

PUBLIC COPY

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

DO

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

AUG 18 2003

File: LIN-02-213-52820 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
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)

ON BEHALF OF PETITIONER:
[REDACTED]

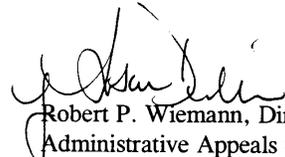
INSTRUCTIONS:

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

The petitioner is a dental office with eight employees and a gross annual income of \$796,978.78. It seeks to employ the beneficiary as an "expanded functions dental specialist" 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.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties resemble those of a health service manager, a position that normally requires a baccalaureate or higher degree. Counsel further states that the proposed duties, which include administering a dental program and formulating dental policies, are so complex that such a degree is required.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Fill cavities with permanent and/or provisional restorations; adjust and seat permanent bridges, crowns, onlays and inlays; take bite-wing, full mouth and panoramic x-rays; for endodontic procedures, take x-rays for working length and final post-op radiographs; take impressions with both rubber and alginate impression materials; record bite registration for complete and partial dentures; fabricate occlusal guards, hard TMJ (Temporomandibular Joint Diseases) splints, Hawley's plates, bleaching trays and provisional restorations; adjust and tighten removable orthodontic appliances and partial dentures; fabricate and seat pediatric space maintainers; provide pre- and post-operative care for patients undergoing local anesthesia; apply topical anesthetic; prepare dry-socket medications in sulci for treating condensing bone osteitis; remove sutures; chart periodontal, refer to periodontist at dentist's direction; fabricate temporary crowns and bridges while permanents are made in laboratory; provide preventive education and communicate dental health to patient; chart existing dental condition of patient under direction of the dentist, and gather and assemble information related to patient history and compiling oral inspection; prepare treatment plans in computer following comprehensive exam after the dentist's diagnosis and treatment plan fabrication; present completed treatment plan to patient and assist in scheduling patient for appropriate treatment; smooth and polish natural and restored tooth surfaces; apply fluorides and other topical agents for prevention of oral disease; perform other tasks or procedures that does [sic] not require the professional skill of a licensed dentist; use intra-oral video cam and other audio-visual aids in order to enhance patient's knowledge of their dental health needs; coordinate the ordering of all supplies and maintain current inventories; supervise, facilitate, direct activities, duties and responsibilities of all clinical dental assistants-management role; confer with staff regarding policies and recommend procedural changes to increase daily production; oversee billing of patient accounts and insurance company submissions; coordinate with the

various dental labs that are utilized in order to assure quality control and that orders are submitted and received in a timely manner.

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.

First, the Service does not agree with counsel's argument that the beneficiary is a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, or a bachelor's degree for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations.

In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 75, the Department of Labor (DOL) describes the job of a health services manager as follows:

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment,

restructuring of work, and an increased focus on preventive care. . . . Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient follow-up care.

. . . .

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

The record reflects that the petitioner, which is a dental office, employs eight persons and has a gross annual income of \$796,978.78. The proposed duties of the medical coordinator are not those of a health service manager, as described above. For example, there is no evidence that the position offered includes complex health service managerial duties such as managing finance. Furthermore, the proposed duties primarily relate to the duties of a dental assistant.

In its *Handbook* at pages 312-313, the DOL describes the job of a dental assistant as follows:

Dental assistants perform a variety of patient care, office, and laboratory duties. They work chairside as dentists examine and treat patients. They make patients as comfortable as possible in the dental chair, prepare them for treatment, and obtain dental records. Assistants hand instruments and materials to dentists, and keep patients' mouths dry and clear by using suction or other devices. Assistants also sterilize and disinfect instruments and equipment, prepare tray setups for dental procedures, and instruct patients on postoperative and general oral health care.

Some dental assistants prepare materials for making impressions and restorations, expose radiographs, and process dental x-ray film as directed by a dentist. They also may remove sutures, apply anesthetics to gums or cavity-preventive agents to teeth, remove excess cement used in the filling process, and place rubber dams on the teeth to isolate them for individual treatment.

Those with laboratory duties make casts of the teeth and mouth from impressions taken by dentists, clean and polish removable appliances, and make temporary crowns. Dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a dental assistant, as described by the DOL in its *Handbook*. According to the DOL at page 313 of the *Handbook*, most assistants learn their skills on the job, though some are trained in dental assisting programs offered by community and junior colleges, trade schools, technical institutes, or the Armed Forces. In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner asserts that it normally requires a baccalaureate degree in dental health or an equivalent thereof for the proffered position, the record contains no evidence of such. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Third, the petitioner did not present any persuasive documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The record contains letters from five dentists, only one of whom actually states that positions such as the proffered position would require a baccalaureate degree in dental science. A second dentist states that "it would be best" to hire individuals with a bachelor's degree for positions such as the proffered position. A third dentist states that hiring an individual with such a degree "would be a superb answer. . . ." A fourth dentist states that, although he has never hired such an individual, it is his "understanding" that such a degree would be required. The fifth dentist states that positions such as the proffered position are "frequently" filled by individuals with a baccalaureate degree. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate degree for positions such as the proffered position is an industry standard.

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 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.