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U.S. Department of Justice  
Immigration and Naturalization Service

~~Identification data deleted to~~  
prevent clearly unwarranted  
invasion of personal privacy.

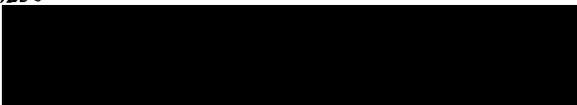
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-01-158-50236 Office: Vermont Service Center

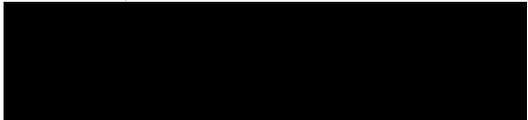
Date: 11 APR 2002

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)

IN BEHALF OF PETITIONER:



**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

*Handwritten signature of Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a dental practice providing dental and orthodontic treatment with fifteen employees and a gross annual income in excess of \$2 million. It seeks to employ the beneficiary as a dental record administrator 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.

The term "specialty occupation" is 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.

The director denied the petition because the proffered position did not normally require a baccalaureate degree because the position's duties were clerical and administrative in nature. On appeal, counsel asserts that the title of the proffered position was inappropriately listed as dental records administrator in both the initial I-129 petition and labor condition application. Counsel contends that the actual position to be filled was orthodontic assistant, a position so complex and unique that it could be performed only by an individual with a degree.

Counsel's statements on appeal are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. 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:

Develops and implements policies and procedures for documenting, storing, and retrieving information, and for processing dental-legal documents, insurance data, and correspondence requests, in conformance with federal, state, and local statutes, etc.

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.

The Service does not agree with counsel's argument that the proffered position is one that would normally require a bachelor's degree. In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to combine the duties of a health information technician with those of an office and administrative support manager. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a health information technician. Health information technicians entering the field usually have an associate degree from a junior or community college. Most employers prefer to hire Accredited Record Technicians (ART), who are required to pass a written examination offered by AHIMA. To take the examination, a person is required to graduate from a 2-year associate degree program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) of the American Medical Association.

A review of the Handbook also finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an office and administrative support manager. Most businesses fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good working knowledge of the organization's computer system are often considered as important as a specific formal academic background.

Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. Additionally, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the 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 arguments put forth by counsel on appeal are acknowledged. Upon initial submission, both the I-129 petition and corresponding labor condition application specified that the petitioner would employ the beneficiary as a dental record administrator. The record contains evidence that the beneficiary will now be employed in a different role as an orthodontic assistant. This represents a substantial change in the proffered position as listed on the I-129 petition at the time of the initial filing. In such a case, the regulations require the petitioner to file an amended or new petition, with fee, to the office where the original petition was filed to reflect these changes. In the case of an H-1B petition, this requirement includes obtaining a new labor condition application from the Department of Labor. 8 C.F.R. 214.2(h)(2)(i)(E). While counsel submits a new labor application listing the job offered as orthodontic assistant on appeal, the petitioner has failed to file an amended or new petition containing an accurate listing of the proffered position.

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.