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Services

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FILE: WAC 02 062 50415 Office: CALIFORNIA SERVICE CENTER Date: AUG 19 2005

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:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a dental practice with two employees. In order to employ the beneficiary in a position that the petitioner entitles "dental specialist," the petitioner endeavors to classify the beneficiary 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 on the basis that the proffered position is a "dental assistant" position that does not satisfy any criterion for a specialty occupation stated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director erred in denying the appeal. Counsel contends that the proffered position is encompassed by the health services manager occupational category, and therefore qualifies as a specialty occupation.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's March 1, 2004 letter on appeal, with its accompanying documents.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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. (Italics added.)

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the 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.

Citizenship and Immigration Services (CIS) has consistently interpreted 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. Applying this standard, CIS 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The Form I-129 contains this description of the proposed duties:

Will administer and direct the activities of the dental practice in accordance with accepted national standards, administrative policies and OSHA compliance guidelines. Will administer a dental program in the clinic.

Counsel’s April 2002 letter of reply to the service center’s request for additional evidence (RFE) provided the following as “a detailed description of the job duties”:

[T]he Dental Specialist will administer and direct the activities of the dental practice in accordance with accepted national standards, administrative policies, and OSHA compliance guidelines; he will administer a dental program in the clinic and direct activities in accordance with accepted national standards and administrative policies; he will confer with

clinical staff to formulate policies and recommend procedural changes; he will confer with personnel regarding policies and recommend procedural changes to increase daily production; he will, as needed, hire and/or fire additional staff, and evaluate their work; he will oversee the billing of patients and insurance companies; he will coordinate the various dental laboratories that the employer utilizes to ensure that orders are submitted and received in a timely manner; and he will set up a system to be used by the dental office and lab that will assure a smooth flow of work and improve efficiency.

Counsel's RFE reply letter also provided the following approximation of the percentages of time that would be expended on different duties:

- 40% - Administration/Direction of dental practice
- 20% - Administration of Dental Program
- 15% - Coordination with Laboratories
- 10% - Overseeing billing of patients and insurance companies
- 10% - Conferring with clinical staff regarding policies and procedures
- 5% - Hiring/firing staff and evaluating work of other staff

The letter also states, in part, that the beneficiary would "formulate dental policies, standards, and procedural changes" (at numbered paragraph 1 of page 3), and that these formulation duties "require someone with a formal education in dentistry" (at numbered paragraph 2 of page 3). The letter also states (at page 5) that the beneficiary would "be required to confer with clinical staff to formulate policies."

As noted at pages 1 and 2 of counsel's letter on appeal, the beneficiary would "not have any patient interaction" and would supervise the dental clinic's receptionist.

Because there is has no prior history of hiring for the proffered position, the petitioner cannot satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). As discussed below, the evidence that the petitioner has provided about the proffered position and its duties is too generalized and generic to satisfy any other criterion required by the regulation.

The AAO finds that, to the generalized extent that they are described in the record, the duties of coordinating with laboratories, overseeing billing of patients and insurance companies, and supervising the receptionist are administrative duties that neither normally require at least a baccalaureate degree, or its equivalent, in a specific specialty nor are usually associated with such a degree.

The record contains no specific information about the tasks and responsibilities involved in: "administer[ing] and direct[ing] the activities of the dental practice in accordance with accepted national standards, administrative policies, and OSHA compliance guidelines"; "administer[ing] a dental program in the clinic"; and "direct[ing] activities in accordance with accepted national standards and administrative policies." No information is provided as to the concrete nature of the specific "activities of the dental practice," the "dental program," and the other "activities" that the beneficiary would administer and direct. The specific nature of

the “dental policies, standards, and procedural changes” which the beneficiary would “formulate” is not addressed. The evidence does not address whose activities besides the receptionist the beneficiary would direct, the specific matters involved, and the extent to which those matters may involve clinical directions to and evaluation of personnel in the area of clinical practice and treatment. The petitioner’s exclusively generalized and generic information makes it impossible for the AAO to assess the type and level of education that actual performance of the proffered position requires. Consequently, contrary to counsel’s contention, the petitioner has not established that the beneficiary would be working in a health services manager occupational category for which the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports a requirement for at least a bachelor’s degree in a particular specialty. In this regard it is noted that, at page 56 of the 2004-2005 edition, the *Handbook* indicates that not all health services management positions require such a degree:

[P]hysicians’ offices and some other facilities may substitute on the job experience for formal education.

For these reasons, the petitioner has failed to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor’s degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) assigns specialty occupation status to a position with a requirement for at least a bachelor’s degree, in a specific specialty, that is common to the petitioner’s industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that its proffered position fits within the range of health services manager positions for which the *Handbook* reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty. The record contains no attestations from dentists or a professional dentist association that the position here proffered is one for which there is a routine practice of recruiting and hiring only persons with at least a bachelor’s degree in a specific specialty. Also, the few job vacancy announcements submitted into the record are not persuasive. Those that pertain to dental office positions are too few to establish an industry-wide practice, and they do not lend themselves to a probative comparison with the proffered position, because of the lack of specific information about the duties proposed for the beneficiary. Of the three announcements from firms that deal exclusively in dentistry, one specifies a bachelor’s degree without any

particular major or concentration of studies, and one includes among suitable degrees a generalized bachelor's degree in business.<sup>1</sup>

As another consequence of the petitioner's lack of specificity about the proposed duties, the evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

Beyond the decision of the director, the AAO also notes that, because of the vague and generalized descriptions of the duties involved in the directing and administering of the unspecified dental "program" and dental "practice" and in the formulation of dental policies, standards, and procedures, CIS cannot accurately determine whether the performance of the proffered position requires licensure or certification by the State of California. It is noted, however, that, according to section 1625(e) of the California Business and Professions Code, a person practices dentistry if he or she "[m]anages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed." As there is no evidence of licensure or certification, the record of proceeding does not establish whether the beneficiary is qualified to serve in the proffered position. For this reason also, the petition must be denied.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>1</sup> Acceptability of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish a position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).