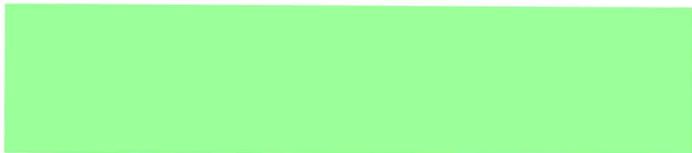
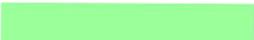


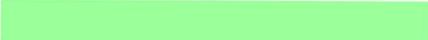


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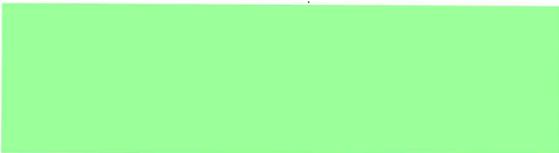


DATE: **JUL 17 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

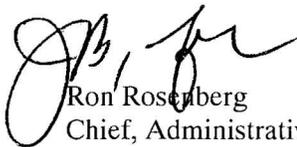


INSTRUCTIONS:

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,



Ron Rosenberg
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.

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as an 18-employee athletic organization¹ established in 2005. In order to employ the beneficiary in what it designates as a full-time director of coaching position at a salary of \$42,000 per year,² 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, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. LAW

As noted, the director's sole basis for denying this petition was his determination that the proffered position is not a specialty occupation. To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 61162, "Sports and Recreation Instruction." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "61162 Sports and Recreation Instruction," [http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=611620&search=2012 NAICS Search](http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=611620&search=2012%20NAICS%20Search) (last visited June 25, 2014).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Coaches and Scouts" occupational classification, SOC (O*NET/OES) Code 27-2022, and a Level III prevailing wage rate.

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

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

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid

this 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 rely simply upon a proffered position's title. The specific duties of the position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

III. SPECIALTY OCCUPATION

We will now address the director's finding that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

The petitioner describes the job duties its March 26, 2013 H-1B support letter as follows:

- Direct the technical development of [REDACTED] soccer players year round ranging from ages 5 to 18 to allow them the best opportunity to progress into High School, College, and Professional Soccer;
- Enhance [REDACTED] players' scientific knowledge of the game of soccer in the following fields:

-Nutrition

- Kinesiology
- Biomechanics
- Psychology

- Organize and manage [REDACTED] training staff;
- Ensure [REDACTED] staff are at a level of coaching that will allow them to deliver fun and challenging training sessions;
- Develop [REDACTED]; Training Staff's knowledge of the importance of Sports Science and the role of Nutrition, Kinesiology, Biomechanics, Psychology, and Injury Prevention;
- Provide advice and guidance to the volunteer coaches on the technical and tactical aspects of soccer and the leading theories in Sports Science;
- Recruit players and teams to join [REDACTED];
- Arrange, organize and lead age specific try outs during winter, spring, and summer, where players will be taught the technical, tactical, and science behind becoming an elite athlete;
- Direct and manage the organization and delivery of [REDACTED] position specific Soccer Clinics during the winter, spring, summer, and fall seasons; [and]
- Oversee the maintenance of [REDACTED] coaching equipment and fields.

In his March 26, 2013 H-1B cover letter, counsel stated that the duties of the proffered position would include the first eight tasks mentioned above and added the following additional two tasks:

- Assist with the organization and delivery of [REDACTED] position specific Soccer Clinics during the winter, spring, summer, and fall seasons;
- Assist in the maintenance of [REDACTED] coaching equipment and fields.

In the September 13, 2013 response to the June 27, 2013 RFE, counsel mentioned the following tasks:

- Enhance [REDACTED] players' scientific knowledge of the game of soccer in the following fields: Nutrition, Anatomy, Kinesiology, Biomechanics and Psychology[;]
- Direct the technical development of [REDACTED] soccer players year round ranging from ages 5 to 18 to allow them the best opportunity to progress into High School, College, and Professional Soccer;

- Organize and manage [REDACTED] training staff as well as ensure [REDACTED] staff are at a level of coaching that will allow them to deliver fun and challenging training sessions and assisting with the organization and delivery of [REDACTED] position specific Soccer Clinics during the winter, spring, summer, and fall seasons.

The petitioner added these job duties in its September 13, 2013 response to the June 27, 2013 RFE:

- Enhance [REDACTED] players' scientific knowledge of the game of soccer in the following fields: Nutrition, Anatomy, Kinesiology, Biomechanics and Psychology[;]
- Direct the technical development of [REDACTED] soccer players year round ranging from ages 4 to 18 to allow them the best opportunity to progress into High School, College, and Professional Soccer;
- Organize and manage [REDACTED] training staff as well as ensure [REDACTED] staff are at a level of coaching that will allow them to deliver fun and challenging training sessions and assisting with the organization and delivery of [REDACTED] position specific Soccer Clinics during the winter, spring, summer, and fall seasons.

We will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize 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 it addresses.³ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Coaches and Scouts" occupational category.

The *Handbook* states the following with regard to the duties of positions falling within the "Coaches and Scouts" occupational category:

Coaches teach amateur and professional athletes the skills they need to succeed at their sport. Scouts look for new players, evaluating their skills and likelihood for success at the college, amateur, or professional level. Many coaches are also involved in scouting.

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2014-15 edition available online.

Duties

Coaches typically do the following:

- Plan, organize, and conduct practice sessions
- 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

Scouts typically do the following:

- Read newspapers and other news sources to find athletes to consider
- Attend games, view videotapes of the athletes' performances, and study statistics about the athletes to determine talent and potential
- Talk to the athlete and the coaches to see if the athlete has what it takes to succeed
- Report to the coach, manager, or owner of the team for which he or she is scouting
- Arrange for and offer incentives to prospective players

Coaches teach professional and amateur athletes the fundamental skills of individual and team sports. They hold training and practice sessions to improve the athletes' form, technique, skills, and stamina. Along with refining athletes' individual skills, coaches are also responsible for instilling in their players the importance of good sportsmanship, a competitive spirit, and teamwork.

Many coaches evaluate their opponents to determine game strategies and to establish specific plays to practice. During competition, coaches call specific plays intended to surprise or overpower the opponent, and they may substitute players for optimum team chemistry and success.

Many high school coaches are primarily academic teachers who supplement their income by coaching part time.

Sports instructors differ from coaches in their approaches to athletes because of the focus of their work. For example, coaches manage the team during a game to optimize its chance for victory, but sports instructors are often not permitted to instruct their athletes during competition.

Like coaches, though, sports instructors hold practice sessions, assign specific drills, and correct athletes' techniques. They spend more of their time working one-on-one with athletes, designing customized training programs for each individual.

Sports instructors typically specialize in teaching athletes the skills of an individual sport, such as tennis, golf, or karate. Some sports instructors, such as pitching instructors in baseball, may teach individual athletes involved in team sports.

Scouts evaluate the skills of both amateur and professional athletes. Scouts seek out top athletic candidates for colleges or professional teams and evaluate their likelihood of success at a higher competitive level.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Coaches and Scouts," <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-2> (last visited June 25, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into positions within this occupational category:

Coaches and scouts typically need a bachelor's degree. They must also have extensive knowledge of the sport. Coaches typically gain this knowledge through their own experiences playing the sport at some level. Although previous playing experience may be beneficial, it is not required for most scouting jobs.

Education

High schools typically hire teachers at the school for most coaching jobs. If no suitable teacher is found, schools hire a qualified candidate from outside the school. For more information on education requirements for teachers, see the profile on high school teachers.

College and professional coaches must usually have a bachelor's degree. This degree can typically be in any subject. However, some coaches may decide to study exercise

and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

Scouts must also typically have a bachelor's degree. Some scouts decide to get a degree in business, marketing, sales, or sports management.

Other Experience

College and professional coaching jobs also typically require experience playing the sport at some level.

However, scouting jobs typically do not require experience playing a sport at the college or professional level. Employers look for applicants with a passion for sports and an ability to spot young players who have exceptional athletic ability and skills.

Licenses, Certifications, and Registrations

Most state high school athletic associations require coaches to be certified. Certification often requires coaches to be a minimum age (at least 18 years old) and be trained in cardiopulmonary resuscitation (CPR) and first-aid. Some states also require coaches to attend classes related to sports safety and coaching fundamentals prior to becoming certified.

Although most public high school coaches need to meet these state requirements in order to become a coach, certification may not be required for coaching and sports instructor jobs in private schools.

Certification requirements for college coaching positions also vary.

Additional certification may be highly desirable or even required in order to become an instructor in scuba diving, tennis, golf, karate, or other individual sports. There are many certifying organizations specific to the various sports, and their requirements vary.

Part-time workers and those in smaller facilities or youth leagues are less likely to need formal education or training and may not need certification.

Advancement

Many coaches begin their careers as assistant coaches to gain the knowledge and experience needed to become a head coach. Large schools and colleges that compete at the highest levels require a head coach with substantial experience at another school or as an assistant coach.

To reach the ranks of professional coaches, a candidate usually needs years of coaching experience and a winning record in the lower ranks or experience as an athlete in that sport.

Scouts may begin working as talent spotters in a particular area or region. They typically advance to become supervising scouts responsible for a whole territory or region.

Important Qualities

Communication skills. Because coaches instruct, organize, and motivate athletes, they must have excellent communication skills. They must effectively communicate proper techniques, strategies, and rules of the sport so every player on the team understands.

Decision-making skills. Coaches must choose the appropriate players to use at a given position at a given time during a game and find a strategy that yields the best chance for winning. Coaches and scouts also must be very selective when recruiting players from lower levels of athletics.

Dedication. Coaches must attend daily practices and assist their team and individual athletes in improving their skills and physical conditioning. Coaches must be dedicated to their sport, as it often takes years to become successful.

Interpersonal skills. Being able to relate to athletes helps coaches and scouts foster positive relationships with their current players and recruit potential players.

Leadership skills. Coaches must demonstrate good leadership skills to get the most out of athletes. They also must be able to motivate, develop, and direct young athletes.

Resourcefulness. Coaches must utilize the talent on a team to achieve the best chances for winning. For example, a coach may change players during the game to meet the defensive needs of the team.

Id. at <http://www.bls.gov/oooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4> (last visited June 25, 2014).

Although the *Handbook* states that "[c]oaches and scouts typically need a bachelor's degree," it also specifically states that it "can typically be in any subject." As the *Handbook* indicates that entry into the Coaches and Scouts occupational category does not normally require at least a bachelor's degree in a specific specialty or its equivalent, it does not support the proffered position as being a specialty occupation.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A),

either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. 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. For all of these reasons, the excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion within this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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 at 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* 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. Nor does the record contain any other evidence relevant to this prong of the second criterion.⁴

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty or its equivalent that is common (1) to the petitioner's industry and (2) for positions in that industry that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

In this particular case, the evidence of record does not credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

The record of proceeding does not contain sufficient evidence to establish relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Coaches and Scouts" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. On appeal, counsel states that the requirements of the proffered position are so specialized and complex such that a degree in sports science, coaching or a closely related field is necessary; the petitioner submitted evidence, including injury prevention plans, nutrition plans, and individual and team development plans, to establish the type of work to be performed; and the petitioner submitted numerous scientific studies on soccer-related injuries and injury prevention programs to show the importance of the development plans the beneficiary would develop. Counsel states that the petitioner discussed each job requirement in detail. Counsel asserts that the development of a nutrition plan involves discussing the number of calories and

⁴ We note that in its March 26, 2013 letter, the petitioner stated that its degree requirement "is common for companies with the size of operation similar to [REDACTED]." However, as noted, the record contains no evidence to support this claim. 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)).

glycogen needed to compete; the proper sources for calories and glycogen; and the importance of hydration during practice and competition. Counsel does not, however, explain how the performance of these duties, and the position the collectively constitute, requires a bachelor's degree *in a specific specialty*, or the equivalent.⁵

The evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in a specific specialty, or the equivalent, in its prior recruiting and hiring for the position. Additionally, 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 proffered position.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's June 27, 2013 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The third section of the RFE includes the following specific requests for such documentation:

⁵ To the contrary, counsel asserts repeatedly that the position requires only "a bachelor's degree," which we do not dispute. However, the relevant inquiry is whether it requires a bachelor's degree *in a specific specialty*, or the equivalent.

- Position Announcement: To support the petitioner's contention that the position is a "specialty occupation," provide copies of the petitioner's present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires its applicants to have a minimum of a baccalaureate or higher degree or its equivalent in a specific specialty.
- Past Employment Practices: Provide evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher[,] in a specific specialty, to perform the duties of the proffered position. Indicate the number of persons employed in similar positions. Further, submit documentation to establish how many of those persons have a baccalaureate degree or higher and the particular field of study in which the degree was attained. Documentation should include copies of transcripts and pay records or Quarterly Wage Reports for the employees claimed to hold a baccalaureate degree in the specific field of study.

Although the director provided the petitioner with the opportunity to establish a history of recruiting and hiring only individuals for this position with a bachelor's degree in a specific specialty, or the equivalent, the petitioner submitted no such evidence. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Coaches and Scouts" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions (to the contrary, it indicates precisely the opposite). With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient, credible evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

The statements of counsel and the petitioner with regard to the claimed specialized and complex nature of the proffered position are acknowledged. As mentioned, counsel states the requirements of the proffered position are so specialized and complex such that a degree in sports science, coaching or a closely related field is necessary; the petitioner submitted evidence, including injury prevention plans, nutrition plans, and individual and team development plans, to establish the type of work to be performed; and the petitioner submitted numerous scientific studies on soccer-related injuries and injury prevention programs to show the importance of the development plans the beneficiary would develop. Counsel does not, however, explain how the performance of these duties requires a bachelor's degree *in a specific specialty*, or the equivalent.

The record of proceeding does not contain information relevant to a detailed course of study leading to a specialty degree and does not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the evidence of record does not demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

IV. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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.