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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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File: LIN 00 241 54498

Office: NEBRASKA SERVICE CENTER

Date: **JAN 14 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: SELF-REPRESENTED

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INSTRUCTIONS:

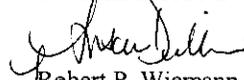
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a dental office with 10 employees and a gross annual income of \$200,000. It seeks to extend the employment of the beneficiary as a dental hygienist for an additional two-year period. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, the petitioner submits a brief.

The regulation at 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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 director denied the petition finding that the petitioner had not established that a bachelor's or higher degree is a minimum

requirement for entry into the proffered position. On appeal, the petitioner argues the position is a specialty occupation because the position requires the attainment of a bachelor's degree and a state license.

The petitioner's argument on appeal is not persuasive. The petitioner has not submitted sufficient evidence establishing that the position is a specialty occupation. The petitioner has not established that the position meets any of the four requirements enumerated above and, as a result, the director's decision will not be disturbed.

The petition is supported by a description of the duties of the position that indicates that the beneficiary will be responsible for dental cleanings, treatment planning, x-rays, diagnostic models, impressions, patient education, sealants, and periodontal therapy.

The Service does not agree with the petitioner's argument that the position of dental hygienist normally requires a bachelor's degree. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, at pages 220-211 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a dental hygienist. The Handbook notes that an associate degree is sufficient for practice in a private dental office.

It is noted that the petitioner has submitted a letter from the Executive Director of the Mississippi State Board of Dental Examiners that states that a bachelor's degree is required to receive a dental hygiene license in the State of Mississippi. However, the record contains contradictory evidence from the State Board indicating that an individual can, in fact, obtain a state license without a baccalaureate degree. As a result, the petitioner has not shown that a bachelor's or higher degree or its equivalent is required for the position being offered to the beneficiary.

In addition, the petitioner has not shown that it has required the services of individuals with baccalaureate or higher degrees in the past for this position prior to the beneficiary's employment. Further, the record does not contain sufficient evidence establishing that dental offices of similar size and scope hire individuals with bachelor's degrees in a specialized area in parallel positions.

Finally, the petitioner has not established that the duties of the proposed position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree.

In view of the forgoing, it is concluded that the petitioner has

not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

It is also noted that the Service previously approved an H-1B petition for the beneficiary for the same position. The Service is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. Matter of Izumii, I.D. 3360 (Assoc. Comm. Examinations, July 13, 1998).

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.