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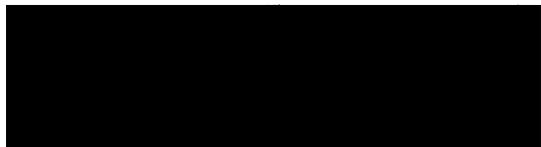
U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: LIN-02-225-53423

OFFICE: NEBRASKA SERVICE CENTER

DATE:

DEC 05 2003

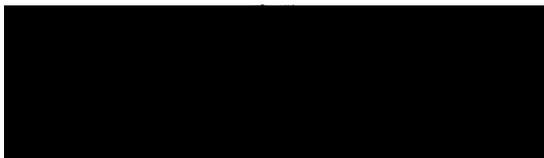
IN RE: Petitioner:

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)

IN BEHALF OF PETITIONER:



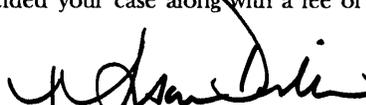
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dental center that employs seven persons and has a gross annual income of \$495,843. It seeks to employ the beneficiary as a research associate. The director denied the petition because the petitioner failed to establish that: (1) the offered position qualified as a specialty occupation, and (2) the beneficiary was qualified to perform the duties of the offered position.

On appeal, counsel submits a brief. Counsel states, in part, that the offered position qualifies as a specialty occupation, and that the beneficiary qualifies to perform its duties.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation, and the second is whether the beneficiary is qualified to perform the duties of the offered position.

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 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.

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 I-129 petition delineates the beneficiary's duties as follows:

As a research associate, he will review and analyze medical laboratory tests, procedures, experiments, and analysis to provide data for diagnosis, treatment[,] and prevention of malformation of teeth and gums and related oral structure. Analyze test results and enter findings in book records. Analyze reports[,] and [sic] findings[,] [and] tests, [and] promote the health of patients by advising them regarding dental hygiene. Use the medical library to do research necessary to make diagnosis on the cases the dentist is working on. Do quality control to monitor activities to ensure efficiency and accuracy of procedures.

Counsel's letter, dated June 26, 2002, stated that candidates must possess a bachelor's degree in dentistry or in one of the life sciences.

On July 5, 2002, the director requested additional evidence: a detailed description of the beneficiary's duties, indicating the percentage of time to be spent performing each duty.

In response, counsel provided the following job duties and the percentage of time the beneficiary will spend on each duty:

- Review and analyze medical laboratory tests, procedures, and experiments to provide data for diagnosis. 12 hours per week.
- Provide diagnosis report for possible treatment and

prevention of malformation of teeth, gums[,] and related oral structures. 10 hours per week.

- Analyze test results and enter findings into records, [and] monitor activities to ensure efficiency and accuracy. 10 hours per week.
- Conduct research in the medical library. 6 hours per week.
- Do quality control to monitor activities to ensure efficiency and accuracy of procedures. 2 hours per week.

On July 15, the director issued a second request for evidence, seeking evidence that would establish that the beneficiary qualified to perform the duties of the offered position, a dentist.

In response, counsel stated that the beneficiary's duties did not involve patient care, and that the duties reflected those performed by research associates, not dentists. Counsel stated that the beneficiary holds a master's degree in conservative dentistry and has an extensive background in dental research, and in the diagnosis of dental disease and the interpretation of lab tests. Counsel conceded that research associates are not found in the medical profession, and are more likely in the field of statistics or biostatistics. Counsel states that a license is not required for the offered position.

On August 1, 2002, the director denied the petition. The director found that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) revealed that the beneficiary's duties were more complex than a dental assistant's, and reflected the duties performed by dentists. The director further stated that the petitioner did not establish that the beneficiary was qualified to perform the duties, such as possessing a license. Finally, the director noted that the petitioner had not established that the offered position met one of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner has established that the offered position qualifies as a specialty occupation, and that the beneficiary qualifies to perform the duties of the position.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation. On appeal, counsel asserts that the petitioner realized that a non-licensed research associate who is familiar with the fundamentals of the dental practice could take over some responsibilities to "alleviate some burdens from the dentist's shoulders." In addition, counsel stated "the dentist will be able to assign different tasks in which no patient care is involved to the research associate." Counsel alleges that the beneficiary's

duties are not as complex as a dentist's and are more analogous to those of research associates as described in the Dictionary of Occupational Titles (*DOT*). Nevertheless, counsel concedes that the position of research associate is not found in the medical profession, but is more closely aligned to the field of statistics or biostatistics.

With respect to the *DOT*, the Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (*CIS*) refers to the *Handbook* to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the occupation.

Based on the evidence in the record, the *Handbook* reveals that the beneficiary's duties are analogous to those performed by dentists. On pages 250-251, the *Handbook* reports that dentists interpret clinical and laboratory diagnostic tests. As shown in counsel's letter, dated June 9, 2002, most of the beneficiary's duties involve analyzing laboratory tests to provide data for diagnosing and treating patients. For example, for 32 hours per week, the beneficiary will analyze laboratory tests to provide data to diagnose and treat malformations of teeth, gums, and related oral structures, and will enter test results in patient records. On appeal, counsel insists that the beneficiary "will not be involved in patient care or any other activity that requires a license." However, the evidence in the record contradicts counsel's statement: it shows that the beneficiary performs analysis and diagnosis to treat and care for patients. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, counsel claims that the beneficiary's duties are similar to those of medical technologists. According to the *Handbook*, on pages 279-280, the medical technologist:

[P]erforms testing and examines and analyzes body fluids, tissues, and cells. They prepare specimens for examination, count cells, and look for abnormal cells. They use automated equipment and instruments that perform tests, as well as microscopes, cell counters, and other sophisticated laboratory equipment. They

evaluate test results, develop and modify procedures, and establish and monitor programs, to ensure the accuracy of tests. They analyze test results and relay them to physicians.

Counsel's claim is incongruous with the *Handbook's* description of medical technologists: the beneficiary will not prepare specimens for examination, use sophisticated equipment to perform tests, or establish monitoring programs to ensure tests are accurate. It should be noted that the *Handbook* reports that some states require that medical technologists have proper licensure or registration.

As previously discussed, the beneficiary's duties reflect those performed by dentists. According to the *Handbook*, on page 251, all 50 States and the District of Columbia require dentists to be licensed. In most States, a candidate must graduate from a dental school accredited by the American Dental Association's Commission on Dental Accreditation, and pass written and practical examinations to qualify for a license. The *Handbook* further reports that some States require dentists to obtain a specialty license before practicing as a specialist and that requirements include two to four years of postgraduate education, and in some cases, completion of a special State examination. In addition, the *Handbook* states that dentists who perform research usually spend an additional two to five years in advanced dental training in programs operated by dental schools or hospitals.

Based on the evidence in the record and the *Handbook*, the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second issue that will be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the offered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner must establish that the beneficiary satisfies one of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C). As previously discussed, according to the *Handbook*, on page 251, all 50 States and the District of Columbia require dentists to be licensed. In most States, a candidate must graduate from a dental school accredited by the American Dental Association's Commission on Dental Accreditation, and pass written and practical examinations to qualify for a license.

The evidence in the record discloses that the beneficiary holds a bachelor's degree in dental medicine and oral surgery, a master's degree in dentistry/conservative dentistry, and a doctorate in dentistry from the University of Baghdad. The record shows that the beneficiary does not hold an unrestricted state license, registration or certification which authorizes him to fully practice the specialty occupation and be immediately engaged in that specialty. Moreover, the documentary evidence in the record fails to show whether the State of Michigan will accept the beneficiary's academic credentials or will require him to graduate from a dental school accredited by the American Dental Association's Commission on Dental Accreditation. Thus, the beneficiary fails to qualify to perform the duties of the specialty occupation.

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. The petition is denied.