



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: EAC-00-259-52933 Office: Vermont Service Center

Date: DEC 08 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a dental laboratory with 24 employees and a gross annual income of \$2.1 million. It seeks to employ the beneficiary as a dental technician for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner failed to establish that the proffered position requires at least a baccalaureate degree or its equivalent. On appeal, counsel argues in part that the duties of the proffered position are so complex that knowledge required to perform the duties of the position is usually associated with the attainment of a baccalaureate or higher degree in a specialized area.

Counsel's argument on appeal is noted. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- * Read prescriptions and examine dental models and impressions to and [sic] repaired;
- * Fabricate full or partial dentures using wax, plaster, or plastic models, grinders and polishers;
- * Cast plaster molds of dentures and crowns to be repaired;

- * Select and mount replacement teeth in model to match color and shape of natural teeth;
- * Mold wax over setup to form contours of gums; and
- * Polish surfaces of case dentures, bend an[d] solder gold and platinum wire to construct dental frames.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

Counsel argues on appeal that the Service relied exclusively on the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 Edition, to reach its determination that the proffered position does not qualify as a specialty occupation, rather than considering the totality of the evidence. Counsel argues that the Handbook is not intended to serve as the "penultimate guide" to positions that constitute professional employment in the United States. However, the Service has not relied on the Handbook to reach its conclusion that the offered position is not a specialty occupation. Rather, the Service bases its conclusion on the duties of the position as described by the petitioner. While the Handbook may not be designed exclusively as a guide as to which occupations qualify as professions, it is a widely used guide concerning the normal minimum requirements for any job listed therein.

The DOL's Handbook describes the duties of dental laboratory technicians at page 486 as follows:

observations and the dentist's specifications, technicians build and shape a wax tooth or teeth model... They use this wax model to cast the metal framework for the prosthetic device.

Once the wax tooth has been formed, dental technicians pour the cast and form the metal, and... prepare the surface to allow the metal and porcelain to bond. They then apply porcelain in layers, to arrive at the precise shape and color of a tooth... The final product is a near exact replica of the lost tooth or teeth.

The duties described are clearly those of a dental laboratory technician, also known as dental technician. The Handbook does not indicate at page 487 that a baccalaureate or higher degree in a specialized area is required for employment as a dental laboratory technician. Some dental technicians learn their trade on the job. Others learn at junior and community colleges, vocational-technical institutes, or through the armed forces. Training usually takes two years. It is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Additionally, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in dental technology for the offered position.

The petitioner submits two job advertisements for dental technicians. Although these ads were apparently intended to demonstrate that other dental clinics require dental technicians to hold a bachelor's degree in dental technology, the ads do not support that conclusion. Selser Dental Laboratory requires at least five years of experience in crown & bridge waxing or metal finishing or all phrases of ceramics; working knowledge of precision attachments; and working knowledge of implant case design. However, that clinic does not specify that it is seeking to employ dental technicians with a bachelor's degree in the specialty area. BonaDent states that it is seeking dental technicians who have successfully completed a two-year approved formalized Dental Laboratory Training Course and certification by the United States National Board for Certification of Dental Laboratory Technicians; or dental technicians with a bachelor of science degree in dental laboratory technology; or successful completion of a recognized and approved formalized two-year college degree course in dental laboratory technology. Clearly, BonaDent does not require that candidates for the position of dental technician possess a baccalaureate degree in dental laboratory technology. Thus, the petitioner has not submitted sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

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Counsel asserts on appeal that dental technicians are expected to demonstrate a great deal of independence and exercise a significant degree of responsibility and judgment. Counsel further asserts that the process of fabricating a precision-fit, delicate-finish product by hand necessitates that the dental technician make a large number of decisions based on his training and experience, a characteristic of a professional occupation. Counsel has not provided any independent evidence to corroborate his assertions. Furthermore, while it may be true that dental technicians exercise skill and judgment in the performance of their duties, this fact alone does not lead to a conclusion that the duties of a dental laboratory technician are sufficiently complex to require knowledge usually associated with a bachelor's degree in dental laboratory technology. Thus, the petitioner has not demonstrated 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.

ORDER: The appeal is dismissed.