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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 108 50442 Office: CALIFORNIA SERVICE CENTER Date: **OCT 30 2006**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. 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 office, with five to seven employees and \$600,000 in gross annual income. It seeks to extend the employment of the beneficiary as a dental specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition determining that the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the March 5, 2004 Form I-129 with supporting documentation; (2) the director's July 29, 2004 request for additional evidence (RFE); (3) counsel for the petitioner's September 29, 2004 response to the director's RFE; (4) the director's March 14, 2005 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a dental specialist. Evidence of the beneficiary's duties includes the petitioner's September 4, 2001 letter in response to the director's request for evidence (RFE) in regards to the first petition filed on behalf of the beneficiary and the petitioner's February 20, 2004 letter in support of the extension petition. The petitioner described the beneficiary's duties in both letters as dividing his time between the following job duties:

[The beneficiary] will continue to be in charge of all non-clinical job duties and will continue to ensure that the dental practice runs smoothly. He will continue to administer a dental program and formulate dental policies, standards[,] and procedural changes.

He will continue to discuss with the Dentist the patients' dental records prior to starting treatment of a patient.

He will continue to conduct patient screening procedures; such as assessment of oral health conditions, review of the health history, oral cancer screening, head and neck inspection, dental charting and taking blood pressure and pulse.

[The beneficiary] will continue to study x-rays and discuss with the dentist the case and appropriate treatment to be followed.

He will continue to oversee the conventional procedures such as root canal filling.

He will continue to supervise surgical procedures such as apicoectomies and retorfills [sic].

He will continue to assist the Dentist in taking and developing radiographs (x-rays).

[The beneficiary] will continue to make impressions of patient's teeth for study casts (models of teeth used by dentists to evaluate patient treatment needs).

[The beneficiary] will continue to order items like Crowns, Bridges, Dentures, both complete and partial with the Dental Laboratory Technicians. He will then follow up on the fabrication of these prosthetics and make sure that these are received on time, and on receipt, make sure that the prosthetics made matches the order.

He will continue to coordinate the placement of orthodontic appliances.

[The beneficiary] will continue to oversee the preparation and fitting of ortho [sic] bands.

He will continue to instruct the patients in the proper care and use of appliances.

He will continue to coordinate the selection of head gear, arch wires, elastics, ligatures, mouth mirrors, probes, forceps, brushes and scalpels.

He will continue to oversee complex fixed and removable restorative procedures including tooth preparation, impressions and occlusal recordings, filling of full, overdenture, and partial dental fabrication.

[The beneficiary] will continue to coordinate complex dental care involving periodontic and prosthodontic rehabilitation.

He will continue to supervise the set up of the armamentarium for oral, nitrous oxide analgesia, intramuscular, and intravenous conscious sedation.

He will continue to oversee selection of the proper specimen container and notification of the laboratory.

He will continue to help the dentist in the in-patient care wherever necessary [and help with] out[-]patient follow up care.

[The beneficiary] will continue to analyze the treatment that is being offered and will design a treatment program to create and maintain a favorable public image for the business as well as promote the dental practice's services.

He will continue to collect, research, compile statistics on the patients and the effectiveness of the treatment.

He will continue to instruct patients on postoperative and on general oral health care and on good oral hygiene.

He will also continue to help patients develop and maintain good oral health. He will also explain the relationship between diet and oral health, inform patients how to select toothbrushes, and show patients how to brush and floss their teeth.

In response to the director's RFE, counsel for the petitioner referenced the description of duties submitted with the Form I-129. Counsel noted that this description tracked the description that had been provided in response to the director's RFE in relation to a prior petition filed on behalf of the beneficiary that had been approved. Counsel also referenced an April 23, 2004 interoffice memorandum issued by William R. Yates, Associate Director for Operations indicating: "In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference." The memorandum noted that prior approved petitions should not be given deference when it had been determined that a material error with regard to the previous petition had occurred, or a substantial change in circumstances had taken place, or new material information adversely impacted the petitioner's or beneficiary's eligibility.

Counsel also asserted that the position of dental specialist resembled the position of health services manager, a position the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported required a minimum of a four-year degree and that the duties of the dental specialist position are more complex and demanding than those listed in the *Handbook*. Counsel attached copies of two Internet job announcements for the position of health services manager as evidence that the position of dental specialist required at least a baccalaureate degree. Counsel contended that the petitioner required the individual filling the position to have at least a baccalaureate degree.

On March 14, 2005, the director denied the petition determining: that the duties of the proffered position resembled the duties of a dental assistant as listed in the *Handbook*, a position that did not require a four-year

degree, not that of a health services manager; that obtaining a degree in a related area or performing specialty occupation duties that are incidental to the primary functions is insufficient to establish that the duties to be performed qualify as a specialty occupation; that although some of the duties of the position appeared managerial, general managerial positions are normally not considered to be professional endeavors required in specific academic degrees; that the record did not establish that a degree in a specific field of study is common to the dental practice industry in parallel positions among similar organizations; that the petitioner has not submitted sufficient documentation to establish that it normally required a degree or its equivalent in a specific specialty for the position; that the record did not establish that the duties to be performed are so specialized and complex that the knowledge required to perform the duties is associated with the attainment of a baccalaureate or higher degree. The director also noted, based on the beneficiary's 2002 and 2003 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, that the beneficiary had been paid less than the amount stated on the labor condition application (LCA).

On appeal, counsel for the petitioner asserts that CIS made a cursory denial based on generalized conclusions inconsistent both with the evidence of record and its prior approval of the position as a specialty occupation. Counsel contends that the director focused on the incidental duties of the position to justify its conclusion that the position is that of a dental assistant. Counsel references the *Handbook's* report that the occupation of health services manager encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare and notes that the proffered position requires the beneficiary to administer the petitioner's dental program, formulate policies, standards, and procedural changes as well as analyzing treatments and compiling statistics on patients and the effectiveness of treatments. Counsel also notes that a dental assistant is not qualified to manage a dental office or discuss specific treatments for patients or perform complicated laboratory work or train other dental assistants, duties counsel claims that the beneficiary will perform in the proffered position.

Counsel also asserts that the director ignored the Internet job announcements submitted which demonstrate that positions similar to a dental specialist require a baccalaureate degree. Counsel also references CIS' prior approval of the beneficiary in the proffered position and contends that the beneficiary had been hired because he had a baccalaureate degree in dentistry. Counsel avers that the duties of the position are simultaneously administrative, technical, and medical, a substantial portion of the duties are advisory, and the position requires the formulation of new policies, standards and procedures to ensure the petitioner's smooth operations, duties that are specialized and complex. Counsel references the Department of Labor's *O\*NET* that assigns the specific vocational preparation (SVP) level of 8 to the position of health services manager position.

Counsel also addresses the beneficiary's wage, noting that the beneficiary's 2002 wage reflected only one-half of a year's salary and that the beneficiary also participates in a profit sharing plan that garnered the beneficiary approximately \$5,000 not listed on his IRS Form W-2. Counsel asserts that the petitioner has not violated the terms of the LCA and the petition should not be denied for this reason.

The AAO does not agree with the director's or counsel's analysis of the proffered position. To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title.<sup>1</sup> The specific duties of

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<sup>1</sup> In this matter, the Dental Board of California does not recognize the title of dental specialist. Counsel provided a February 3, 2006 letter from the Dental Board in California in another matter before the AAO indicating that

the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 (5<sup>th</sup> Cir. 2000). 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. The petitioner's description of the proffered position is not that of a medical and health services manager.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. In reaching its own conclusion regarding the degree requirements of the proffered position, the AAO has relied upon the *Handbook*, comparing the position's duties against those described for a range of dental professions. This review has found that the petitioner has not provided a meaningful description of many of the tasks associated with the proffered position, that some of the tasks are lifted directly from the *Handbook's* report on dental assistants and dental hygienists; and that some of the duties encompass duties associated with the duties of a dental laboratory technician and administrative or office manager.

The AAO does not find in the lengthy description provided that the petitioner requires the individual in the proffered position to primarily manage the dental office; nor does the description provide comprehensive evidence that the individual in the proffered position will be required to discuss specific treatments or perform complicated laboratory work; or train other dental assistants. The reference to these duties on appeal, without documentary evidence or a more thorough explanation of what the duties encompass, is insufficient to demonstrate that the position is a specialty occupation. Moreover, the AAO observes that if the individual in the proffered position advises and evaluates treatments or diagnoses or provides a prognosis of disease or infection, or manages a place where dental operations are performed, that individual will be providing dental care and must be licensed as a dentist to do so in the State of California.<sup>2</sup>

The AAO finds that many of the listed duties do not provide a clear understanding of the task(s) the beneficiary will be performing. For example, "[c]oordinat[ing] complex dental care involving periodontic and prosthodontic rehabilitation" is not sufficiently clear to discern whether the performance of this duty involves the work of a dentist, a dentist auxiliary, or a dentist auxiliary that requires licensure or registration in the State of California. Likewise, the petitioner's description of a duty that requires the beneficiary to oversee a task does not provide sufficient information to determine if the beneficiary will be performing the duties of a licensed dentist who oversees dental auxiliaries or if oversight is something of a different nature altogether. In yet other examples, the AAO cannot discern whether the beneficiary's discussion of the patients' dental records, discussion of x-rays and appropriate treatment, and designing a treatment program to create a favorable public image are tasks requiring the services of a dentist or of a dental assistant as the duties are ill-defined and lack clarity of purpose. The AAO observes again, that if the proffered position includes diagnosing or providing treatment, or planning, placing,

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there is no such title as dental researcher/specialist.

<sup>2</sup> California Business and Professions Code Section 1625.

condensing, carving, or removing permanent restorations, or other surgical or cutting procedures on hard or soft tissue, the individual performing these tasks must be licensed as a dentist in the State of California. The record does not reflect that the petitioner requires licensure in the position or that it is seeking a licensed dentist. As the record is not sufficiently clear regarding the actual duties of the proffered position as it relates to these tasks, the AAO will not find that the proffered position is that of a dentist, thus requiring proof of State licensure.

The petitioner has provided some detail in the extensive list of duties of the proffered position that identifies a specific task. A review of the *Handbook* shows that the identifiable tasks are related to the occupations of dental assistant, dental hygienist, and administrative/office manager.

In pertinent part, the *Handbook* states the following regarding dental assistants:

Dental assistants perform a variety of patient care, office, and laboratory duties. They work chairside as dentists examine and treat patients. They make patients as comfortable as possible in the dental chair, prepare them for treatment, and obtain their dental records. Assistants hand instruments and materials to dentists.... Assistants also sterilize and disinfect instruments and equipment, prepare trays of instruments for dental procedures, and instruct patients on postoperative and general oral health care.

Some dental assistants prepare materials for impressions and restorations, take dental x rays, and process x-ray film as directed by a dentist. They also may remove sutures, apply topical anesthetics to gums or cavity-preventive agents to teeth, remove excess cement used in the filling process, and place rubber dams on the teeth to isolate them for individual treatment.

Those with laboratory duties make casts of the teeth and mouth from impressions, clean and polish removable appliances, and make temporary crowns. Dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials.

The following duties of the petitioner's description of the proffered position align most closely with that of a dental assistant:

- Assist the dentist in taking and developing radiographs (x-rays).<sup>3</sup>
- Coordinate the placement of orthodontic appliances.
- Oversee the preparation and fitting of orthodontic bands.
- Instruct the patients in the proper care and use of appliances.
- Coordinate the selection of headgear, arch wires, elastics, ligatures, mouth mirrors, probes, forceps, brushes, and scalpels.

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<sup>3</sup> The AAO observes that Article 5 Section 1085 of the California Business and Professions Code requires a dental assistant who operates dental radiographic equipment for the purpose of oral radiography to comply with the requirements of section 1656 of the Code. The record does not provide evidence that the beneficiary has so complied.

- Set up of the armamentarium for oral, nitrous oxide analgesia, intramuscular, and intravenous conscious sedation.
- Instruct patients on postoperative and on general oral health care and on good oral hygiene.
- Make impressions of patient's teeth for study casts (models of teeth used by dentists to evaluate patient treatment needs).

The *Handbook's* discussion regarding the duties of dental hygienists also relates to the proffered position, as follows:

Dental hygienists...teach patients how to practice good oral hygiene, and provide other preventive dental care. Hygienists examine patients' teeth and gums, recording the presence of diseases or abnormalities. .... They...take and develop dental x rays....

Dental hygienists also help patients develop and maintain good oral health. For example, they may explain the relationship between diet and oral health or inform patients how to select toothbrushes and show them how to brush and floss their teeth.

Dental hygienists use...x-rays machines to take dental pictures, syringes with needles to administer local anesthetics, models of teeth to explain oral hygiene.

The following duties of the petitioner's description of the proffered position align most closely with that of a dental hygienist:

- Conduct patient screening procedures; such as assessment of oral health conditions, review of the health history, oral cancer screening, head and neck inspection, dental charting and taking blood pressure and pulse.
- Help patients develop and maintain good oral health, explain the relationship between diet and oral health, inform patients how to select toothbrushes, and show patients how to brush and floss their teeth.

The *Handbook's* discussion regarding the duties of administrative services managers also relates to the proffered position, as follows:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services . . . . These workers manage the many services that allow organizations to operate efficiently.

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In small organizations, a single administrative services manager may oversee all support services . . . . As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities. For example, some administrative services managers work primarily as office managers . . . .

The petitioner's indication that the beneficiary will order items like crowns, bridges, and dentures, and follow up on the fabrication of prosthetics, making sure that they are received on time, on receipt, and matches the order are administrative functions.

Turning now to the occupation of medical and health services managers, the AAO takes note of the following discussion:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. Medical and health services managers, also referred to as *health care executives or health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The structure and financing of health care are changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated health care delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work and an increased focus on preventive care. They will be called on to improve efficiency in health care facilities and the quality of health care provided. Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of related services - for example those ranging from inpatient care to outpatient followup care.

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Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

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In group medical practices, managers work closely with physicians. Whereas an office manager may handle business affairs in small medical groups, leaving policy decisions to the physicians themselves, larger groups usually employ a full-time administrator to help formulate business strategies and coordinate day-to-day business.

The *Handbook* notes that a small group of 10 to 15 physicians may employ one administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays and patient flow, while a large practice of 40 to 50 physicians might have a chief administrator and several assistants to handle each area. The AAO does not find the proffered position to be closely aligned to the employment just described. While the

petitioner indicates that the proffered position would require the beneficiary to ensure that the dental practice runs smoothly and administer a dental program, formulate dental policies, standards, and procedural changes, the petitioner does not describe what those duties entail.<sup>4</sup> The AAO also notes that the petitioner uses the same terminology as the *Handbook* when indicating the beneficiary will help the dentist with in-patient care wherever necessary and with out-patient follow up care. The AAO, however, does not find that the description of the duties of the proffered position provides sufficient detailed information to substantiate that the proffered position is that of a health services manager. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on its reading of the *Handbook*, the AAO concludes that the proffered position, as described by the petitioner combines the duties of several dental professions. While the majority of the position's duties are not clearly defined and the AAO cannot discern whether the tasks are the tasks of a dentist, a dental auxiliary, or a registered dental auxiliary, some tasks appear to fall within the *Handbook's* description of dental assistant, or a dental hygienist or an office administrator. The record does not support counsel or the petitioner's assertion that the proffered position is that of a medical and health and services manager.

Having concluded that the defined duties of the proffered position of dental specialist parallel those of dental assistants, hygienists and administrative services managers, the AAO turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent. Factors considered by the AAO when determining these criteria include whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree.

The *Handbook* states the following regarding the educational requirements for dental assistants:

Most assistants learn their skills on the job, although an increasing number are trained in dental-assisting programs offered by community and junior colleges, trade schools, technical institutes, or the Armed Forces....

For dental hygienists, the requirements as discussed by the *Handbook* are:

Dental hygienists must be licensed by the State in which they practice. To qualify for licensure, a candidate must graduate from an accredited dental hygiene school and pass both a written and clinical examination....

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<sup>4</sup> The AAO notes that California Business and Professions Code Section 1625(e) defines the practice of dentistry to include any person who "[m]anages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed." The record does not reflect that the beneficiary is a licensed dentist in the State of California or that the petitioner requires a license in dentistry. Thus, the petitioner does not appear to be seeking a manager for the dental practice which would require licensure as a dentist under California law.

In 2004, the Commission on Dental Accreditation accredited about 266 programs in dental hygiene. Most dental hygiene programs grant an associate degree, although some also offer a certificate, a bachelor's degree, or a master's degree. A minimum of an associate degree or certificate in dental hygiene is required for practice in a private dental office. A bachelor's or master's degree usually is required for research, teaching, or clinical practice in public or school health programs.

The *Handbook* offers the following regarding the training of administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager.

Counsel's reference to the Department of Labor's *O\*NET* assignment of SVP level 8 to the position of health services manager position is not relevant. As discussed, the record does not establish that the proffered position is that of a health services manager. Moreover, the *O\*NET* is not a persuasive source of information regarding the tasks and work activities associated with a particular occupation.

In that the *Handbook* finds no baccalaureate or higher degree, or its equivalent, to be required for employment in any of the occupations whose defined duties comprise the proffered position, the AAO concludes that the proffered position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), has qualified it under one of the three remaining criteria.

To support the petitioner's implication that a degree requirement is common to the industry in parallel positions among similar organizations, the petitioner has submitted copies of two job announcements. The first job listing is for a health services manager responsible for attaining sales objectives for an assigned territory and implementing new accounts. The second job announcement is for a health education program manager who will manage a large medical educational grant. Neither of these two job positions is comparable to the proffered position. Likewise, the organizations are dissimilar to the petitioner rather than similar. The petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner also fails to establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. As discussed above, the defined duties of the proffered position track the duties of a dental assistant, and possibly a dental hygienist, and office administrator, positions that are commonly performed by non-degreed individuals. The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(2) and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

The petitioner has also failed to establish that it normally requires a degree or its equivalent for the position. Although the petitioner employed the beneficiary, an individual with a foreign degree in dentistry, in an H-1B classification prior to submitting this extension request, that employment cannot be used to establish that the petitioner normally requires a degreed individual for the position of dental assistant. First, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's 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 employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Second, the petitioner has not provided evidence of other employees in the proffered position who have attained a baccalaureate degree or its equivalent. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Third, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the totality of the prior record and the rationale for the prior decision. The AAO finds, however, that if that record contained the same description of the proffered position as counsel indicates was submitted with this petition, the CIS would have committed material error in approving the previously filed petition. CIS is 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. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). As discussed previously, the petitioner has not provided sufficient detailed evidence to establish that the proffered position is a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) or (2). Neither has the petitioner established the position as specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

The petitioner has asserted that the proffered position is complex. On appeal, counsel also emphasizes the complex nature of the proffered position's duties. The AAO will, therefore, consider the evidence submitted by the petitioner and counsel in determining whether the stated specialization and complexity of the proffered position satisfies the requirements of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In assessing whether the petitioner has met its burden with regard to the fourth criterion, the AAO has again reviewed the duties of the proffered position to determine whether they reflect a higher degree of knowledge and skill than would normally be required of someone trained as a dental assistant, dental hygienist or an administrative services manager.

While the AAO finds that the petitioner may rely on the beneficiary to a greater extent than normally expected, due to the beneficiary's foreign training as a dentist, the specific duties of the proffered position are not so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Having considered the defined duties of the proffered position, the AAO finds no

evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that normally needed by dental assistants, dental hygienists, or administrative services managers.<sup>5</sup> The petitioner's reliance on the skill and education of this particular beneficiary does not elevate the described duties to that of a specialty occupation. The petitioner has listed the duties of a dental assistant, a dental hygienist, and an administrative services manager, to describe the tasks the beneficiary will perform in the proffered position. The petitioner has not provided a definitive description of duties or of other evidence that establishes that the position includes duties that are so specialized or complex that the position requires an individual with a baccalaureate or higher degree. The AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. As always, 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 met that burden.

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

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<sup>5</sup> The AAO notes once again that the general references in the proffered position indicating the beneficiary will provide treatment, diagnosis, or oversight of various tasks, suggest that the position may be that of a dentist, a specialty occupation that requires licensure in the State of California. As the record does not include evidence that the beneficiary has obtained a dental license, the petition could not be approved on the basis of performance of these duties as they appear to include the duties of a dentist and the beneficiary has not been licensed to perform the occupation.