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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: WAC-02-180-51130 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:



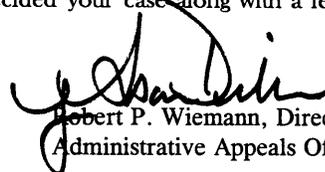
INSTRUCTIONS:

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 office that employs 15 persons and has a gross annual income of \$1.9 million. 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 and additional evidence. 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 a dental program in the office and direct activities in accordance with accepted national standards and administrative policies. She will confer with clinical professionals and staff to formulate policies and recommend procedural changes. She will confer with the [sic] personnel regarding policies and recommend procedural changes to increase daily production.

Additionally, she will work with the dentists and analyze the medical significance of infection or disease, providing a prognosis and advise on treatment based upon her research. With information supplied, she will keep up to date on the latest medical research results and utilize the medical library to perform the research necessary to evaluate the cases that are given to her. She will utilize medical journals, textbooks[,] and medical research materials to analyze and evaluate the patients' conditions, particularly regarding AIDS and treatment of gingival diseases. The time spent on research will be determined by the extent of the injuries or rarity of the diseases incurred for each case.

Specifically, the duties are as follows:

- As needed, hire additional staff, fire[,] and evaluate their work.
- Oversee the billing of patients and insurance companies.

- Coordinate with the various dental laboratories that we utilize to assure that orders are submitted and received in a timely manner.
- Set up a system to be used by the dental office and lab that will assure a smooth flow of work and improve efficiency.
- Analyze and evaluate the medical significance of infection and disease in a given case.
- Provide diagnosis and devise treatment programs based upon research.

The letter stated that the beneficiary would not provide patient care because she is not a licensed dentist in the State of California. The letter further stated that candidates must possess a strong medical background to understand terminology and interpret and evaluate a dentist's diagnosis, and that this knowledge can only be obtained by having attended dental school.

On May 10, 2002, the director issued a request for evidence, seeking: (1) a detailed job description and an explanation of why the position required the services of a person holding a college degree or its equivalent in the occupational field; (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 position's duties without a degree; and (4) evidence that the petitioner established one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, counsel submitted a letter stating that the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), misstated the position's title; the proper title is dental specialist/researcher, not dental specialist. The letter further stated 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 desired to expand its practice, by using recent developments in the medical and dental fields, and also satisfy industry standards to avoid liability. To do this, 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 described the beneficiary's administrative duties (as previously stated in the letter accompanying the I-129 petition), and delineated the second area of the beneficiary's duties as:

[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. Counsel, for example, stated that the beneficiary would use the dental and medical libraries to perform research and devise methods to implement the results of her research.

The percentage of time spent on each duty, according to counsel, would be 30 percent devoted to administrative duties; 40 percent dedicated to analyzing patients' records and assisting in 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 would analyze and determine the quality of their work, and their compliance with procedures and standards. Counsel asserted that candidates must possess a bachelor's degree or higher because 40 percent of the duties involve studying patients' records and making recommendations to improve diagnosis or treatment; and 30 percent involves research, requiring a comprehensive understanding of the field; thus, about 70 percent of the duties require formal training in dental medicine. Last, counsel mentioned that the position is part-time, 20 hours per week.

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. Counsel also claimed that the position is unique because 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 her submitted Internet job postings for dental and health services management positions. Counsel asserted 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 number 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 duties of the position - analyzing dental work and 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 along with 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 her 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 states that the offered position qualifies as a specialty occupation.

Counsel avers that the petitioner established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because a baccalaureate or higher degree or its equivalent is the normal minimum for entry into the occupation. Counsel asserts that the Service, now CIS, incorrectly states that the offered position's duties parallel those of facility managers. Counsel states that only 30 percent of the offered position's duties are administrative, whereas the remaining 70 percent involve assisting dentists in determinations and diagnoses by reviewing patients' records, and researching medical and dental publications. Thus, the position's duties, counsel claims, should not be described as purely administrative because candidates require an education equivalent to a doctor of dental medicine to perform these duties and most of the beneficiary's other duties. Counsel provides Internet postings to validate her claim that medical researchers require a degree in the discipline pertaining to the research area.

Counsel maintains that the beneficiary's duties resemble those performed by health services manager positions.

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*, the duties of the offered position are comparable to those performed by dentists. For instance, about 70 percent of the beneficiary's duties involve assisting dentists in determinations and diagnoses by reviewing patients' records, and researching medical and dental publications. On pages 250-251, the *Handbook* reports that dentists diagnose, prevent, and

treat teeth and tissue problems.

The petitioner claims that the beneficiary will not provide patient care; however, the duties of assisting dentists in determinations and diagnoses by reviewing patients' records, and researching medical and dental publications, obviously 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.

Counsel's Internet postings do not support her assertion that a baccalaureate or higher degree or its equivalent is the normal minimum for entry into the occupation, because the beneficiary's duties differ dramatically from those in the postings. The postings are as follows: (1) Boehringer Ingelheim, a products development company, seeks a medical research associate to work on clinical trials for products; (2) Aventis, a pharmaceutical company, seeks a medical research associate to assist a study manager; (3) PacificCare, a prescription solutions company, seeks a medical research associate/monitor to assist in clinical trial monitoring; (4) VA Medical seeks a research assistant for a cardiovascular and pulmonary study; (5) Robert Wood Johnson Medical School seeks a research specialist for a project on the differentiation of embryonic stem cells; (6) Veterans Medical Research Foundation seeks a research associate for its molecular studies; (7) Sybron Dental Specialties seeks a research chemist to conceive new products; (8) St. Luke's Episcopal Hospital seeks a medical surgical education specialist; (9) the Retina Foundation seeks a research to study eye disorders; (10) Community Education Center seeks a proposal writer/researcher for drug and alcohol treatment and educational services; (11) Profiles, a provider of health improvement services, seeks a pharmacoeconomics researcher/outcomes researcher; and (12) Parexel, a global contract research organization, seeks a medical research associate to track clinical trial results.

There is no evidence contained in the record to establish that the petitioner's 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. As previously discussed, the beneficiary's duties differ dramatically from the duties of the Internet postings, and the industries and organizations differ from the petitioner's.

There is no evidence contained in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the duties of the offered position are so specialized and complex that that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously discussed, the beneficiary's duties reflect those performed by dentists.

The petitioner's letter accompanying the I-129 petition states that the beneficiary is not a licensed dentist in the State of California. Accordingly, she 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.