

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D/

PUBLIC COPY



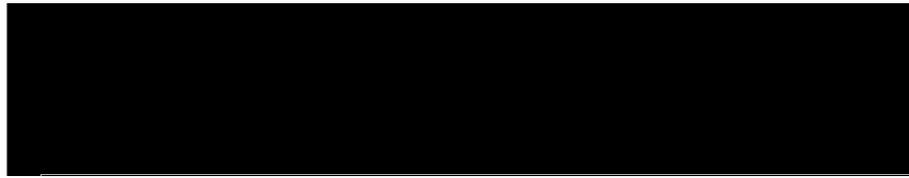
FILE: EAC 04 046 52513 Office: VERMONT SERVICE CENTER Date: **SEP 18 2006**

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 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 that seeks to employ the beneficiary as a health services coordinator. The petitioner, therefore, 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 of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. In denying the petition, the director found the duties to be essentially those of an office manager.

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 for evidence; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 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 proposed position.

According to the petitioner’s response to the director’s request for additional evidence, the beneficiary would spend twenty-five percent of her time researching, supervising, and directing the purchase of equipment for the petitioner’s second dental facility; fifteen percent of her time working closely with the dentist to maintain the requisite level of dental care and hygiene in both locations; less than five percent of her time researching for changes in the field of dentistry, such as new materials, new treatment procedures, the integration of health care delivery systems, and the increasing focus on preventive care; twenty-five percent of her time overseeing and evaluating the performance of dental assistants and technicians; five percent of her time supervising and maintaining the facility’s equipment; two to five percent of her time consulting with the owner on new purchases and negotiating with vendors and verifying proper delivery and installation; twenty percent of her time acting as a link between patients and the dentists by answering questions regarding fee and scheduling arrangements, resolving complaints and problems, and referring medical inquiries to the appropriate personnel; and less than two percent of her time arranging for job-related training sessions and seminars for the facility’s employees.

As noted previously, the director found that the duties of the proposed position were essentially those of an office manager.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation. Counsel contends that the duties of the proposed position are similar to those of a health services manager.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. In its adjudication of this appeal, the AAO consulted the 2006-2007 edition of the *Handbook*.

In reaching its own conclusion regarding the degree requirements of the proposed position, the AAO has compared the position’s duties against those described for a range of professions. This review has found that virtually all of the proposed position’s duties are listed among the occupations of administrative services managers, office and administrative support worker supervisors and managers, and dental assistants.

In pertinent part, the *Handbook* states the following regarding the duties of administrative services managers:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. . . .

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. . . .

In small organizations, a single administrative services manager may oversee all support services. . . .

[A]dministrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment. . . .

The *Handbook's* discussion regarding the duties of office and administrative support worker supervisors and managers also relates to the proposed position, as follows:

All organizations need timely and effective office and administrative support to operate efficiently. Office and administrative support worker supervisors and managers coordinate this support. These workers are employed in virtually every sector of the economy. . . .

Although specific functions of office and administrative support worker supervisors and managers vary significantly, they share many common duties. For example, supervisors perform administrative tasks to ensure that their staffs can work efficiently. Equipment and machinery used in their departments must be in good working order . . . They also request new equipment or supplies for their department when necessary.

Office and administrative support worker supervisors and managers also evaluate each worker's performance. . . .

Office and administrative support worker supervisors and managers often act as liaisons between the administrative support staff and the professional, technical, and managerial staff.

Finally, the AAO turns to the *Handbook's* discussion of the duties of dental assistants:

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 only aspect of the proposed position's duties not addressed by these occupations would be the beneficiary's research for changes in the field of dentistry. However, while these activities are not

specifically covered in the occupations just discussed, such activities appear to fall within those research activities routinely performed by dental clinics as part of patient treatment programs. There is no evidence that they constitute a type of research that would be beyond the abilities of dental assistants.

Therefore, based upon its reading of the *Handbook*, the AAO concludes that the proposed position, as described by the petitioner in its letter of support and in response to the director's request for additional evidence, combines the duties of administrative services managers, office and administrative support worker supervisors and managers, and dental assistants.

On appeal, counsel asserts that the duties of the position are similar to those of health services managers that require at least a bachelor's degree in a specific specialty, and submits an excerpt of the *Handbook's* entry for that occupational grouping of positions. However, the AAO does not agree. The beneficiary would not be planning, directing, coordinating, or supervising the work of the dentist who would be delivering the health care. Moreover, to the extent it is described in the record, the proposed position does not exceed the educational requirements of dental assistants who serve as dental office managers. The *Handbook's* section on dental assistants notes that "[s]ome dental assistants become office managers."

Having concluded that the duties of the proposed position combine those of administrative services managers, office and administrative support worker supervisors and managers, and dental assistants, the AAO next 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. The *Handbook* states the following regarding the educational requirements for administrative services managers:

Educational requirements 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 an office manager. . . .

For first-line administrative services managers or secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience.

For office and administrative support worker supervisors and managers, the requirements as discussed by the *Handbook* are as follows:

Most firms fill office and administrative support supervisory and managerial positions by promoting office or administrative support workers from within their organizations.

The *Handbook* offers the following information regarding the training of 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.

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

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. In response to the director's request for evidence and again on appeal, counsel submits letters from four other dental services providers in an attempt to establish eligibility under this prong. These letters are from Drs. [REDACTED] and [REDACTED]. The author of each letter asserts that the dental services provider requires a bachelor's degree to perform the duties of similar positions.

As a preliminary matter, the AAO notes that the text of these four letters is identical; it appears as though one person wrote the text and then provided it to all four companies as a template. As such, their evidentiary weight is diminished. No evidence, such as the names of those employees, copies of their diplomas, or payroll records, has been submitted to document the authors' assertions about hiring practices at their dental offices. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. The authors assert that, at their respective offices, "it has been our practice to hire individuals for this position with a minimum of a bachelor's degree in dental health or a related field." The AAO notes that the authors fall short of asserting that it has been their firms' practice to exclusively recruit and hire only persons with at least a bachelor's degree. Also, the authors do not state and document the duration of the asserted practice. Further, the authors' conclusions about an industry standard are based on unspecified and undocumented "conversations with individuals and organizations similar to mine," and therefore do not establish a factual basis which the AAO can assess for accuracy and evidentiary weight. *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)). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of the second criterion requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. However, there has been no demonstration that the proposed position is more complex or unique than the general range of administrative services managers, office and administrative support worker supervisors and managers, and dental assistant positions in other, similar organizations, which would not require a degreed individual. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree

in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The petitioner submits the names of two previous employees that it asserts have held the proposed position in the past. The petitioner also submits a copy of one employee's W-2 for tax year 2002, a copy and translation of his dental degree. For the second employee, the petitioner submits a copy of a degree. The degree simply states that it is a "bachelor of science;" it does not state in which field of study the degree was earned. Nor was any evidence submitted to demonstrate that this individual actually worked for the petitioner.

The submitted evidence does not satisfy the third criterion. According to the Form I-129, the petitioner was established in 1996. One, or even two, degreed employees hired during this period of time are insufficient to establish the pattern of hiring required under this criterion. Moreover, since there is no evidence in the record regarding the second named individual's field of study, the AAO is unable to determine the time period of the asserted hiring practice. As noted previously, 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 proposed position.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(4) – that 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. To the extent that they are depicted in the record, the duties do not appear more specialized or complex than those associated with other administrative services managers, office and administrative support worker supervisors and managers, and dental assistant positions, for which the *Handbook* indicates neither a requirement for or usual association with at least a baccalaureate degree in a specific specialty.¹ The evidence does not establish that this particular position requires the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that its proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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,

¹ Again, the evidence of record does not establish that the research duties of the position exceed the type routinely undertaken by dental clinics as part of patient treatment programs and performed by non-degreed individuals with appropriate clinical training or experience that is not equivalent to at least a baccalaureate degree.

EAC 04 046 52513

Page 8

8 U.S.C. § 1361. The petitioner has not sustained that burden.

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