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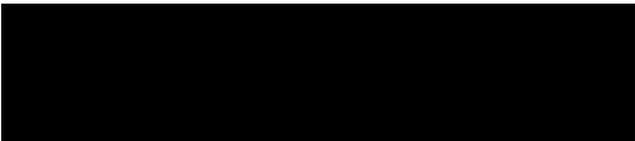


FILE: WAC 03 205 54382 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a dental clinic engaged in general dentistry and orthodontics. It seeks to employ the beneficiary as a dentist specialist/researcher and to classify him 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 ground that the proffered position is not a specialty occupation. On appeal counsel submits a brief arguing that the subject position, based on the complexity and specialization of its duties and the industry-wide degree requirement for similar positions, qualifies as 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.

As provided in 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 proffered position.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the

director's notice of decision; and (5) Form I-290B, counsel's appeal brief and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a dental specialist/researcher. As described by the petitioner in response to the director's RFE, the duties of the position and the percentage of the beneficiary's time they will entail are as follows:

- plan, organize, and maintain miscellaneous dental programs of the clinic – 20%
- confer with dentists and staff to formulate new policies and improve existing policies and recommend procedural changes – 15%
- develop and implement system to be used by the dental office, clinic, and laboratory to assure a smooth flow of work and improve efficiency – 15%
- formulate personnel hiring, promotion, and termination procedures, and coordinate staff's assigned tasks and work schedules – 10%,
- evaluate staff members' work performances and ensure all safety procedures are followed – 10%
- solve workers' procedural problems and demonstrate proper dental techniques – 10%
- coordinate with various dental laboratories that the clinic utilizes to assure that all work orders are submitted and received correctly and timely – 5%
- review major professional dental journals for dental health issues and development[s] particularly relevant to the dentists' practice, and provide dentists with latest information – 5%
- research literature to find research suggestions of modes of treatment for possible diagnosis, eliciting detailed patient histories, discussing the patients' charts and records with dentists – 5%
- supervise billing of patients and insurance companies financially accountable for services rendered – 5%

The petitioner asserted in its response to the RFE that a qualified candidate for the job must have the equivalent of a doctor of dental surgery (D.D.S.), though the job opening announcement indicated that a "bachelor's degree or higher in dental medicine/surgery" was required. The beneficiary, a native of Egypt, earned a Bachelor in Dental Medicine and Surgery at Cairo University, Egypt, in May 2000.

The director found that the position offered to the beneficiary is not a specialty occupation. Specifically, the director found that the record failed to establish that baccalaureate level training was required for entry into the occupation, that the petitioner normally requires a baccalaureate degree for the position, that the duties and responsibilities of the position are unusually complex, or that businesses similar to the

petitioner require the services of a degreed professional to perform dental research functions. Based on the job duties described by the petitioner the director concluded that the subject position appeared to be that of a general office manager that did not require professional skills. The director referred to the petitioner's assertion that the subject position was akin to that of a health services manager as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, for which a bachelor's or master's degree is required, but determined that a dental office on the scale of the petitioner was "not complex enough to warrant the professional service of a health service manager."

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered by CIS are whether the *Handbook* indicates a degree is required by the industry; 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

In his appeal brief counsel describes the petitioner as a dental clinic headed by two managing dentists. Employees include a staff of seven other dentists, an orthodontist, and a support staff of eight including four registered dental assistants, an office manager, two front-office clerks, and a file clerk. According to counsel the petitioner wants to hire a dental specialist/researcher to augment its capacity to increase its patient load and handle more complicated cases. As described by counsel, "[t]he Dental Specialist/Researcher will . . . relieve the dentists [of] as many of their duties as possible that do not involve actual patient care. The duties [of the position] . . . include the creation and implementation of dental programs, intensive dental research to keep up-to-date with the latest information and technology in the industry and also to locate and identify acceptable modes of treatment for complex patient cases, demonstrating dental techniques to solve dental assistants' procedural problems [and] the evaluation of [their] performances, and other dental-service related duties that have burdened the dentists in the past." Counsel emphasizes that the dental specialist/researcher will have "no direct patient care/handling" duties and will "not [be] tasked to perform any general managerial duties, which are assigned to the . . . Office Manager." An organizational chart has been submitted for the petitioner which groups the dental specialist/researcher with the dental assistants under the heading "dental services support." Thus, the petitioner does not assert that the proffered position is at the same level as its associate dentists, who require a D.D.S. or equivalent degree, according to the *Handbook*. The petitioner also distinguishes the proffered position from its dental assistants, who are not required to have baccalaureate degrees, according to the *Handbook*. The dental specialist/researcher will not be directly involved in patient care, the petitioner explains, whereas dental assistants, as described in the *Handbook*, "perform a variety of patient care, office, and laboratory duties," including "work[ing] chairside as dentists examine and treat patients." *Handbook*, 2004-05 edition, at page 339.

On appeal the petitioner asserts that the director mentioned only four of the position's ten duties in his decision, ignoring the last six duties comprising 40% of the worker's time. The AAO has reviewed all ten duties in the job description. The first three, comprising 50% of the worker's time, are so broad and vague that they do not convey what the beneficiary would actually be doing on a daily basis and do not

appear to demand any specialized knowledge of the dental profession. Of the remaining seven duties only three – *i.e.*, demonstrating proper dental techniques to the dental assistants, reviewing dental literature, and discussing patient records with the dentists – comprising 20% of the employee's time appear to focus directly on dentistry. None of these duties involves dental work on patients, however, and all of them emphasize the position's supporting function vis-a-vis the dentists. Moreover, despite the petitioner's emphasis on the research features of the proffered position, no laboratory research is indicated in the list of job duties and only two of the job's ten listed duties, comprising just 10% of the employee's time, involve reviewing dental literature. Furthermore, the petitioner's description of those two duties – *i.e.*, "review major professional dental journals for dental health issues and developments" and "research literature to find research suggestions of modes of treatment for possible diagnosis" – is far too imprecise for the AAO to draw any conclusion that they require a baccalaureate or higher degree. What is clear from a review of the job duties is that most of the employee's time will be spent performing general administrative functions. The petitioner has failed to establish that a baccalaureate or higher degree is required to perform those duties. The AAO concludes that a baccalaureate or higher degree is not a minimum requirement for entry into the subject position, as required to meet the first alternative criterion of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion to qualify as a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner contends that the director did not give due weight to letters from three dental clinics in California certifying their prior and/or current need for the services of a dental specialist/researcher with a dental degree. The AAO has reviewed the subject letters, which were very brief and did not describe the clinics or the duties of their dental specialists in any detail. The AAO agrees with the director that the letters failed to demonstrate the similarity of the clinics to the petitioner in the scale and scope of their business operations or the necessity of a bachelor's degree in dentistry for their dental specialist positions. On appeal the petitioner has supplemented the record with additional information from two of the three clinics in the form of computer printouts from their websites. According to the petitioner the printouts show that the two clinics – [REDACTED] located in Long Beach, with three dentists and a support staff of eight employees at two different locations, and the solo practice of [REDACTED] in San Francisco – are similar to the petitioner in size and operation. However, the printouts say nothing about employing a dental specialist or researcher at the respective clinics and do not describe the duties or educational requirements of any such positions. The AAO concludes that the computer printouts fail to establish that a degree requirement is common to the industry in parallel positions among similar organizations, as required to qualify the petitioner's dental specialist/researcher position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO is not persuaded that the proffered position and its specific duties fit the alternative criteria of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4). The position does not appear to be so complex or unique, and the specific duties described by the petitioner do not appear to be so specialized or complex, as to require the theoretical and practical application of a body of highly specialized knowledge associated with a bachelor's or higher degree in the specific specialty. Indeed, the job description indicates that the majority of the employee's duties and time will be spent on tasks that are primarily administrative in nature. Nor does the proffered position meet the alternative criterion of a "specialty occupation" set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – "the employer normally requires a degree or its equivalent for the position" – because the subject position did not previously exist and the petitioner has no hiring history.

Lastly, the AAO is not persuaded that the proffered position can properly be classified as that of a health services manager, requiring a baccalaureate or advanced degree. The *Handbook*, 2004-05 edition at pages 55-57, describes medical and health services managers as employees “who plan, direct, coordinate, and supervise the delivery of healthcare.” According to the *Handbook*, as of 2002 about 37% worked in hospitals, 17% worked in offices of physicians or nursing care facilities, and the remainder worked mostly in home healthcare services, federal government healthcare facilities, ambulatory facilities of state and local governments, outpatient care centers, insurance carriers, and community elder care facilities. Most importantly, the *Handbook* states, at page 56, that “[m]edical and health services managers must be familiar with management principles and practices,” and indicates that a bachelor’s degree in health administration, business administration, or a related field is the standard credential for entry-level positions in the field. The AAO notes that the duties of the proffered position in this case do not require much familiarity with management principles or practices.

Thus, the petitioner has failed to establish that the proffered position meets any of the criteria of a specialty occupation outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The statute requires that the beneficiary be coming temporarily to the United States to perform services in a specialty occupation. *See* section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b). The petitioner has not established that the beneficiary will be performing services in a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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