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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536



File: LIN 02 053 54878

Office: NEBRASKA SERVICE CENTER Date:

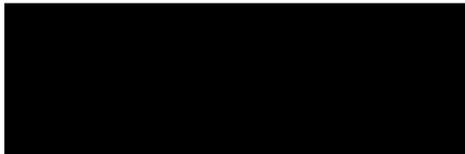
**APR 21 2003**

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)

ON BEHALF OF PETITIONER:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

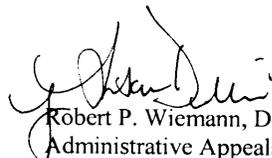
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a dental office with two employees and a stated gross annual income of \$200,000. It seeks to employ the beneficiary as an orthodontics researcher for a period of three years. The director determined that the petitioner had not shown that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The term "specialty occupation" is further 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 determined the petitioner had not shown that the duties of the proffered position are so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the duties of the position are more complex than those normally performed by dental technicians or dental assistants. Counsel states that the beneficiary will be required to assist the dentist in diagnosing problems and planning treatments based on the medical research that he conducts in conjunction with his scientific background. Counsel contends that these duties require the services of an individual with a baccalaureate degree in dentistry or a related field.

When determining whether a particular job qualifies as a specialty occupation, the Bureau (formerly the Service) considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- (1) Enhance clinic's specialization on orthodontics by assisting Dentist in a research project involving organizing, constructing, and repairing appliances for straightening teeth; removing separators and selecting & fitting bands; as well as preparing patients for direct bonding and performing emergency orthodontic adjustments;
- (2) Review major professional dental journals for issues and developments that are particularly relevant to the patients;
- (3) Find literature relevant to diagnosis or management of cases; and
- (4) Elicit detailed patient histories and discuss patients' charts and files with the Dentist.

In response to a Bureau request for additional evidence, the petitioner supplied the following, expanded description of the duties and the percentage of the beneficiary's time to be spent on three general groups of duties:

***Product Research and Development*** 70%

- Observe orthodontic-related clinical work.

- Assist dentist in the classification of orthodontic cases by reviewing patient profile and providing survey data and model analysis.
- Collect related literatures for each specialized case for review with the dentist.
- Research... modern orthodontic materials and procedure[s] that will best suit the needs of orthodontic patients and promote chair time saver system.
- Independently execute experimental studies, after initial discussion with Orthodontics Specialist, in support of orthodontic goals and commitment.
- Independently develop new scientific protocols for research program.

***Patient Care Management*** 10%

- Participate in various aspects of the patient care such as patient recruitment, interview, data collection and education on proper care of orthodontic appliances.
- Disseminate information on dental health status and/or problem of the patients both in English and Philippine 'Tagalog' since 80% of the patients are Tagalog speaking.

***Patient File Management*** 20%

- Compile individual patient profile and identify the clinic's general patient profile.
- Maintain systematic filing of pre and post operative cases, which may be useful for model preservation, medico-legal, and future reference of [sic] the dentist and patient.
- Conduct survey study on procedures performed for patients treated 3 to 6 years ago.

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.

Although the petitioner indicates that 70% of the beneficiary's work day will be spent doing "orthodontic research," the petitioner has provided very little information regarding the actual, day-to-day research-related activities to be performed by the beneficiary. Nor has the petitioner provided any explanation as to why a small orthodontics practice with two employees would require the full-time services of an orthodontic researcher. In the absence of persuasive evidence to show that an orthodontic research position would normally require a baccalaureate degree in a specific specialty, the Bureau is not persuaded to classify the proffered position as a specialty occupation based on the research duties of the job. It appears that the beneficiary's duties primarily involve constructing and repairing orthodontic appliances, interviewing patients, instructing patients on the proper care and maintenance of orthodontic appliances, and updating and filing patient records. These are the duties typically performed by dental assistants and dental technicians as described by the Department of Labor (DOL) in the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. There is no indication in the *Handbook* that a baccalaureate degree in a specific specialty is the normal minimum requirement for employment as either a dental assistant or a dental technician.

In an attempt to demonstrate that the degree requirement is an industry standard, the petitioner submitted various Internet and print job advertisements for research assistant positions.

However, none of these jobs can be considered parallel positions in similar organizations because none of the advertised positions involve dental research in a private orthodontic practice.

The petitioner also provided material from the website [www.dent.unc.edu/careers](http://www.dent.unc.edu/careers) describing dental careers, including dental research, and the educational requirements for such positions. According to this website, dental research positions typically require the dental graduate to pursue an advanced degree involving a significant amount of research training. A successful research career generally requires a Ph.D. degree. Such programs generally last a minimum of three years past the DDS qualification. It is noted that there is no indication in the record that the beneficiary has received any advanced education beyond his DDS degree. It is further noted that most dental research jobs are located at university dental schools or dental research institutes; private industries such as manufacturers of dental supplies; and government agencies and research institutes. The petitioner has not provided any documentation to show that dental or orthodontic research jobs in private orthodontic practices typically require a baccalaureate degree in a specific specialty. Thus, the petitioner has not shown that a baccalaureate degree in a specific specialty is standard to the industry in parallel positions among similar organizations.

Furthermore, the petitioner has not shown that it required a bachelor's degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not demonstrated that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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 proffered 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.