

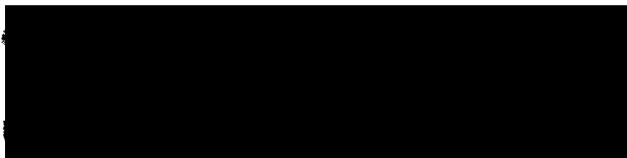
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U.S. Department of Homeland Security
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U.S. Citizenship
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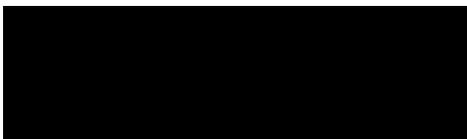
FILE: WAC 02 050 50233 Office: CALIFORNIA SERVICE CENTER Date: SEP 21 2005

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 engaged in general and cosmetic dentistry and seeks to employ the beneficiary as a dental laboratory supervisor. It endeavors 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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, 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 are 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) 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a dental laboratory supervisor. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Supervise the staff and technicians and manage the budget and operations of the laboratory;
- Supervise the acquisition, installation, construction and maintenance of dental equipment;
- Inspect the laboratory daily to ensure the healthy and safe operation of the laboratory;
- Oversee the maintenance of associated records;
- Plan, direct and oversee all activities of the laboratory which includes: program development, budget guidelines, compliance with applicable mandates, laws and safety regulations, permits, licenses, and certificates of inspection;
- Oversee the collection, storage and disposal of infectious waste;
- Oversee dental technicians on the health and safety operation of dental equipment, sterilization units and ultrasonic cleaners, all pre-clinical equipment, x-ray processing and x-ray machine regulations;
- Supervise the creation of all types of dental prosthetics, including implant retained prostheses;
- Maintain supplies of artificial teeth through suppliers and manufacturers and issue them as needed;
- Order all laboratory and dental supplies including moulds, syringes, etc.
- Investigate new techniques and equipment to ensure that the laboratory performs at the highest possible level;

- Maintain knowledge of appropriate terms and methods as well as technologies and ensure that technicians have appropriate training and other resources to perform their jobs and develop additional skills;
- Perform general administrative duties such as processing invoices and billing, filing work orders and submitting equipment repair requests;
- Perform special projects as assigned by management such as the development of a computerized database system for the laboratory;
- Train authorized individuals in the use of a computerized database system; and
- Implement a system that will be available to other dental laboratory supervisors at the end of the beneficiary's period of stay.

The petitioner states that it requires a bachelor's degree for entry into the proffered position, and prefers that the degree be in life sciences.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for dental technicians/supervisors and health services managers. While the petitioner states that the beneficiary will supervise a staff and technicians, the record does not establish that the petitioner employs any dental technicians, nor does it indicate what staff the beneficiary would supervise. The entire office consists of a staff of five people, including the dentist. The beneficiary would, however, assist in directing, coordinating, and supervising the delivery of healthcare as the delivery pertains to the office's dental laboratory. The *Handbook* notes that such personnel in physician's offices and other facilities may substitute on-the-job experience for formal education. The *Handbook* further notes that training for dental laboratory technicians is obtained on-the-job, in community and junior colleges, vocational-technical institutes, and the U.S. Armed Forces. In 2002, 25 programs in dental laboratory technology were approved by the Commission on Dental Accreditation in conjunction with the American Dental Association. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion refers to America's CAREERINFONET website for medical and clinical laboratory technologists, and submits two Internet job advertisements, and statements from two other dental clinics. The CAREERINFONET website simply indicates that medical and clinical laboratory technologists occupations require a bachelor's degree. The proffered position includes the duties of dental laboratory technicians (not requiring a bachelor's degree), not clinical laboratory technologists who perform complex chemical, biological, hematological, immunologic, microscopic, and bacteriological tests. That reference is, therefore, of little evidentiary value. One of the job advertisements submitted is for a clinical or medical laboratory supervisor, whose duties would involve the supervision of clinical and medical laboratory technologists (not dental technicians), and is not similar to the position offered in this instance. The second advertisement is for a dental lab production supervisor and requires a graduate of an accredited dental lab school. The record does not establish that dental lab schools offer a baccalaureate level education. That advertisement is also of little evidentiary value. Finally, the statements submitted from two other dentist offices simply state that they require a bachelor's degree in dentistry or related courses for the position of dental laboratory supervisor. These statements do not list the duties of their laboratory supervisors so that a comparison can be made between the duties of their laboratory supervisors with those of the position offered. Further, two statements from dental offices are insufficient in scope to establish an industry standard for the educational requirements of the offered position. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner asserts that it normally requires a degree for the proffered position but offers no evidence in this regard. Simply going on the 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

baccalaureate or higher degree in a specific specialty. The duties are routinely performed by dental technicians/supervisors, and medical and health services managers in physician's offices and other facilities with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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