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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 03 090 51607 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:

[Redacted]

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 office in California. It seeks to employ the beneficiary as a director of dental care and 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 on the ground that the proffered position is not a specialty occupation. On appeal counsel submits a brief arguing that the subject position meets three different criteria set forth in the regulations, 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify 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.

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 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 and counsel's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a dental clinic with 31 employees, is seeking the beneficiary's services as director of dental care. As described by the petitioner in response to the director's RFE, the duties of the position include the following:

- 1) Assisting doctors in treatment of patients by assuring each doctor has at his/her disposal the necessary tools and equipment to render effective diagnosis and treatment.
- 2) Researching and working with different dental laboratories for the purpose of procuring the most up to date materials and products that can be obtained in a cost effective and time efficient manner.
- 3) Serving as liaison between doctors and front office by reviewing, assessing and organizing patient scheduling so as to minimize timing conflicts and double scheduling of patients.
- 4) Serving as liaison between doctors and office staff by reviewing and assessing the needed number of dental assistants for the number of doctors scheduled to work, keeping mindful of the number of patients to be treated.
- 5) Surveying patients on quality of treatment, timeliness of treatment, and overall satisfaction of treatment and reporting results back to headquarters with analysis on how to keep patient satisfaction at an optimal level.
- 6) Reviewing and auditing patient charts to assure that necessary documentation is present.
- 7) Developing and implementing office procedures assuring the highest level of patient, doctor and staff satisfaction with an increase in profitability.

The petitioner asserted that a qualified candidate for the job must have a degree in dental surgery. The beneficiary, a native of the Philippines, earned a Doctor of Dental Medicine degree [REDACTED] University in Manila on March 24, 2001.

The director found that most of the duties of the proffered position could be performed by the employer's office manager or dental assistants, neither of which is a specialty occupation. The director determined that the record failed to establish that a baccalaureate or higher degree was required for entry into the occupation, that such a degree was common to the industry in parallel positions among similar organizations, that the petitioner normally required such a degree for the position, or that the duties of the position were so specialized and complex that the knowledge required to perform them is associated with a baccalaureate or higher degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor's *Occupation Outlook Handbook (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.

On appeal counsel asserts that the proffered position qualifies as a specialty occupation because it meets the definition thereof in 8 C.F.R. § 214.2(h)(4)(ii) (section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1)) and three different qualifying criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). In particular, counsel asserts that (1) the position is so unique that it can be performed only by an individual with a degree, (2) the employer would normally require a degree or its equivalent for the position, and (3) the duties are so complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. According to counsel, the position “requires a combination of managerial, assistant like, and technical knowledge in the field of dentistry,” the combination of which “would normally require a degree or its equivalent.”

Counsel’s assertions on appeal are not supported by any additional documentation. Mere assertions by counsel, unsupported by documentary evidence, will not satisfy the petitioner’s burden of proof. *See Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director thoroughly reviewed the record before issuing his decision and specifically determined that most of the duties of the proffered position could be performed by the employer’s office manager or dental assistants. As described in the *Handbook*, 2004-05 edition, at page 339:

Dental assistants perform a variety of patient care, office and laboratory duties. They work chairside as dentists examine and treat patients 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 Dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials.

According to the *Handbook* most dental assistants learn their craft through on-the-job experience, though increasingly they are trained in dental-assisting programs at community and junior colleges, trade schools, technical institutes, or the armed forces. *See id.* The *Handbook* does not indicate that a baccalaureate degree in the specialty area is required for dental assistant positions. As for office managers, their duties, as described in the *Handbook* at page 464, include the following:

[Office managers] perform administrative tasks to ensure that their staffs can work efficiently They also request new equipment or supplies . . . when necessary. Planning the work and supervising the staff are key functions of this job [Office managers] oversee the work to ensure that it is proceeding on schedule and meeting the established quality standards [They] often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow

According to the *Handbook* office manager positions are usually filled by promoting administrative personnel from the company's ranks. *See id.* at 465. The *Handbook* does not indicate that a baccalaureate degree in the specialty area is required for office manager positions.

The AAO agrees with the director that the duties of the proffered position are reflected in the *Handbook's* description of dental assistants and office managers. Counsel's broad statement on appeal that the proffered position "requires a combination of managerial, assistant like, and technical knowledge in the field of dentistry" adds nothing to the information previously provided in the job description. Indeed, it is consistent with the director's determination the position is characterized by duties at the office manager or dental assistant level. Since the *Handbook* indicates that no baccalaureate degree is required for entry into such positions, the proffered position does not meet the first alternative criterion to qualify as a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The evidence of record does not establish that the proffered position is so complex or unique that it can only be performed by an employee with a baccalaureate or higher degree, or that the duties of the position are so specialized and complex that they require specialized knowledge associated with such a degree. Nor is there any evidence that a degree requirement is common to the industry in parallel positions among similar organizations. Thus, the proffered position does not meet the alternative criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4) to qualify as a specialty occupation. Finally, the record does not establish that the petitioner normally requires a degree or its equivalent for the position because it is newly created position and the petitioner has no hiring history. Accordingly, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

As discussed above, the proffered position does not meet any of the qualifying criteria of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). Consequently, the record does not establish that the position requires a theoretical and practical application of a body of highly specialized knowledge associated with a bachelor's or higher degree in the specific specialty, as required to meet the statutory definition of a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

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 in this case 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.