



U.S. Citizenship
and Immigration
Services

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DATE: AUG 26 2015

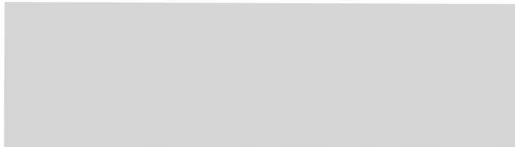
PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a three-employee indoor sports facility established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time "Soccer 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, finding that the evidence of record did not establish that the proffered position constitutes a specialty occupation. The petitioner now files this appeal, asserting that the Director's decision was erroneous.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's decision denying the petition; and (5) the petitioner's appeal and submissions on appeal.

As will be discussed below, we find that the evidence of record is insufficient to establish that the proffered position constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.¹

II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title 27-2022, Coaches and Scouts, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level II position.

In a letter dated March 31, 2014, the petitioner explained that it is an "indoor and outdoor multi sports complex" that offers "a wide range of sports programs, including: Soccer, Lacrosse, Flag Football, Dodgeball, Cricket, Baseball, Softball and field hockey." In particular, its soccer programs include soccer clinics, camps, and classes designed for children. Regarding the proffered position, the petitioner stated that the beneficiary will be "solely responsible" for the following duties:

- Teach athletes the fundamental skills of individual and team soccer;

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Create, promote, sell and deliver fundamental programs of high caliber for children and soccer coaches;
- Manage and train coaches for soccer programs;
- Create team training programs outlining the aims and objectives and a reporting template to monitor the athletes' progress;
- Measure and use the templates to generate monthly reports on performance;
- Implement and create successful training program while delivering high quality coaching standards;
- Create, Promote, Sell and Deliver Fundamental programs for Children and Coaches;
- Oversee and run programs to ensure the everyday operation of classes are successful;
- Hire and Fire coaches based on performance and delivery of session plans;
- Deliver Physical Education sessions to children in order to increase stamina and endurance;
- Create specific programs tailored to athletes age group and needs;
- Provide feedback to soccer players based on weekly reports of progress and team development;
- Implement player strategies and advice on how to improve the overall game and the team's game;
- Create Strength, Tactical, Technical and game related scenarios and training programs; and
- Deliver sessions following session's plans to deliver a fun and learning environment for all children participating in camps and classes.

(Verbatim.)

With respect to the minimum educational requirement for the proffered position, the petitioner stated that "[t]he position of Soccer Coach is a Specialty Occupation and it is the minimum requirement to have a bachelor's degree."

In a letter dated September 25, 2014 submitted in response to the RFE, the petitioner elaborated upon the proffered position, its constituent duties, and educational requirement. More specifically, the petitioner attested:

As Soccer Coach, [the beneficiary] is in fact, director of coaching. The level of responsibility of this position is so specialized and complex that we only hire individuals who hold a Bachelors in Sports Science, Physical Education or sports related field, possess extensive knowledge of the sport and hold a UeFA B license or equivalent. In order to fulfill this high level of responsibility within our company, the Soccer Coach will be the highest qualified coach in the club and is expected to have a background in Sports Science to be able to perform technical classroom sessions breaking down techniques and game strategies. Because of our small staff and the

nature of our expanding business, as well as competition in our industry, we require that our Coaches possess extensive knowledge of the principles of the game and have the ability to create methods of curriculum and training design, teaching and instruction for individuals and groups, and Child Protection Policy and Procedures.

Because the position of Soccer Coach is not a generalized field, a Bachelor's in Sport Science is directly related with the position of coach. Due to the complexity of the position of Soccer Coach whose duties encompass director of coaching, it is required that the individual be educated and well versed in college level courses. As Soccer Coach, [the beneficiary] will supervise and evaluate other coaches and assistant coaches throughout their performance and delivery of session plans. [The beneficiary] will also be responsible for creating soccer programs. In order to create soccer programs, the Soccer Coach must be highly educated in the theoretical approach of the sport with an extensive background in Child Protection Policy and Procedures, in order to create programs that accommodate each player in the appropriate level to ensure their safety and progress.

In addition, the petitioner offered a more detailed breakdown of the beneficiary's duties with the percentages of time spent on them. The petitioner's descriptions are summarized below:

1. Create, promote, sell and deliver fundamental programs of high caliber for children and soccer coaches (20%). Includes creating curriculum and class room sessions for U9 to U15 academies teaching tactical analysis, injury prevention techniques, muscle building techniques, technical break down (from running technique all the way to soccer dribbling and striking techniques), fitness and nutrition and basic knowledge to in depth knowledge of soccer education.²
2. Teach athletes the fundamental skills of individual and team soccer (30%). Includes holding practice sessions, advising players, teaching physical and social skills, and coaching up to 25 hours per week.
3. Assess students to evaluate their abilities, strengths, and weaknesses (30%). Includes coaching, evaluating players and their opponents to devise competitive strategies, motivating athletes, teaching and grading student progress, communicating with parents and players. Also includes oversight of specific program functions or locations, program participation and growth, and general operational needs.

² The petitioner explained that the U9 to U14 academies are designed to teach young players advanced technical skills and techniques.

4. Hire, Manage, and Train Coaches for Soccer Programs (20%). Includes recruiting, selecting, training, educating, and developing coaches and assistant coaches.

On appeal, the petitioner refers to the proffered position exclusively as the "Director of Coaching (DOC)," and provides additional descriptions of the proffered duties with percentages of time spent on them, as summarized below:

1. Player Development, including coaching up to 25 hours per week, teaching theoretical and technical classes, and holding practice sessions (30%).
2. Coaching Development, including recruiting, assigning, training, monitoring, and overseeing the coaches (30%).
3. Program Development, including creating classroom sessions for U9 to U15 academies, designing player evaluation and feedback processes, creating and assisting in programs for internal staff development, and developing a code-of-conduct for coaches, players, and parents (30%).
4. Club Development, including budgeting all programs, promoting and selling the club's soccer programs, developing the facility's philosophy, training, and coaching curriculums, and organizing and running try-outs (10%).

The petitioner states on appeal that "[a] Bachelor's Degree, together with a high level coaching license and at least 8 years in sport is needed for this role as recommended by the US Soccer Federation" and a "Bachelor's in Sports Science is directly related with the position of coach."

III. SPECIALTY OCCUPATION

A. Legal Framework

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B 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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

The 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 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 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.

B. Analysis

Upon review, we find the evidence of record insufficient to establish that the proffered position is a specialty occupation that satisfies any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

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 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.

We recognize the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that

it addresses.³ In pertinent part, the *Handbook* states the following with regard to the educational requirements necessary for entrance into the "Coaches and Scouts" occupational group:

How to Become a Coach or Scout

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.

* * *

License, Certifications, and Registrations

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.

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.

³ All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>.

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.

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-4> (last visited Aug. 19, 2015).

The *Handbook* does not support a finding that a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. In particular, while the *Handbook* states that "[c]oaches and scouts typically need a bachelor's degree," it does not state that a bachelor's degree *in a specific specialty* is required. *Id.* Even at the college or professional level, there is no requirement that the bachelor's degree be in any particular field, as the *Handbook* explicitly states that "this degree can typically be in any subject." *Id.* In addition, the *Handbook* states that coaches and scouts "in smaller facilities or youth leagues are less likely to need formal education or training." *Id.*

On appeal, the petitioner acknowledges that the *Handbook* does not specify the type of bachelor's degree needed for the position. The petitioner asserts, however, that the *Handbook* indicates that a Sports Science degree is *preferred* for the offered position. The petitioner states: "Although there is not a specific degree requirement indicated in the [*Handbook*], the [*Handbook's*] acknowledgement that that a specific degree in sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine, is preferred by some coaches, should be given weight, since the beneficiary holds a specific degree in Sports Science." *Id.* The petitioner's assertions are unpersuasive. A *preference* for a degree is not a *requirement* for a degree, as required by the plain language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Furthermore, the petitioner asserted that "[i]n the United States, the position of Soccer Coach requires a Bachelor's Degree and a minimum of a US F License if candidates do not hold European Licenses." However, the petitioner has not provided evidence from an objective, authoritative source corroborating this 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). We note the *Handbook's* statement, to the contrary, that coaches of youth leagues "may not need certification." *Id.*

Even if the petitioner had provided corroborating evidence to support its assertion regarding mandatory certification for soccer coaches in the United States, the petitioner has not adequately

explained and documented the educational requirements needed to obtain a US F License or European License. Nor has the petitioner established that these licenses would be equivalent to a bachelor's degree in a specific specialty. The petitioner submitted a letter from [REDACTED] in the United Kingdom, stating that the Uefa B License is "the second highest practical coaching award available behind the Uefa A award" and that completing the courses required for the Uefa B License would take approximately 4-5 years. However, the petitioner did not submit any evidence establishing that Mr. [REDACTED] could reasonably be considered an "expert" or is otherwise qualified to render an advisory opinion on the matter. Moreover, this letter does not address the content and educational equivalency of the Uefa A or B License coursework. The petitioner also did not submit any evidence relating to the educational requirements and equivalencies of a US F License and other European Licenses.

On appeal, the petitioner cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), to support the proposition that the required degree need not be in a specific academic major. However, the evidence of record does not establish how *Residential Fin. Corp.* supports such a proposition. Moreover, as explained above, the regulations at 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). As such, 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. Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).

Overall, we find the evidence of record insufficient to establish that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

Next, we will review the record regarding 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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 evidence does not demonstrate that the proffered position is one for which the *Handbook* or another authoritative source reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there submissions from professional associations or firms in the petitioner's industry. Despite the petitioner's references to the US Soccer Federation's recommended requirement of "[a] Bachelor's Degree, together with a high level coaching license and at least 8 years in sport" for soccer coaching positions, the petitioner did not provide any documentation from the US Soccer Federation or other reliable sources to corroborate this assertion. Again, 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.

On appeal, the petitioner asserts that "a baccalaureate degree for the Director of Coaching role is common to the industry among comparable organizations." The petitioner provided vacancy announcements posted by [REDACTED] and [REDACTED] in support of this assertion. However, neither vacancy announcement states that a bachelor's degree in a *specific specialty* is required. While the vacancy announcement from [REDACTED] states that a bachelor's degree in education or exercise physiology "is a plus," we again note that a preference is not a requirement.

The petitioner also asserts that other clubs in the New Jersey region, such as [REDACTED] and [REDACTED] "only hire individuals holding a Bachelor's Degree for the position of Director Coaching." As evidence, the petitioner submitted printouts from the websites of those clubs outlining the educational credentials of its coaching staff. However, the printouts do not establish that those organizations *require* a bachelor's degree in a specific specialty for their coaching positions, notwithstanding the qualifications of their staff. In any event, the statements on those websites regarding the educational qualifications of those individuals are claims, and the record of proceeding lacks documentary evidence to establish or corroborate those educational and professional experience claims. Further, the record lacks sufficient evidence to establish the petitioner as being similar to those organizations in terms of size and scope of services such that they could be found to be similar organizations. For example, [REDACTED] and [REDACTED] appear to be soccer clubs while the petitioner, an "indoor and outdoor multi sports complex," appears to provide a wider range of sports programs such as soccer, lacrosse, flag football, dodgeball, cricket, baseball, softball, and hockey.

The petitioner also submits on appeal another letter from Mr. [REDACTED] stating that the beneficiary's degree and license "are very important when taking on such a senior and highly important role in an organisation" and are "a must in the director of coaching role." However, Mr. [REDACTED] statements do not adequately explain the factual basis for his conclusions, particularly with respect to the educational requirements common to the industry in similar organizations. As

previously discussed, the petitioner did not submit evidence establishing that Mr. [REDACTED] is qualified to render an opinion on the matter. As such, his statements are accorded little probative weight.

The evidence of record is thus insufficient to satisfy the first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

The evidence of record also 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."

We find that the petitioner has not sufficiently developed relative complexity or uniqueness as aspects of the proffered position. The petitioner has not adequately distinguished the proffered position from other soccer coach positions which do not necessarily require a minimum of a baccalaureate degree in a specific specialty. In other words, the record does not sufficiently distinguish the proffered position as unique from or more complex than other soccer coaching positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. We again highlight the *Handbook's* statements that even coaches at the college or professional levels may possess bachelor's degrees which "can typically be in any subject," and that coaches for youth leagues "are less likely to need formal education or training."

Consequently, as the petitioner has not demonstrated how the proffered position is so complex or unique relative to other similar positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

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. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. In addition, the petitioner may submit any other documentation it considers relevant to this criterion of the regulations.⁴

⁴ A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See

With respect to this criterion, the petitioner indicates that it has never previously hired for the proffered position. Specifically, the petitioner stated that "[its] company has not previously employed an individual in the position of Soccer Coach." 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).

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 in a specific specialty, or its equivalent

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner so as to differentiate the proffered position as more specialized and complex than other soccer coaching positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

Here, the petitioner repeatedly emphasizes the specialized and complex nature of the proffered position, stating that it encompasses the Director of Coaching position. The petitioner attests that the proffered position will oversee an assistant coach and will manage, hire, and fire other coaches.⁵

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 the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

⁵ On appeal, the petitioner explains that the beneficiary previously supervised one assistant coach, and will now supervise five additional, newly hired coaches.

The petitioner also attests that the proffered position requires other management skills, such as financial alignment of budgets, managing staff and potential young elite players, and oversight of program functions or locations. However, we must question the stated requirements for the proffered position, as well as the level of complexity and level of responsibility that are actually needed for the proffered position, as the LCA is certified for a Level II position.⁶ This characterization of the position and the claimed duties, responsibilities and requirements as described in the record of proceeding is inconsistent with the wage-rate element of the LCA selected by the petitioner, which is indicative of a comparatively lower position relative to others within the same occupation.⁷

⁶ A level II wage rate indicates that the position is for an employee who has a good understanding of the occupation but who will only "perform moderately complex tasks that require limited judgment." In contrast, a Level III position is for an employee who "perform[s] tasks that require exercising judgment," "may coordinate the activities of other staff," and "may have supervisory authority over those staff." A Level IV position is for an employee who "generally [has] management and/or supervisory responsibilities." See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it does not appear that the position is one with specialized and complex managerial duties, as such a higher-level position would be classified as a Level III or Level IV position.

We note that the petitioner proposes to pay the beneficiary at a rate of \$62,400, which is higher than a Level II wage (\$29,513 per year) for the occupational category, Coaches and Scouts, for [REDACTED] New Jersey). Nevertheless, the wage level designation on the LCA must correspond to the duties and requirements of the proffered position. We are not in a position to speculate as to why the petitioner proposes to pay the beneficiary a wage in excess of the prevailing wage for a Level II position. For more information regarding the wages for "Coaches and Scouts" – SOC (ONET/OES Code) 27-2022, in [REDACTED] NJ MSA, for the period 7/2013 – 6/2014, see [http://flcdatcenter.com/OesQuickResults.aspx?code=27-2022\[REDACTED\]year=14&source=1](http://flcdatcenter.com/OesQuickResults.aspx?code=27-2022[REDACTED]year=14&source=1) (last visited Aug. 19, 2015).

We further note that while the petitioner states on the Form I-129 that it will pay the beneficiary \$62,400 per year, it states in its letter of support that the rate of pay will be \$62,000 per year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

⁷ The issue here is that the petitioner's designation of this position as a Level II position undermines its claim that the position is particularly complex and specialized compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level II (or even Level I) wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not

The evidence in the record of proceeding does not 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 petitioner has not satisfied 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.

IV. BENEFICIARY QUALIFICATIONS

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the 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 did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree, or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based in part on experience, there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

V. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the proffered position, as described, more likely than not constitutes a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied.

reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

(b)(6)



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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.