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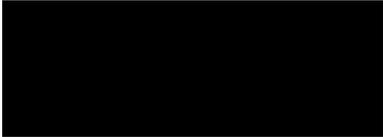
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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invasion of personal privacy**

DA

ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: LIN 02 035 55812 Office: NEBRASKA SERVICE CENTER Date:

AUG 18 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:



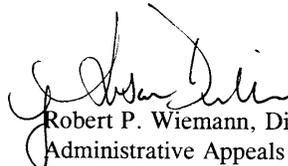
INSTRUCTIONS:

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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Northbrook, Illinois dental clinic with six employees and a gross annual income of \$500,000. It seeks to temporarily employ the beneficiary as an orthodontics researcher for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation, in that the duties of the proffered position appeared to be more akin to those of a dental assistant rather than a researcher. On appeal, counsel asserts that the position is consistent with that of a dental researcher and so is a specialty occupation. No brief was submitted on appeal.

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.

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 field 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on November 13, 2001, the petitioner described the duties of the proffered position as follows:

1. Review professional dental journals for issues pertaining to emerging developments relevant to orthodontic patients.
2. Research literature relevant to the diagnosis and management of cases.
3. Interview patients and elicit detailed dental histories to be discussed with the dentist.
4. Study issues regarding organizing, constructing, and repairing appliances for straightening teeth and treatment of problems related to the growth and development of face and jaws.
5. Educate patients regarding proper care of orthodontic appliances.

On November 16, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In response, the petitioner submitted a statement along with several job announcements for research assistants and like positions. The petitioner further described the proffered position as requiring the beneficiary to review technical journals and literature relating to orthodontics and correlate theoretical findings with practical issues facing the petitioner's patients. The beneficiary would also educate patients regarding the proper care of orthodontic appliances.

On February 14, 2002, the director denied the petition. The director noted that the job announcements included in petitioner's response were posted by organizations unlike the petitioner's dental office. The director concluded that the announcements did not establish that a bachelor's degree was a standard minimum requirement for parallel positions among similar organizations. The director also determined that the job duties proposed in the instant case are not similar to those enumerated in the various job announcements or in the internet information from the University of North Carolina provided by the petitioner.

On appeal, counsel states that the beneficiary would be performing research by gathering information (by talking to patients and reading publications), applying her knowledge of dentistry, and

relating the knowledge gained to actual clinical cases. The beneficiary would also explain the proper care of orthodontic appliances in the process of communicating with patients. Counsel asserts that these duties are similar to, and thus require the same level of preparation as, scientific/medical researcher positions. Counsel submits that a bachelor's degree is normally the minimum entry requirement for the proffered position, and also that it requires a bachelor's degree because the nature of the specific duties is specialized and complex.

The Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. Since counsel asserts that the *Handbook* classification of medical scientist corresponds to the proffered job duties, this job category will be examined in greater detail.

A bachelor's degree would be the minimum requirement in order to enter into the field of medical research, per the *Handbook*. According to the *Handbook* on page 219, whatever the branch of science involved, and no matter what the setting for the research may be, it appears that the main focus of such researchers is on finding solutions to very specific problems, or answers to very specific questions. The solutions or answers which they seek, however, have a broad application rather than an individual scope. The goals of medical researchers are not necessarily the same as those of medical or dental practitioners, who diagnose individuals and seek solutions for those particular patients.

The duties of the proffered position appear to be focused on individual patient diagnosis and care. The research involved, consisting of speaking with patients and reading dental literature, is the type of research done by dentists and their staff in order to treat patients. This is not the type of research contemplated by the *Handbook* or the submitted job announcements in reference to the researcher positions. The dental literature the beneficiary would read, in fact, publishes the work of the medical and dental scientists conducting studies in laboratories and clinical facilities. There is no information on record to indicate that this is the type of work to be performed in the proffered position.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. The petitioner has not established that the proffered position meets any of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

As discussed above, the proffered job duties do not fit into the

medical scientist/researcher category as described in the *Handbook*. Without a breakdown of the beneficiary's exact duties, it is not possible to specify whether the position is that of dental assistant or hygienist. To the extent that the *Handbook* does not indicate that employers of either dental assistants or hygienists require a bachelor's degree, it does not appear that a bachelor's degree is the minimum requirement for entry into this field.

II. 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*Handbook*) reports that the industry requires a degree, 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." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for dental hygienists or assistants were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted several job announcements for scientific researcher positions. As discussed above, the employers in these announcements are not similar to the petitioner's practice.

In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that this position involves duties seen as either unique or complex so that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The petitioner submitted no information regarding whether it has hired anyone previously for the proffered position. Thus the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to those of a dental assistant or hygienist position. Although the petition describes the position as an orthodontics researcher, no documentation as to any specialized or complex duties within this description has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.