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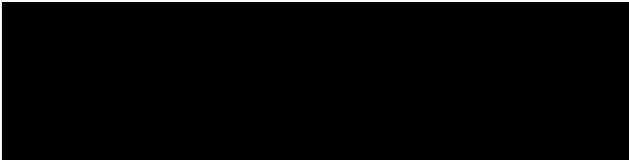
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



FILE: WAC-02-186-52053

OFFICE: CALIFORNIA SERVICE CENTER

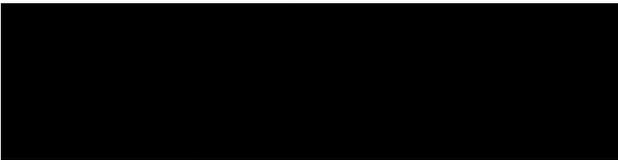
DATE: DEC 17 2003

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:



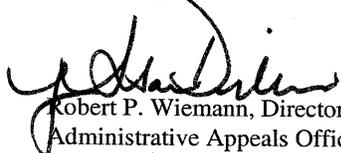
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a dental practice that employs four persons and has a gross annual income of \$390,000. It seeks to employ the beneficiary as a dental specialist/researcher. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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 issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 petitioner's letter accompanying the I-129 petition described the beneficiary's duties as follows:

[The beneficiary] will administer and direct the activities of the dental office in accordance with national standards, administrative policies[,] and OSHA compliance guidelines.

[The beneficiary] will conduct the necessary research to determine the cause and or effect of the disease that the patient is exhibiting or prepare a complete analysis of the patient['s] infection or disorder. She will confer with clinical staff to formulate policies and recommend procedural changes to increase daily production. [The beneficiary] will as needed, hire additional staff, fire[,] and evaluate their work.

[The beneficiary] will oversee the billing of patients and insurance companies . . . coordinate with the various laboratories . . . to assure that orders are submitted . . . .

On May 20, 2002, the director issued a request for evidence, seeking: (1) a detailed job description; (2) evidence that the position's duties could not be performed by a person with less than a bachelor's degree; (3) an explanation of how the beneficiary acquired her experience performing the duties of the position without a degree; and (4) evidence establishing one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, counsel submitted a letter stating that the petitioner is a dental clinic providing full dental diagnostic services to adults and children, routine dental examinations, oral care, and emergency treatment surgery. The letter claimed

that the petitioner could expand its practice by using recent developments in the medical and dental fields, and also satisfy industry standards to avoid liability. To meet its needs, counsel claimed that the petitioner decided to hire a candidate with formal training in dental medicine. The employee, counsel stated, will manage and analyze the clinic's practices and procedures, compare them with national standards, and confer with clinical staff to form policies and recommend procedural changes.

The letter elaborated on the beneficiary's duties. It reiterated the beneficiary's administrative duties, and stated that another area of duties entailed:

[A]ssisting the clinic's dentists with the analysis of patients' records. She will examine patients' records to compose dental reports for the ultimate approval of the clinic's dentists. She will utilize her medical background to provide complete analysis of the patient's oral and maxillo-facial conditions based upon the dentist's findings, reports, medical history and laboratory results. [The beneficiary] will record these conditions for diagnosis and treatment by the dentist. [The beneficiary's] expertise in the area of dental medicine will be utilized in suggesting to the clinic's dentist solutions as to patients' conditions. [The beneficiary] will maintain complete dental reports and related documentation of the patients. She will coordinate dental care evaluation and develop criteria and methods for such evaluation/reports. Also, [the beneficiary] will utilize medical journals, textbooks[,] and medical research materials to analyze and evaluate the patients' records . . . .

Counsel's letter stated that the third area of the beneficiary's duties involved extensive research of new developments in the medical and dental industries. For example, counsel stated that the beneficiary would use the dental and medical libraries to perform research and devise methods to implement the results of her research.

Counsel alleged that the beneficiary will not provide any patient care and will not have contact with patients.

The percentage of time that would be spent on each duty, according to counsel, would be 30 percent devoted to administrative duties; 40 percent dedicated to analyzing patients' records and assisting dentists to make proper determinations and diagnosis; and 30 percent dedicated to medical and dental research and composing research reports. The letter mentioned that the beneficiary would not directly supervise clinic staff, but will analyze and determine the quality of their work, and their compliance with procedures and standards. Counsel mentioned that the beneficiary

will work 25 hours per week.

Counsel asserted that candidates must possess a bachelor's degree or higher because 70 percent of the duties involve researching publications, studying patients' records, and recommending improvements to diagnosis or treatment; thus, requiring a comprehensive understanding that is acquired through formal training in dental medicine.

Counsel claimed that the offered position qualifies as a specialty occupation because candidates for the position must possess a formal education exceeding a bachelor's degree. Counsel, citing the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), at page 251, stated that dental schools usually require a bachelor's degree for admission, and that dental schools entail four years of study; thus, an education in dental medicine requires nearly eight years of study.

Counsel alleged that the administrative duties of the position, which include creating and administering procedures and policies, parallel the duties performed by health services managers because health services managers plan, organize, coordinate, and supervise the delivery of health care; direct activities in clinical areas; and establish and implement policies, objectives, and procedures for medical offices and facilities. The *Handbook*, counsel stated, describes that a bachelor's degree in health services administration, health sciences, public health, or a related discipline, is required for entry into the position; accordingly, counsel claimed that the position is unique in that it requires a degree in health sciences as opposed to business administration.

Counsel maintained that the degree requirement is common in the industry because parallel positions in other organizations require a bachelor's degree, and counsel referred to Internet job postings for dental and health services management positions. Furthermore, counsel claimed that the advertisements are from large and medium sized companies because smaller companies prefer to hire candidates through small employment agencies or from recommendations. Smaller companies, counsel asserted, are not equipped to handle a considerable volume of applications; therefore, they are unlikely to advertise in newspapers or on the Internet. Nevertheless, counsel stated that a company's size is irrelevant, and maintains that what is relevant is that the duties of the advertisements resemble the beneficiary's proposed duties.

According to counsel, the offered position is newly created; therefore, the petitioner does not have a past practice of requiring a degree.

Finally, counsel asserted that the beneficiary's duties - analyzing dental work, recommending improvements to diagnosis and treatment, and determining what are the relevant facts and procedures when researching publications and reports - are specialized and complex, and that only a person formally trained as a dentist can perform them.

On July 8, 2002, the director denied the petition, finding that the beneficiary would perform general administrative duties and a few managerial ones; thus, the position would not require professional skills and would not qualify as a specialty occupation. Essentially, the director found that the *Handbook* revealed that the beneficiary's duties reflected those performed by facility managers, and that the *Handbook* stated that facility manager positions do not require a bachelor's degree. According to the *Handbook*, the director stated, some employers promote within their organization to fill positions; and for supervisory positions, many require an associate's degree or in-house training or courses in time management or interpersonal relations. Furthermore, the director found that counsel failed to submit documentary evidence to corroborate his allegations that the position qualified as a specialty occupation. The director determined that the petitioner's advertisements did not overcome the *Handbook's* portrayal that the degree requirement is not required in the industry, and the director mentioned that counsel did not clarify the kinds of employees that the beneficiary will supervise. Finally, the director stated that it is common knowledge that dental manager positions do not require a bachelor's degree.

On appeal, counsel asserts that the petitioner established that the offered position qualifies as a specialty occupation.

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the occupation. Counsel states that the *Handbook* reveals that the beneficiary's duties resemble those performed by health services managers. Counsel maintains that health services managers plan, organize, and coordinate and supervise the delivery of health care. In addition, counsel states that they direct activities in clinical areas; establish and implement policies, objectives, and procedures for their departments; evaluate personnel; develop reports and budgets; coordinate activities with other managers; and work closely with physician owners. Counsel claims that these duties reflect the beneficiary's duties with the exception that they are performed in a dental practice, not a general medical practice.

Counsel maintains that the *Handbook* states that health services managers require, at minimum, a bachelor's degree for entry-level positions in smaller operations. Consequently, counsel states

that candidates for the offered position must possess, at minimum, a bachelor's degree in dentistry. Counsel further maintains that a college degree is required because it provides an in-depth knowledge of dental healthcare, analysis of contradictory information, an understanding of information systems, and other knowledge that one acquires while obtaining an advanced degree.

Counsel's assertion that the beneficiary's duties reflect those of health services manager positions is misplaced. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The *Handbook* is instructive because it provides a 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.

According to the *Handbook*, on page 75, health services managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers. Most of the beneficiary's duties differ from those of health services managers. For example, about 40 percent of the beneficiary's duties involve studying patients' records and recommending improvements to diagnosis or treatment, and 30 percent involve researching medical and dental publications. Only 30 percent of her duties involve administrative tasks.

According to the *Handbook*, the beneficiary's duties are comparable to those performed by dentists. On pages 250-251, the *Handbook* reports that dentists diagnose, prevent, and treat teeth and tissue problems. Although the petitioner claims that the beneficiary will not provide patient care, the beneficiary's duties of studying patients' records and recommending improvements to diagnosis or treatment, and researching medical and dental publications, clearly constitute patient care. Thus, like a dentist, the beneficiary would need to satisfy licensing requirements. The *Handbook*, at pages 250-251, reports that all 50 States and the District of Columbia require dentists to be licensed. In most States, candidates 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.

Another of counsel's assertions is that the degree requirement is common to the industry in parallel positions among similar organizations, and that the beneficiary's duties are so complex and unique that they can be performed only by an individual with

a degree. There is no evidence contained in the record to validate counsel's assertion that the beneficiary's duties resemble those performed by health services managers and that the petitioner's degree requirement is common to the industry in parallel positions among similar organizations. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel's Internet postings do not validate his claim because the positions are not parallel to the beneficiary's, and the industries and organizations differ dramatically from the petitioner's. The postings are as follows: (1) a fee-for-service company seeking a licensed associate dentist; (2) a provider of HIV/AIDS medical care seeking a healthcare center office administrator; (3) a large health services company, serving over 1.8 million members, seeking a quality improvement manager; and (4) a Manpower posting for a licensed dentist.

Counsel claims that the employer required that all candidates for the offered position possess a bachelor's degree. However, this does not establish that the petitioner normally requires a degree or its equivalent for the position. Counsel's letter of June 21, 2002, stated that the offered position is newly created; therefore, the petitioner does not have a past practice of requiring a degree. Thus, the petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, counsel attests that the petitioner has established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because it has shown that the duties of the offered position are so specialized and complex that they require specialized training. Counsel states that the beneficiary's duties are more complex and demanding than those performed by health services managers, and that the beneficiary will supervise the work of a dentist; thus, counsel maintains that the offered position is associated with the attainment of a bachelor's degree or higher. As previously discussed, the beneficiary's duties reflect those performed by dentists; thus, counsel is correct when he states that the beneficiary's duties are more complex and demanding than those performed by health services managers.

A careful review of the record reveals that it does not contain evidence that would establish that the beneficiary possesses a license to practice dentistry. Accordingly, the beneficiary is not qualified to perform the duties of the offered position.

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.