



U.S. Citizenship
and Immigration
Services

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JUN 08 2015

DATE:

PETITION RECEIPT #:



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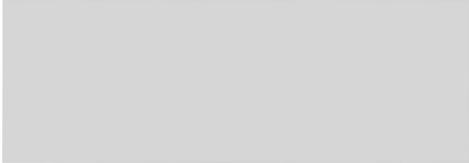
Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(15)(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, California Service Center, denied the nonimmigrant visa 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 235-employee "Inter-collegiate Athletic Association" established in [REDACTED]. In order to employ the beneficiary in a position it designates as an "Assistant Men's Golf Coach," 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 determining that the record of evidence did not establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner asserts that the Director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before this office includes the following: (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 Notice of Appeal or Motion (Form I-290B), a brief, and additional documentation. We reviewed the record in its entirety before issuing our decision.¹

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

II. THE PROFFERED POSITION

The petitioner identified the proffered position as an "Assistant Men's Golf Coach" on the Form I-129, and attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Coaches and Scouts," SOC (ONET/OES) Code 27-2022, at a Level I (entry) wage. The LCA was certified on June 30, 2014, for a validity period from July 1, 2014 to June 30, 2016 for the [REDACTED] Kentucky geographical area.

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

Also, in light of the petitioner's references, in response to the Director's RFE, to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010).

In the petitioner's letter submitted in support of the petition, dated July 23, 2014, the petitioner stated that it "oversees the management of the Athletic Department and programs including collection of revenues and payment of expenses, scholarships and employment of coaches." The petitioner stated the following with regard to the proffered position:

The position is responsible for assisting the Head Coach with all facets of managing a Division I Men's Golf program. These duties include recruiting of US and international students, assisting in coaching and providing instruction and mentoring of student-athletes, off and on golf course. The Assistant [C]oach will ensure compliance with all NCAA rules and policies as well as educate all team student athletes of said rules and policies and enforce observation at all times. The Assistant Coach will assist the head coach in identifying, maintaining, interacting and growing relationships with team donors, potential donors, community members, alumni and [redacted] members. He will also act as a resource to our student athletes at all times and when traveling to competitions, overseeing academic progress of student-athletes, as well as making travel arrangements for team and coaches for travel to competitions.

Our coaches are heavily integrated into the educational aspect of our college athletes' lives, rather than just focusing on coaching for an athletic victory. They fill numerous roles in the University in support of the academic mission of the school. Because we expect each of its student-athletes to graduate with at least a bachelor's level degree, we expect that all of our coaches will also have Bachelor's Degrees and at least one to two years of coaching experience at the professional or collegiate level. We expect that coaches have degrees in Education, Physical Education, Kinesiology or related fields. If their degrees are outside of the education field, we require that they have several years of coaching or other relevant work experience so that they have the equivalent of a degree in Physical Education or closely related field. The minimum requirement and the high level of expertise required in this position make it a specialty occupation which qualifies for the H-1B status.

In a response to the Director's RFE, dated September 29, 2014, the petitioner added to its initial description of the duties of the proffered position, now indicating that the "position is responsible for all facets of managing a Division I Men's Golf program including designing customized exercise plan for each student athlete based on their anatomical state and prior, current or potential injuries." The petitioner also indicated:

At the [redacted] we offer tailored instruction and fitness plans depending upon a student's skill level and overall health. To provide appropriate instruction, our coaching staff must be well-versed and knowledgeable about the latest theories and technologies that relate to their particular sport. The first part of instruction is an in-depth assessment of each individual and development of a targeted, goal driven plan for instruction. Another key component of instruction is injury prevention and healing based on the person's injury history.

The petitioner stated that the proffered position requires "at least a bachelor's degree in a sports/health field and one to two years of experience in coaching golf at the professional level and/or collegiate level" and that a "degree in a sports/health related field such as kinesiology or sports management meets our requirement as it provides the Assistant Golf Coach with sufficient underlying knowledge of human anatomy and athletic instruction." The petitioner also attached a job description for the proffered position which included the following duties:

- Continually evaluate the swing of each golfer and monitor the degrees of shoulder and hip turns, making small adjustments until maximum performance. (15%)
- Conduct an initial assessment of a golfer's anatomical state including flexibility degrees and range of motion and create an ongoing exercise plan to prepare to maximize physical condition. (10%)
 - As a position or event specialist, evaluate student-athletes to identify strengths and deficiencies, and design instructional opportunities to improve technical and strategic execution based on sound motor learning and bio-mechanical principles.
- Conduct an evaluation of prior, current or potential injuries based on kinesiology and plan a course of action to address, repair or prevent spinal hyperextension or injury. (10%)
 - Examine and prevent injuries during warm up, practice or competition, by using protective tape, bandages, braces or the proper orthopedic/muscular devices as needed.
- Evaluate biomechanics of each golfer and coach/instruct to ensure thoracic rotational flexibility, lumbar and soft tissues are in order for maximum safety and performance. (Biomechanics predict future injuries) (10%)
 - Establish a CFTE or clinical flexibility and therapeutic exercise protocol.
 - Evaluate and maintain the CFTE specific to each golfer's needs.
- Provide ongoing plan to prepare golfers for competition physically, psychologically and intellectually, this includes training direction, encouragement and motivation. (10%)
 - Educate student athletes on sports rules, game strategies and performance principles.

- Mentor student athletes on an ongoing basis and ensure that the student athletes succeed.
- Collaborate with the Head Coach, certified Athletic Trainers, and Strength and Conditioning Coach to design both academic year (in season and out-of-season) and summer conditioning programs, encompassing recognized and approved methods of improving power, speed, strength, and aerobic performance, consistent with industry safety and health standards. (5%)
 - Assist with the development of schedules for practice and competition, as assigned. Interface with appropriate departmental administrators to manage site assignments, visiting team practices, reservations for alternative facilities (e.g. classrooms, meeting rooms) pre-and post-events, hospitality room and cancelled practices.
- Game Management (10%)
 - Scout opponent teams, collecting and analyzing tactical and statistical data, evaluating and editing game film, and designing game plans and strategies.
 - Attend coaches' preparatory meetings to develop collaboratively-determined coaching strategies for upcoming competitions, and to prepare the official game plan materials and game simulations for the student-athletes.
 - Manage team-related game day activities, including game-day practices, pre-or post-game meals and sport psychology/performance sessions.
 - Manage film exchange programs per conference game management manuals.
 - Tournament management and execution.
 - Act as a liaison to appropriate event units, including Marketing, Media Services, Operations & Events, Grounds/Facilities staff, Ticket Operations, DAF and Compliance office.
 - Supervise and assign responsibilities to team manager(s), video staff, and graduate assistant(s).
 - Assume responsibility for game management in the absence of the Head Coach.

- Recruitment Management (15%)
 - As an NCAA certified recruiter, successfully research, scout, evaluate and contact prospective student-athletes while operating within the scope of the department, ACC and NCAA regulations at all times.
 - Manage International recruitment. Establish and maintain international relationships with coaches and administrators that assist in connecting with those top 10% golfers in the world that we recruit.
 - Evaluate talent and make frequent international recruiting trips to build relationships with future golfers.
 - As an on-campus recruiter, collaborate with other department and university staff in designing official and unofficial visits in compliance with all university, ACC and NCAA regulations.
 - Coordinate mailing of recruitment materials to prospective student-athletes, ensuring that all commitments fit within the total number of available scholarships.
 - Establish and develop relationship with appropriate high school and junior college officials, amateur club coaches, and coaches within the sport's national governing body for public relations purposes, this [sic] positioning the university nationally.
 - Utilize social media tools to enhance effective recruiting efforts.
- Responsible for promoting the philosophy and objectives of the intercollegiate athletics program, including adherence to all department policies and procedures, as well as the rules and regulations of the university, the Atlantic Coast Conference "ACC" and the NCAA. (5%)
 - Must understand and comply with all NCAA and ACC rules and regulations at all times. Lack of compliance could result in severe ACC or NCAA sanctions for the program the department and the university.
 - Design, conduct and monitor countable athletically-related activities per NCAA playing and practice regulations and departmental policy, including declaring the practice season, reporting weekly countable athletically-related activities and adhering to sport-specific rules regarding voluntary activities and sport-specific safety exceptions.

- Responsible for providing coaching and administrative assistance to the Head Coach. (10%)
 - Provide valuable input in developing and monitoring the program budget relative to position's primary responsibilities, such as recruitment, team travel, or equipment and apparel.
 - Assist in or manage the purchase of apparel and/or specialized equipment, as assigned. Work with vendors in accordance with university protocol. Consult with the equipment manager on matters of inventory, purchase and delivery. Coordinate with equipment manager to ensure the issuance of the necessary equipment and apparel for scheduled practices and competitive events.
 - As assigned, liaison with primary support units [*sic*] such as Student Services, Athletic Medicine and Compliance.
 - Manage, monitor and archive all required records and paperwork per regulatory requirements (e.g. state, federal and NCAA compliance).
 - Cooperate with all coaches and administrative staff within the intercollegiate athletics programs to enhance overall departmental operations.
 - Assistant Coach is expected to conduct him/herself in a loyal honest, responsible, ethical and professional manager at all times.

III. SPECIALTY OCCUPATION

A. Legal Framework

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), 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

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 address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This criterion 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. We recognize the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The petitioner claims on the LCA that the proffered position corresponds to SOC code and title 27-2022, Coaches and Scouts.

We reviewed the section of the *Handbook* regarding the occupational category "Coaches and Scouts," including the section entitled "How to Become a Coach or Scout," which describes the following preparation for the occupation:

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.

² All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>. The excerpt of the *Handbook* regarding the duties and requirements of the referenced occupational category is hereby incorporated into the record of proceeding.

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.

[Emphasis added.]

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 June 3, 2015).

The *Handbook* reports that although college and professional coaches must usually have a bachelor's degree, the degree can typically be in any subject. As such, although some coaches may decide to study a sports-related field or physiology, kinesiology, or sports medicine, the *Handbook* does not indicate that such bachelor's degree in a specific specialty, or its equivalent, is a minimum requirement.

Additionally, when reviewing the *Handbook*, it must be noted that the petitioner designated the proffered position as a Level I (entry) position on the LCA.³ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance."⁴ A Level I wage rate is described as follows:

³ Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

⁴ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.⁵ As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training, or an internship is indicative that a Level I wage should be considered.

We have also reviewed the petitioner's reference to O*NET's report on the occupational group of "Coaches and Scouts" which indicates that the occupational group is in the SVP range of 7.0 to < 8.0 and is assigned a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." An SVP rating of 7.0 for "coaches and scouts" simply indicates that the occupation requires "[o]ver 2 years up to and including 4 years" of training while an SVP rating of 8.0 indicates that the occupation requires "[o]ver 4 years up to and including

⁵ The petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a 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 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.

10 years" of training. Therefore, the SVP and Job Zone information is not probative of the proffered position being a specialty occupation.

We have also reviewed the opinion letter authored by [REDACTED] Ed.D., [REDACTED] and offered in support of the proposition that the proffered position of "Assistant Men's Golf Coach" requires the candidate to possess at least a Bachelor's Degree or its equivalent in Physical Education, Kinesiology, or a related field. Dr. [REDACTED] repeats the job duties provided by the petitioner in response to the Director's RFE and claims the "industry standards for hiring coaches at the collegiate level to show that it is an industry standard to only have appropriately degreed individuals hired to coach collegiate level teams."

Dr. [REDACTED] opines that the duties described by the petitioner "require candidates for the position to possess skills in the area of Physical Education, and other related areas." Dr. [REDACTED] notes that such skills are often taught in various college-level courses and that the beneficiary completed coursework directly related to the sport and health field.⁶ Dr. [REDACTED] concludes that "[i]t is standard practice in collegiate and university athletics to require a coach to possess an undergraduate degree in a sport, physical education, or health-related field" and that the "reason that a degree in a physical education-related field is required to coach is that a graduate of such a degree program would be provided with the knowledge and skills necessary to coach at the collegiate level." Dr. [REDACTED] adds:

A collegiate-level coach must be well-versed and knowledgeable about the latest theories and technologies related to their specific sport. In order to provide high-level instruction, an individual must possess formal instruction that is provided in an undergraduate degree program in physical education or a related field, and not just playing and/or coaching experience.

Dr. [REDACTED] does not differentiate the proffered position from those coaching positions that the *Handbook* indicates are performed by persons who have only a general degree and not a baccalaureate or higher degree in a specific specialty. To the extent that the opinion suggests that a collegiate coach position comprises an occupational class that requires a bachelor's degree in a specific specialty, or the equivalent, the opinion conflicts with the information in the *Handbook* – and does so without acknowledgement of the fact or explanation.

⁶ Dr. [REDACTED] states that the beneficiary completed a course(s) in anatomy and kinesiology; however, the beneficiary's transcript indicates that he withdrew from "Anatomy & Kinesiology" during the Fall 2007 semester. Additionally, the beneficiary's diploma is in general studies. 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). The petitioner has not provided sufficient probative evidence that the beneficiary completed a general studies degree with a concentration in kinesiology.

Further, we observe that Dr. [REDACTED] does not discuss the duties of the proffered position in any meaningful detail. He does not identify or expressly state the full content of, whatever documentation and/or oral transmissions upon which he based his opinion. To the contrary, he simply repeats the list of duties contained in the petitioner's response to the Director's RFE and then offers conclusory statements without analysis. Additionally, Dr. [REDACTED] does not discuss the fact that the petitioner submitted an LCA certified for a wage-level that is appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation. Importantly, he also does not explain the empirical basis for his assertion regarding minimum industry hiring standards. For example, he does not specify or discuss any relevant research, studies, surveys, or other authoritative publications as part of his review and or as a foundation for his opinion regarding an industry standard.

We may, in our 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, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). For the reasons discussed above, we find that Dr. [REDACTED] opinion letter does not merit recognition or weight as an expert opinion, and the opinion letter is not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate 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 of proceeding 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 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*, or other authoritative source, reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. We have also reviewed Dr. [REDACTED] opinion submitted in support of a finding that an industry standard for a bachelor's degree in a specific specialty is required for the proffered position. We incorporate the above discussion of this document here. As set out above, we do not find, based upon a complete review of the record of proceeding, that the petitioner has established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is (1) common to the petitioner's industry (2) in parallel positions (3) among 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 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

We 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 support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted various corporate documents, letters describing its operations, and its organizational chart. However, upon review of the record of proceeding, the evidence of record does not credibly demonstrate that the duties the beneficiary will be responsible for or 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.

Specifically, the evidence does not demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did 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 petitioner has not demonstrated 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.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a wage Level I employee, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the occupation.⁷ This does not support the proposition that the proffered position is so complex or unique relative to other positions in the same occupation that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some coach positions do not require such a degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty, and that some such positions may not require any college degree at all. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the evidence of record does not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category 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

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) 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, USCIS reviews the petitioner's past recruiting and hiring practices, information regarding employees who previously held the position, as well as any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, 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 performance requirements of the position. 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 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. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd

⁷ 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.

result." *Id.* at 388. 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 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.*

The petitioner here asserts that it always requires its Assistant Golf Coaches to have degrees in a sport-related field and applicable experience. Although the petitioner does not submit documentary evidence substantiating the employment and degrees of its previously employed assistant golf coaches, the record does include evidence that the petitioner previously received H-1B approvals for six tennis, soccer, field hockey, rowing, and strength/conditioning coaches. The petitioner submitted copies of the letters provided to USCIS when it requested approval of these seven H-1B petitions for the six different coaches. The letters submitted, however, provide an overview of the duties of the particular coaching position and do not include sufficient detail demonstrating that the positions proffered in those cases are similar to the position proffered here. Additionally, the record lacks documentary evidence of the academic and experience levels of the individuals approved for H-1B employment. Further, the petitioner has not submitted evidence of the academic history of all its coaches, rather than just the coaches that have been approved for H-1B classification. That is, the record includes only a sampling of the coaches the petitioner has previously employed.

Upon review of the record, the petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. 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)). Additionally, as will be discussed below, prior approvals do not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

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 as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are

more specialized and complex than collegiate coaching positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Moreover, the petitioner's assertion that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex conflicts with its designation of the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position (compared to others within the occupation) for an employee who has only basic understanding of the occupation.⁸ Therefore, it is not credible that the position is one with specialized and complex duties relative to others, as such a position would likely be classified as a higher level position, requiring a significantly higher prevailing wage. Again, 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. at 591-92.

For the reasons related in the preceding discussion, the petitioner has not established 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.

We note that the petitioner asserts on appeal that USCIS's interpretation of the statutes and regulations are "too rigid" and "interpreted too narrowly" and cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) (*Tapis Int'l v. INS*) and *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services (Residential Fin. Corp. v. USCIS)*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) in support of this assertion. The petitioner states in its brief that "[a]lthough the title of degree stated 'Bachelor of General Studies with concentration in Kinesiology,' rather than a 'Bachelor of Coaching' (which does not generally exist in academia) Beneficiary and Petitioner should not be penalized for having the substantive requirements met, but not the label." The petitioner contended in response to the Director's RFE that "case law construing the regulations make clear that a position may qualify as a specialty occupation either by requiring such a specific degree, or by requiring a combination of education and specific skills that are highly specialized."

We note 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

⁸ 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.

something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177.

We agree 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 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, we also agree 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. We do 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, we do 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.*

We have also reviewed the petitioner's citation to *Residential Fin. Corp. v. USCIS*, for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, upon review of the totality of the record, the petitioner here has not met its burden and established that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to the duties it describes in order to perform those duties. We recognize that the petitioner here desires an employee with a strong sports-related background. However, the petitioner does not substantiate that only a bachelor's degree in the field of education, physical education or kinesiology would provide the specialized knowledge to perform the duties it ascribes to the proffered position.

We also observe that the petitioner has not furnished evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS* or *Residential Fin. Corp. v. USCIS*.⁹ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in

⁹ It is noted that the district judge's decision in the *Residential Fin. Corp. v. USCIS* case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to this office. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by our *de novo* review of the matter.

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 this office, the analysis does not have to be followed as a matter of law. *Id.* at 719.

IV. PRIOR APPROVALS

On appeal, the petitioner asserts that it had previously filed seven petitions for six different coaches seeking H-1B classification and that in all those cases, the academic requirements for the positions are identical. The petitioner claims that the six coaches had a suitable bachelor's degree or higher and relevant work experience that qualified the individual for the position. The petitioner indicates that these individuals had bachelor's degrees in Sports Administration, Health and Human Performance, Education, and master's degrees in Kinesiology and Exercise Physiology. The petitioner notes that each of those cases was approved for H-1B classification.

We first note that the Director's decision does not indicate whether USCIS reviewed the prior approvals of the other nonimmigrant petitions. However, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Second, we reiterate that in this matter, the petitioner has not met its burden in establishing that the position proffered here in the instant matter qualifies as a specialty occupation for the reasons set out above. The record of proceeding does not include sufficient probative evidence to establish that the proffered position 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 or its equivalent as the minimum for entry into the occupation, as required by the Act.

V. BENEFICIARY'S 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 beneficiary's Bachelor of General

Studies degree conferred by [REDACTED] is not a U.S. bachelor's degree in a specific specialty.¹⁰

Even if we considered the beneficiary's general studies degree combined with his work experience, the record is insufficient to establish that the beneficiary possesses the equivalent of a U.S. baccalaureate degree in a specific specialty. Specifically, as any claimed equivalency would be based in part on experience, there is insufficient evidence that the work experience has been evaluated by an evaluator who 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), 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (5). 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.

VI. CONCLUSION

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.

¹⁰ A copy of the beneficiary's [REDACTED] diploma indicates that he was awarded a bachelor's degree in general studies. Further, a copy of the beneficiary's transcript indicates that the beneficiary's last six of ten semesters at [REDACTED] were completed as a general studies major.