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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, D.C. 20536

[redacted]

DEC 19 2003

File: WAC-02-222-53324 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:

PUBLIC COPY

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

The petitioner is a dental services business with 145 branches in California. It has 2,200 employees and a gross annual income of $188,772,097. It seeks to employ the beneficiary as an administrative officer 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 proffered position is similar to that of a health services manager and can be performed only by an individual with a DDS equivalency. Counsel submits an opinion from an industry expert in support of his claim.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Ensure patient satisfaction by evaluating patient grievances and will participate with quality management department in developing solutions for achieving patient satisfaction.

2. Provide training and supervision of back office operations by dental assistants, x-ray technicians, sterilization technicians, and floor supervisors.

3. Oversee dentist and branch personnel compliance with company policies and practices relating to preparation, seating, and delivery of prosthetics to patients.

4. Provide training and supervision in connection with dental office compliance with the company's policies and practices, including, but not limited to, patient chart entries, x-ray quality, patient consents to treatment, record keeping, and billing matters.

5. Provide recommendations for solutions to administrative workflow problems specific to the dental offices, including, but not limited to, scheduling dental treatment, determining necessary dentist staffing, and monitoring appointment books.

6. Participate in preparing patients for treatment in conformity with company policies and practices, including, but not limited to (a) financial planning, (b) treatment planning, and (c) other relevant patient considerations and inquiries.

7. Assist the dentists with patient emergencies occurring during business hours and/or in the community as part of the company's public relations activities.

8. Participate in planning and preparation for patient chart review for quality management oversight purposes in order to ensure compliance with the company's quality improvement program and the associated policies and procedures.

9. Make recommendations and participate in the company's activities involving compliance with applicable

> regulatory requirements, policies, and practices concerning patient handling.

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 AAO does not agree with counsel's assertion 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 services business with approximately 145 branches in California, employs 2,200 persons and has a gross annual income of $188,772,097. The petitioner has not persuasively established that the proposed duties, which include scheduling dental treatment, monitoring appointment books, and assisting the dentists with patient emergencies, are those of a health service manager, as described above. Furthermore, although counsel and the petitioner assert that the proffered position would not require a state license, they also assert that the position is that of a "health services manager" whose duties would include "supervis[ing] staff as well as dentists." The California Business & Professions Code 1625 states, in part, as follows:

> [A] person practices dentistry within the meaning of this chapter who does any one or more of the following:
>
> . . . .
>
> (e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.

The California Business & Professions Code 1626 states, in part, as follows:

> It is unlawful for any person to engage in the practice of dentistry in the state, either privately or as an employee of a governmental agency or political subdivision, unless the person has a valid, unexpired license or special permit from the board.

In light of the requirements of the California Business & Professions Code 1625 and 1626, it appears that, if the proposed duties realistically entailed managing the petitioner's dental practice, including supervising its licensed dentists, the proffered position would require state licensing. In this case, however, as counsel and the petitioner assert that the proffered position does not require such licensing, it appears reasonable to conclude that the proposed duties do not include the actual supervision of the petitioner's licensed dentists. In view of the foregoing, the types of duties the petitioner ascribes to the beneficiary primarily fall primarily within the scope of a dental assistant and an office and administrative support worker supervisor and manager, as described by the DOL in its *Handbook*.

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. . . .
>
> . . . .
>
> Dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials.

In its *Handbook* at pages 417-418, the DOL describes the job of an office and administrative support worker supervisor and manager, in part, as follows:

> Planning the work of their staff and supervising them are key functions of this job. . . .
>
> Supervisors also help train new employees in organization and office procedures. . . .
>
> Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments.

According to the DOL at page 313 of the *Handbook*, most dental 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 addition, the DOL at page 418 of the *Handbook* finds that most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. 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, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as dental medicine, for the offered position. 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. 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 record contains a declaration from Dr. Neal Demby, who cites various publications, such as the *Institute of Medicine Report*, in support of the petitioner's creation of the proffered position. Dr. Demby states, in part, as follows:

> [The petitioner] has had the vision and foresight to create an innovative position called an "Administrative Officer" or "AO" as referred to in this declaration . . . .
>
> There have been sporadic efforts in the dental industry over the years to utilize similarly qualified individuals in a similar manner. Often the individuals have been non-practicing dentists. They have been successful for one compelling reason: the individuals selected have been able to bridge the divides between existing employee categories, i.e., office manager and dental assistant because of their (a) specialized education, (b) specialized training, (c) specialized insight, and (d) specially developed analytical capabilities. These individuals, much as the proposed Administrative Officer, while complying with applicable state law and regulation, were able to bring a perspective, decision making capability, educational

> and dental practice management background, and integrative ability that would materially benefit [the petitioner's] quality management program, operations, and delivery of care to patients. . . .
>
> The A.O., through the highly specialized education described above and beyond a baccalaureate degree (D.M.D.), through dental practice experience, team and collaborative management, is the individual who can best make sense of this complex array of factors. . . .

The petitioner's creation of a position with a perfunctory requirement of a baccalaureate or higher degree will not mask the fact that the position is not a specialty occupation. The AAO must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.[1] To interpret the regulations any other way would lead to absurd results: if the AAO was limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. *See id.* at 388.

In this case, although Dr. Demby cites various publications from the dental industry to support his assertion that the proffered position is a specialty occupation, he has presented no specific information from these publications that addresses the position of an "Administrative Officer" or any similar position. Rather, Dr. Demby cites the "Guiding Principles" found in the *Institute of Medicine Report*, such as: "The long-standing commitment of dental professionals to prevention of primary care should remain vigorous." Although not explicitly stated, Dr. Demby suggests that this general statement, as well as others from this report, indicate that the proffered position has been recognized by the

[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

dental industry as complex and requiring a baccalaureate degree. The record, however, contains no evidence to support Dr. Demby's claim. 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). It is additionally noted that, although Dr. Demby asserts that non-practicing dentists have previously performed duties similar to the proposed duties in a specialty occupation capacity, the record again contains no evidence in support of such assertion. *Matter of Treasure Craft of California, id.* As stated previously, nothing in the job description for the proffered position indicates that the position of an "Administrative Officer" at Western Dental Services, Inc. is either complex or unique, which would require the holder of the position to hold a baccalaureate degree in a specialized field of study such as dental medicine. In view of the foregoing, Dr. Demby's declaration is accorded little weight.

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.