitioner's day-to-day operations).

Further, [REDACTED] does not show how his pronouncement that the proffered position is a specialty occupation is founded upon specific, concrete aspects of the proffered position as specifically performed within the context of the petitioner's business. Additionally, the very fact that the professor concludes a degree requirement from the generalized treatment of the proffered position that appears in his letter undermines the credibility of his opinion. There is no evidence that [REDACTED] has visited the petitioner's business, observed the petitioner's assistant tennis coaches at work, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. He has not provided sufficient facts that support his ultimate conclusions about the educational requirements of the proffered position and the specialty occupation issue.

Here, [REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement, such as a labor market survey or study, and, notably, he fails to address the countervailing information that appears in the *Handbook*. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Next, there is the fact that [REDACTED] does not identify what documentation (if any) he reviewed in order to base his opinion. Moreover, if he reviewed any documents, he did not provide a copy of such documents to USCIS, so as to establish whether his statements actually conform to the documents provided him, whether his findings and ultimate conclusions actually comport with the content of those documents, and whether the documents provided to the professor materially conform to the documentary evidence in the record of proceeding, so as to be relevant to this proceeding. This aspect of the opinion letter itself renders the reliability of the letter for the purposes of this appeal questionable.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the advisory opinion rendered by Dr. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Dr. [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion. Therefore, the AAO finds that the letter from Dr. [REDACTED] does not establish that the proffered position is a specialty occupation. As such, neither Dr. [REDACTED] findings nor his ultimate conclusions are worthy of any deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. §214.2(h)(4)(iii)(A).

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'r 1988). As a reasonable exercise of its discretion, the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into its analysis of each of the criteria bases in this decision for dismissing the appeal.

The AAO will now discuss the petitioner's references to the Occupational Information Network's (O*NET) designation of a "Job Zone of 4" for the occupation of "Coaches and Scouts," and to the Specific Vocational Preparation (SVP) rating.

A designation of Job Zone 4 in the O*NET indicates that a position requires "considerable preparation." The O*NET provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. A Job Zone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Thus, the O*NET does not demonstrate that at least a bachelor's degree in any specific specialty or its equivalent is required, and does not, therefore, indicate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).⁴

In addition, the AAO finds that an assignment of an SVP rating of 7.0 to < 8.0 is not evidence that the proffered position – or any other particular position within an occupational group assigned a 7.0 to < 8.0 - requires at least a bachelor's degree or higher in a specific specialty. This finding comports with Section II of the DOL's *Dictionary of Occupational Titles*' (the DOT's) Appendix C,

⁴ See the O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 4 does not indicate any requirements for degrees in specific specialties) (last visited Dec. 31, 2013).

Components of the Definition Trailer, which addresses the SVP rating system⁴ and states the following:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year

⁴ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (accessed on Dec. 31, 2013). This website notes that the DOT “was last updated in 1991” and was “replaced by the O*NET.”

(b)(6)

- 6 Over 1 year up to and including 2 years
- 7 Over 2 years up to and including 4 years
- 8 Over 4 years up to and including 10 years
- 9 Over 10 years

Note: **The levels of this scale are mutually exclusive and do not overlap.**

Thus, contrary to the petitioner's assertion in response to the RFE, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required to perform the duties of the proffered position or, more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the information from the *DOT* is not probative of the proffered position being a specialty occupation.

The petitioner cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) and states that "the court determined that the regulations do not require a degree in a specific specialty but do permit a combination of education and experience."

Specifically, the AAO notes that in *Tapis Int'l v. INS*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177.

The AAO agrees with the district court judge in *Tapis Int'l v. INS*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added).

Moreover, the AAO also agrees that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and

experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. The AAO does not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis Int'l v. INS* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor's degree in that field. In other words, the AAO does not find that *Tapis Int'l v. INS* stands for either (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

In any event, the petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS*. The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the

same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Finally, the petitioner refers to unpublished decisions in which the AAO determined that the coach positions proffered in those matters qualified as a specialty occupation. The petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Therefore, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, in response to the RFE the petitioner submitted copies of various job vacancy announcements.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no documentary evidence demonstrating that any of the advertising employers are similar in size and scope to that of the petitioner, a state university with 2,330 employees. Thus, the record is devoid of sufficient information regarding the advertising employers to conduct a legitimate comparison of each of these organizations to the petitioner. Without such evidence, advertisements submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and another organization share the same general characteristics, information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements) may be considered. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Moreover, contrary to the purpose for which the advertisements were submitted, the advertisements provided, however, do not establish that a bachelor's degree in a *specific specialty*, or its equivalent, is required by the advertising employers. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant as the record does not indicate that the posted job announcements are for parallel positions in similar organizations in the same industry.

Specifically, none of the advertisements indicate that a bachelor's (or higher) degree in a specific specialty, or its equivalent, is a requirement for entry into those positions. Moreover, the extent of playing skills, division experience, and/or coaching experience varies among the job announcements. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty, or its equivalent, that is directly related to the specialty occupation claimed in the petition. Thus, for the reasons discussed above, the petitioner's reliance on the job vacancy advertisements is misplaced. As a result, the petitioner has not established that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁵

⁵ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from such a limited number of advertisements with regard to determining the common educational requirements for entry into parallel positions in similar state universities. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of assistant men's tennis

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied 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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the assistant men's tennis coach duties described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates a wage level based upon the occupational classification "Coaches and Scouts" at a Level I (entry level) wage. This wage level designation is appropriate for positions for which the petitioner expects the beneficiary is only required to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other assistant men's tennis coach positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

coach at a state university required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The AAO turns next to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position.

Of course, the AAO will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree-requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

In the brief in response to the RFE, the petitioner stated that it "has never hired a person into [the proffered] position who did not have a bachelor degree. . . ." In addition, as previously noted, the petitioner submitted two lists indicating that the petitioner's coaches and assistant coaches hold bachelor's degrees in a variety of majors. The wide array of majors listed in the petitioner's listings indicate that the petitioner does not require a minimum of a bachelor's degree, in a specific specialty, or its equivalent, for similar positions to the one here proffered. Thus, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

Upon review of the record, the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, 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 the specific duties is so specialized and complex that the knowledge required to perform the

(b)(6)

duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the record of proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. There is insufficient evidence in the record to establish that the duties of the proffered position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

The AAO finds that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. That is, the petitioner has not established that the nature of the duties of the position 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 in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

(b)(6)

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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