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U.S. Department of Justice

Immigration and Naturalization Service

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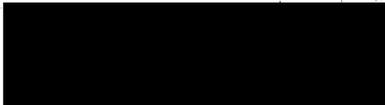
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-02-117-50923 Office: Nebraska Service Center

Date: JAN 14 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: SELF-REPRESENTED

PUBLIC COPY

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a dentist with 15 employees and a gross annual income of \$850,000. He seeks to employ the beneficiary as a dental hygienist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement and additional documentation.

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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner had not shown that he requires a baccalaureate degree in a specific specialty for the proffered position or that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

On appeal, the petitioner states that a bachelor's degree in dental hygiene is the minimum requirement for the dental hygienists in his office. In support of his assertion, the petitioner provides a list of his current and past dental hygienists and their educational credentials.

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

The hygienist will be responsible for conducting a complete medical and dental history, intra, extra oral and periodontal examinations. Additionally dental charting, taking and exposing radiographs, oral prophylaxis, patient education, impression implementation, placing rubber dams, pit and fissure sealants, topical anesthesia and desensitizing agents are all requirements. She will also be responsible for complete and thorough documentation in patient files.

In response to a Service request for additional evidence, the petitioner provided the following break-down of the beneficiary's duties:

Conducting a complete medical and dental history - 10%
Intra, extra and periodontal examination - 10%
Taking, exposing and interpreting radiographs - 10%
Dental [c]harting, record keeping and documentation - 10%
Treatment Planning - 5%
Periodontal scaling/root planing, cleaning teeth, fluoride [a]pplication and patient education - 45%
Impression implementation - 5%
Pit and fissure sealants - 5%

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.

The Service does not agree with the petitioner's assertion that the proffered position of dental hygienist would normally require a bachelor of science degree in dental hygiene. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at page 282 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a dental hygienist in a dental office. An associate degree is sufficient for practice in private dental offices. A bachelor's or master's degree is usually required for teaching, research, or clinical practice in public or school health programs. As the beneficiary would not be conducting research in public or school health programs, a baccalaureate or higher degree in a specific specialty would not be the usual requirement. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty is required for the position being offered to the beneficiary.

The petitioner states that a bachelor's degree is his minimum requirement for the proffered position. In support of his statement, the petitioner submits a list of his current and past dental hygienists and their educational credentials. Examination of this list reveals that two of the beneficiary's current hygienists have a bachelor's degree in dental hygiene and three have an associate degree in dental hygiene. Eight of the petitioner's former dental hygienists have bachelor's degrees in dental hygiene, seven have associate degrees in dental hygiene, and one has a master's degree. Of the 21 individuals named on the list, 10 have a bachelor's degree in dental hygiene, 10 have an associate degree in dental hygiene, and one has a master's degree. It appears that such degree may be a preference rather than a normal requirement, as only half of the dental hygienists currently and previously employed by the petitioner hold bachelor's degrees in dental hygiene.

Third, the petitioner did not present any documentary evidence that the requirement of a baccalaureate degree in a specific specialty

is standard to the industry in parallel positions among similar organizations.

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 in a specific specialty. The duties of the proffered position do not appear to be any more specialized and complex than those normally performed by dental hygienists in a dental office. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as a dental hygienist in a dental office.

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.