



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 03 2015** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Soccer Academy" with "1 employee & 1099s" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Director of Coaching and Development" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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 denial letter; and (5) the Form I-290B and petitioner's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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 also meet one of the following criteria:

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See

Royal Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not 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.

III. EVIDENCE

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

An addendum to the visa petition states the following as the duties of the proffered position:

- Oversee the Assistant Director of Coaching Boys [REDACTED] the Assistant Director of Coaching for [REDACTED] Boys and Girls and the Director of Goalkeeping- 30%
- Recruit, mentor and assign qualified coaches to teams and age groups- 20%
- Set compensation rates for coaching staff based on playing/coaching experience and team/levelcoaching-10 to 15%
- Develop and implement a year round player development pathway for all ages/levels/genders within the organization- 5%
- Design and implement a year round coach education program for coaches of all levels- 5%
- Design and implement year round player assessments- %5
- Design, administer and build teams from the tryout process on an annual basis- 10%

Create and develop a structure of on-going education for coaches to achieve credentials/licensure through state wide and national courses with financial reimbursement incentives- Ongoing

Represent ██████████ Soccer Club externally through Coach Education Courses, Committees and Symposium Presentations state wide and national- Ongoing

Set and execute a vision for the future success of soccer in the ██████████ community -- Ongoing

Work with partner association ██████████ Soccer Association to manage and build consistency between the recreational and traveling soccer programs. Ongoing

Foster a relationship between the local schools and community service programs within the ██████████ community- Ongoing

Create a young coaches program for ██████████ players to gain experience teaching and working with youth soccer players as a way of community services- Ongoing

Develop and establish working relationships with the senior management of facilities and long term development of fields/resources within the community. Ongoing

Lead a Technical Committee to execute the strategic and long term development of the soccer program- 20%

Identify and recommend players for the Olympic Development Program and Regional Pools to the state and regional governing bodies- 2%

Create and maintain an Operational Manual with Best Practices for Coaches- Ongoing

Oversee all camp programming, staffing and curriculum for players- 10%

Develop and oversee additional and creative learning environments through 1 on 1 training, small group training and free play models- Ongoing

Develop and promote lifelong participation on soccer through adult clinics and adult men's, women's and co-ed teams affiliated with the general structure of the youth program- Ongoing

Oversee all tournament selections to ensure correct team and player development- 2%

Oversee the implementation of a college recruiting program for both players and parents- 2%

Resolve any coach/player, coach/parent conflicts- 20%

Assist in the design and implementation of a Parent Best Practices and Parent Education Programs- 1%

Attend all Board of Director meetings- 5%

As to the educational requirement of the proffered position, that addendum states: "We require a 4-year Degree or its equivalent in the field of physical education to qualify for this position."

In addition, the petitioner submitted, *inter alia*, (1) a letter, dated March 23, 2014, from ██████████ ██████████ signing as the petitioner's vice president, and (2) letters from three people in the petitioner's industry.

March 23, 2014 letter reiterates the duty description contained in the visa petition addendum. As to the educational requirements of the proffered position, it states: "Education: Bachelors [sic] Degree in Physical Education or Sports Management or equivalent."

The industry letters are from [redacted] signing as Director of Coaching Education for the [redacted]; [redacted] signing as State Director of [redacted] and [redacted], signing as Director of [redacted]

[redacted] stated that Director of [redacted], Director of [redacted] and Director of [redacted] positions in the U.S. youth soccer market "typically demand . . . a minimum of a bachelor's degree or equivalent." [redacted] stated that, for such positions, "A Bachelor's degree or equivalent in physical education or related sports field is preferred." [redacted] stated: "It is typical that Director of [redacted] positions require a bachelor's degree or equivalent in physical education or related sports field is preferred" [sic]

On April 28, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*, (1) an organizational chart of the petitioner's operations; (2) a letter, dated July 8, 2014, from [redacted] and (3) an affidavit, dated July 14, 2014, signed by the beneficiary and [redacted]

In his July 8, 2014 letter, [redacted] stated that, in addition to being Director of [redacted] he is the Chair of [redacted]

He stated that with the rise in popularity of soccer in the United States, soccer coaching has become more sophisticated. Mr. [redacted] further stated: "I have noticed in the last ten years clubs are asking Director of [redacted] to have a minimum of a Bachelors [sic] Degree to even apply for a position." As to the reason for that requirement, Mr. [redacted] stated:

I have attended every convention of the [redacted] over the last 25 years and I have noticed that the expectations and skill sets of coaching and program directors have progressed rapidly. An example would be the use of advanced computer technology and software to assess and track players' skills and development. Another would be the brand new platforms that allow Clubs to communicate with teams and players more effectively. Yet another would be the software that deals with game analysis digitally and the new tools that allow training sessions to be constructed digitally. Study at degree level would certainly be a minimum for the modern Director of [redacted] to function effectively in 2014 and beyond.

In his July 14, 2014 affidavit, [REDACTED] stated, *inter alia*: [The petitioner] requires a bachelor's degree in physical education, or its equivalent, for the Director of [REDACTED]."

The director denied the petition on August 1, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submitted, *inter alia*: (1) a copy of a portion of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to Coaches and Scouts; (2) evidence pertinent to an H-1B visa petition filed by the [REDACTED] Youth Soccer Association for [REDACTED] as beneficiary and Mr. [REDACTED] qualifications; (3) two diplomas of [REDACTED]; (4) a letter, dated January 2012, from [REDACTED]; (5) a letter, dated January 17, 2012, from [REDACTED], signing as Director of [REDACTED] a manufacturer and supplier of sports equipment and custom apparel; (6) an undated letter from [REDACTED] signing as Director of Coaching and Player Development of the [REDACTED] Soccer Club in [REDACTED] Iowa; (7) a printout of web content describing the qualifications of staff of the [REDACTED] Soccer Club; (8) a letter, dated October 22, 2012, from [REDACTED]; (9) numerous certificates from [REDACTED] and other organizations issued to the beneficiary; (10) a letter, dated October 22, 2012, from [REDACTED]; (11) a letter, dated October 24, 2012, from [REDACTED], signing as President of the [REDACTED] Youth Soccer Association ([REDACTED] in [REDACTED], Minnesota); (12) a letter, dated October 24, 2012, from [REDACTED] signing as Director of Coaching at [REDACTED] Soccer Association; (13) a letter, dated October 26, 2012, from [REDACTED], on letterhead of "Soccer Awareness"; (14) a letter, dated November 7, 2012, from [REDACTED] signing as Director – Operations and Business Development of the [REDACTED] Soccer Club in [REDACTED] Iowa; (15) an affidavit by [REDACTED] dated August 27, 2014; (16) the I-290B and an addendum; and (17) a brief.

[REDACTED] diplomas show that he has a bachelor's degree in education and a master's degree in physical education. [REDACTED] January 2012 letter is substantially similar to his July 8, 2014 letter with the exception of one paragraph. The January 2012 letter states:

I am a professional in my field. [REDACTED], in my opinion is also a professional and understands the big picture of where youth soccer needs to go in the USA, and in particular in the community of [REDACTED] Minnesota. It is almost impossible to locate soccer experts of [REDACTED] caliber with the unique balance of international soccer knowledge, local soccer knowledge, organizational ability, soccer qualifications from Europe and the USA, impeccable character, work ethic, experience in youth development, and passion for the game. [REDACTED] Youth Soccer Association is lucky to have found somebody with [REDACTED] diverse background and unique abilities to fill this position.

The July 8, 2014 letter contains the same paragraph, except that the beneficiary's name was substituted for [REDACTED] " [REDACTED] Minnesota" was substituted for " [REDACTED], Minnesota," and the petitioner's name was substituted for " [REDACTED] Youth Soccer Association."

[REDACTED] January 17, 2012 letter states that, in addition to being director of [REDACTED], he is a professional soccer coach and Director of Education for [REDACTED] and describes his qualifications for such positions. He makes no assertion pertinent to the requirements of the proffered position.

The undated letter from [REDACTED] states that the position for which [REDACTED] was proposed requires "at a minimum, a bachelor's degree in general physical education or related field." It does not specifically address the position proffered in the instant case. As to his own qualifications, Mr. [REDACTED] stated:

I personally have a Bachelor of Science degree in Business Communication, which has been essential in assisting me with various responsibilities of being a professional coach. However, my coaching position differs since I do not specialize in the physical aspect of the game.

The printout of the [REDACTED] Soccer Club's web content confirms that Mr. [REDACTED] has a bachelor's degree in business communication. While the Assistant Director of Coaching's profile on the [REDACTED] Soccer Club's website does not mention a bachelor's degree, head coaches with that club have degrees in computer science, and marketing with a minor in philosophy. One head coach is a graduate student in psychology, and one has a bachelor's degree in business administration and marketing and a master's degree in sports management.

[REDACTED] October 22, 2012 letter states:

Based on the number of prerequisite awards to get to the top of the US soccer education tree, and the required time between courses where coaches are expected to practice their skills before moving on, it is not unfair to liken the acquisition of all of the highest soccer awards to a period of undergraduate study. The breakdown would be equivalent as follows. An [REDACTED] Premier Award could reasonably take 3.5 years to achieve and the [REDACTED] 4.5 years of education to achieve.¹ This could be considered equivalent to a degree in sports/physical education.

¹ Although we will not address the issue of the beneficiary's qualifications, we observe that the record contains evidence of numerous certificates from the [REDACTED], but not evidence that the beneficiary ever received the [REDACTED] Award. Further, the website maintained by [REDACTED] at [REDACTED] does not indicate that receiving the premier award is the result of three and a half years of work, as Mr. [REDACTED] appears to assert, but that it is bestowed pursuant to a 45-hour seminar.

The numerous certifications issued to the beneficiary by various organizations including the [REDACTED] do not include a certification that the beneficiary was awarded the [REDACTED] Award.

The October 22, 2012 letter from [REDACTED] states, "The Director of [REDACTED] is a specialized position requiring specialized education and more often than not requires a Bachelor's degree or equivalent."²

[REDACTED] October 24, 2012 letter states: "[The [REDACTED] requires] a 4-year degree or its equivalent in the field of physical education or a related field in sports management to qualify for [a Director of [REDACTED] position."³

The October 24, 2012 letter from [REDACTED] states that the position offered by [REDACTED] to [REDACTED] would require a minimum of a bachelor's degree. It does not address the requirements of the proffered position in the instant case.

In his October 26, 2012 letter, [REDACTED] states that he is a "Soccer Consultant" with a degree in sports psychology, and also describes positions he has previously held. It lists the qualifications of [REDACTED] for the Director of [REDACTED] position for which [REDACTED] petitioned for [REDACTED] and states, referring specifically to that position:

In my expert opinion, the Director of [REDACTED] for this particular position would require, at minimum, a Bachelor's Degree in general physical education or a related sports field to qualify.

The heading of [REDACTED] November 7, 2012 letter indicates that it was prepared as support for the visa petition for [REDACTED] to work in a Director of [REDACTED] position. It states:

In order to represent and manage a youth club program in today's ever changing world and economy it requires a person with many qualities. In my professional opinion it is an industry standard that a degree in Physical Education or a sports related field would normally be required for a Director's position.

² [REDACTED] letter also discusses the qualifications of [REDACTED] for such positions. Although that letter was clearly produced to support the visa petition of [REDACTED] for [REDACTED] as beneficiary, Mr. [REDACTED] assertions pertinent to the requirements of Director of [REDACTED] positions in general will be considered.

³ References in that letter to [REDACTED] make clear that it, too, was prepared as support for [REDACTED] visa petition for [REDACTED]

states in his August 27, 2014 affidavit that the petitioner's first Director of holds a Master's Degree in physical education.

In the I-290B appeal addendum, the petitioner cites the *Handbook* as evidence that the proffered position qualifies as a specialty occupation position and asserted that the evidence submitted to support the instant visa petition demonstrates that it should be approved.

The petitioner also asserted:

[USCIS] may not have taken account of the additional evidence submitted in response to the [RFE]. [USCIS] states that organizational charts were requested, but it does not acknowledge their receipt or consideration of the evidence.⁴

In the appeal brief, the petitioner cites to the *Handbook* as evidence that the proffered position qualifies for classification as a specialty occupation position. The petitioner also refers to visa petition filed on behalf of and contends that the director failed to recognize that "identical Petition" was approved.

IV. SPECIALTY OCCUPATION ANALYSIS

As an initial matter, we will address the petitioner's assertion that the instant visa petition is identical to the visa petition previously filed by and approved by USCIS. We observe that some of the evidence that was apparently filed in support of the other petition was reused in the instant case, with only details such as the name of the petitioner, the name of the beneficiary, and the name of the town where the petitioner is located changed to correspond to the instant case. We agree with the petitioner that some of the assertions made with respect to that case were reiterated in the instant case. However, the petitioner has not demonstrated that the evidence in the two cases is "identical." The evidence in the previous case, in its entirety, has not been shown to have been presented in the instant matter.

Further, even if the petitioner had demonstrated that it provided the "identical" evidence in the instant matter that provided in the previous case, such a demonstration would not mandate approval of the instant visa petition. We are not required to approve applications or 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.

⁴ As noted above, we have reviewed the record in its entirety. We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). It is noted that the petitioner's organizational chart viewed on its own and in conjunction with the evidence of record does not provide persuasive evidence indicating that the proffered position qualifies as a specialty occupation.

denied, 485 U.S. 1008 (1988). A prior approval does 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). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. We are not bound to follow the decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The instant case will be decided on the merits of the evidence submitted for this case.

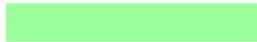
To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 27-2022, Coaches and Scouts, from O*NET. The *Handbook* describes the occupation of "Coaches and Scouts" as follows:

What Coaches and Scouts Do

Coaches teach amateur and professional athletes the skills they need to succeed at their sport. Scouts look for new players, evaluating their skills and likelihood for

⁵ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.



success at the college, amateur, or professional level. Many coaches are also involved in scouting.

Duties

Coaches typically do the following:

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

Scouts typically do the following:

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

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

Many coaches evaluate their opponents to determine game strategies and to establish specific plays to practice. During competition, coaches call specific plays intended to

surprise or overpower the opponent, and they may substitute players for optimum team chemistry and success.

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Coaches and Scouts," <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-2> (last visited Feb. 27, 2015).

Most of the duties attributed to the proffered position in the addendum to the visa petition are consistent with the duties of described in the *Handbook's* chapter on Coaches and Scouts. In particular, they appear to be chiefly duties of a coach. On the balance, we find that the proffered position is a position as described in the Coaches and Scouts section of the *Handbook*. We also note that, as the duties described include supervising other coaches, the proffered position appears to be, as the petitioner asserts, a higher-level coaching position than some others. This is also consistent with the proffered position having been labeled a Level IV position.

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

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.

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

Other Experience

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

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

Licenses, Certifications, and Registrations

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

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

Certification requirements for college coaching positions also vary.

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

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

Advancement

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

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

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

Important Qualities

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

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

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

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

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

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

Id. at <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4> (last visited Feb. 27, 2015).

The *Handbook* states, "Coaches and scouts typically need a bachelor's degree." It does not state that the requisite degree must be *in a specific specialty*. The *Handbook* does not support the assertion that coach and scout positions qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's or higher degree in a specific specialty, or its equivalent.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of coaching and soccer, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement

of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As detailed above, the petitioner provided numerous letters from people in its industry. Some of those letters make plain, however, that they are addressing the requirements of the position offered by [REDACTED] to [REDACTED]. Some of the letters provided state that a director position in a soccer organization would require a bachelor's degree, but not that the degree must be *in a specific specialty*. The issue in this case is whether the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. Those letters shed very little light on that issue.

One of the letters states that such positions require a bachelor's degree but appears to indicate that the requirement is to assure that the candidates are comfortable using computer software that assesses and tracks players' skills and development; allows clubs to communicate with teams and players; analyzes games; and allows digital construction of training sessions. No argument was provided for the proposition that use of such software requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the imposition of the degree requirement discussed in that letter appears to be for the purpose of obtaining a more sophisticated class of candidates, rather than because the duties of the position require a degree in a specific specialty.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. The requirement of a college degree with no specific major, for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, does not establish eligibility. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm'r. 1988).

Some of the letters submitted indicate that a bachelor's degree or its equivalent in physical education or a related sports field is "preferred" for such positions. Obviously, a preference is not a standard minimum requirement for entry.

The letters provided do not demonstrate that a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent is common to positions parallel to the proffered position in similar organizations in the petitioner's industry. Thus, the evidence of record does not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to 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 failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

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. 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 petitioner fails to 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 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. We usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

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

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty

occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

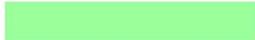
In the instant matter, the petitioner has repeatedly asserted that it requires a minimum of a bachelor's degree in a physical education or a related field or its equivalent for the proffered position. The petitioner states on the visa petition that it was established in [REDACTED] [REDACTED] states in his August 27, 2014 affidavit that [REDACTED] who has a master's degree in physical education, was the petitioner's first Director of [REDACTED]. However, there is insufficient documentary evidence in the record identifying anyone, including Mr. [REDACTED] as ever being employed in the proffered position.

Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent. The petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as recruiting and mentoring coaches; overseeing the work of coaches and assistant directors of coaching; designing and implementing a coach education program; developing and implementing a player development pathway and player assessments; designing, administering, and building soccer teams; representing the petitioner externally, contain insufficient indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of coach positions that are not usually



associated with at least a bachelor's degree in a specific specialty or its equivalent. Therefore, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.⁶

V. 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.

⁶ 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.