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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, DC 20536

[redacted]

File: LIN 03 080 51424 Office: NEBRASKA SERVICE CENTER Date: APR 09 2003

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER: [redacted]

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INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This is a motion to reconsider the Administrative Appeals Office decision withdrawing the approval of the nonimmigrant visa petition. The motion to reconsider will be granted and the previous decision affirmed.

The petitioner is a sports league that seeks to employ the beneficiary as a soccer coach and instructor for a period of 9 ½ months. The Department of Labor (DOL) determined that a temporary labor certification could not be made inasmuch as the proposed employment does not appear to be temporary in nature. The director determined that the petitioner had established that there were no qualified U.S. workers available, that no U.S. worker would be displaced, and that the position is temporary. The director certified his decision to the AAO for review. Upon review, the AAO withdrew the director's approval of the visa petition finding that the offered position could not be considered temporary and that the petitioner had not established that there were no qualified United States workers available for the job.

On motion, counsel states that the petitioner's employment is seasonal because it exists each year only for the duration of the soccer seasons. Counsel argues that the recurring seasonal need of the petitioner does not disqualify the position from being temporary for H-2B purposes.

The DOL certifying officer declined to issue a labor certification because she determined that the petitioner had not established that its need for the beneficiary's services is temporary. The certifying officer stated:

> The employer explains what his needs are and his expectations of the coach but did not explain why a coach would only be needed for this soccer season and not the following seasons.

The regulation at 8 C.F.R. § 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the DOL, or notice detailing the reasons why such certification cannot be made. The regulation at 8 C.F.R. § 214.2(h)(6)(iv)(E) states that a petition not accompanied by a temporary labor certification must be accompanied by countervailing evidence from the petitioner that addresses the reasons why the Secretary of Labor could not grant a labor certification.

Matter of Artee Corporation, 18 I&N Dec. 366 (Comm. 1982), specified that the test for determining whether an alien is coming temporarily to the United States to perform temporary services or labor is whether the need for the duties to be performed is temporary. It is the nature of the need, not the nature of the duties, that is controlling.

The petitioner's need for the services or labor must be a one-time occurrence, a seasonal need, a peakload need, or an intermittent need. *See:* 8 C.F.R. § 214.2(h)(6)(ii)(b). On motion, counsel emphasizes that the employment is a seasonal need.

The regulation at 8 C.F.R. § 214.2(h)(6)(ii)(B)(2) states that for the nature of the petitioner's need to be a seasonal need, the petitioner must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed us unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employees.

The Application for Alien Employment Certification (Form ETA 750) indicates the dates of employment are from January 2, 2003 through October 20, 2003. The application describes the job to be performed as follows:

> Train three teams including running drills and practices, giving instruction, and coaching during games and tournaments for the 2003 season running January, 2003 to October 2003; train and coach indoor soccer for the teams; assist in coaching other teams as needed; and coach and train at summer camps; assist in maintaining fields and goals; and maintain and develop schedule for teams.

Counsel argues that each year, a new season begins that is wholly distinct and separate from the season before. On motion, counsel states that "when the season is over, no coaches are coaching and no instructors are working."

In this case the beneficiary would be coaching both indoor and outdoor soccer. The record now shows that the permanent coaches employed by the petitioning organization are not engaged in employment during November and December because the petitioner has suspended its activities during these months. Therefore this employment may not be considered seasonal as the period during which the services are not needed is clearly a vacation period for the petitioner's permanent employees. *See:* 8 C.F.R. § 214.2(h)(6)(ii)(B)(2), supra. On motion, the petitioner has not overcome the objections of the DOL certifying officer and established that the offered position may be considered temporary.

The employer is requiring as a condition of employment that the U.S. worker have four years experience as a soccer coach and instructor and that the individual possess a soccer coaching license at least at level B. The petitioner explains that the B level coaching license is issued by U.S. authorities and requires several levels of coaching licenses before it is issued. The

petitioner indicates that these levels require a total of 75 hours of training.

The petitioner acknowledged that one of the two U.S. workers interviewed for the job had attained the required four years of coaching experience based upon his six years of coaching experience that he earned from 1966 to 1972. The petitioner improperly disallowed this experience as being too old to meet its minimum requirement for the position because "Coaching techniques and theories have changed significantly in the past 30 years." The petitioner also indicated that the applicant had not coached since 1972 although his resume indicates that he coached a secondary school soccer team in Detroit in 1996. Also, the petitioner had not adequately explained why it determined that the applicant's "Amateur Football Team Trainer" course certificate that he earned from the soccer authorities in Turkey was not at least equivalent to a United States issued B license. On certification it was determined that the petitioner had not established that there were no qualified United States workers available for the job.

On motion, counsel forwards a letter from [redacted] the International Department Manager of The Turkish Football Association in Istanbul, dated January 31, 2003 indicating that the rejected applicant's license was not valid on that date. Counsel also forwards a letter dated February 10, 2003 from [redacted] the Manager of Coaching Programs of the U.S. Soccer Federation (USSF) in Chicago, Illinois. [redacted] indicated that as the rejected applicant's Turkish certificate was not valid, the USSF could not waive the rejected applicant into a USSF Licensing course and that he would have to start the United States licensing process at the "National "D" License or lower."

Based upon the evidence submitted on motion, it is determined that the rejected permanent resident alien applicant from Turkey does not have a soccer coaching license at least equivalent to a United States issued B license and was properly found not qualified for the offered position based upon the petitioner's job requirements.

However, this additional evidence forwarded by the petitioner on motion raises other issues in this case. The record contains a copy of the beneficiary's soccer license which was issued by the Scottish Football Association in 1995. The document shows the beneficiary attained a "B (Basic) Licence/Diploma" from the Inverclyde National Sports Training Center in Largs, Scotland based on a two-day course that he attended on March 19 and 20, 1995. The record contains no evidence establishing that the beneficiary's Scottish license remains valid. Also, the record does not show that the attainment of this license issued by the Scottish authorities is equivalent to a USSF B level license. A petition may not be approved after a U.S. worker was rejected for not meeting the petitioner's requirements when it has not been clearly established that the beneficiary meets those same requirements.

The United States Soccer Federation, Inc. Policy Manual (website available at http//www.ussoccer.com/services) states that to even take the licensing course at the B level, a player or former player must document at least five years of experience on a National Team (or as an active or former professional player) and five years coaching experience. With that showing, the individual may apply for a waiver for entry into a B level USSF course. To date, the record does not show that the beneficiary could have been waived into the United States licensing process at an appropriately high level to meet the petitioner's licensing requirement. In other words, the rejected applicant was deemed not qualified because his license was not active in his home country and it could not be shown that he could qualify for a B license or to even take the course. No evidence has been provided to show that the beneficiary's license is active in Scotland or that he would be eligible to enter into the USSF's licensing courses at an appropriate level. These two objections caused the United States worker to be rejected for the position. Based on the evidence submitted to date, the beneficiary's credentials are not adequate for these same two reasons. Based on the record, it is determined that the beneficiary does not meet the petitioner's stated requirements for the offered position. Therefore, the petition must be denied for this additional reason.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The decision of the AAO dated January 21, 2003 is affirmed.