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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[Redacted]

JUL 2 2008

File: WAC 01 214 51417

Office: CALIFORNIA SERVICE CENTER

Date:

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:

[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 the Bureau of Citizenship and Immigration Services (Bureau) 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 is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a dentist with four employees and a gross annual income of \$350,000. She seeks to employ the beneficiary as a dental specialist 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 and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the proffered position most closely parallels that of a health services manager, an occupation that normally requires a master's degree in health services administration or a related field. Counsel further asserts that the duties of the position are 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. Finally, counsel states that the Bureau has already determined that the position of dental specialist is a specialty occupation since the Bureau has previously approved another nonimmigrant H-1B petition for a dental specialist position.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will administer a dental program in the clinic and direct activities in accordance with accepted national standards and administrative policies. [The beneficiary] will confer with clinical staff to formulate policies and recommend procedural changes. She will confer with the personnel regarding 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. She will coordinate with the various dental laboratories that we utilize to assure that orders are submitted and received in a timely manner. [The beneficiary] will set up a system to be used by the dental office and lab that will assure a smooth flow of work and improve efficiency.

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 Bureau does not agree with counsel's argument that the duties of the proffered position most closely resemble those of a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the Department of Labor (DOL) describes the job of a health services manager at page 74 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 duties of the position in question do not parallel those of a health services manager as described above. For example, the beneficiary would not be involved in the management of finances or facility operations, nor would the beneficiary have any involvement in direct patient care. Rather, the beneficiary will hire, fire, and evaluate the office and clinical staff; oversee the billing of patients and insurance companies; and coordinate with laboratories to assure that orders are submitted and received in a timely manner. The position appears to be an office and administrative support services manager position in a dental office. A review of the *Handbook* at page 417-418 finds no requirement of a baccalaureate degree in a specific specialty for employment as an office and administrative support services manager. Most firms fill office and administrative support supervisory and managerial positions from within their organizations.

The Bureau does not agree with the petitioner's assertion that the position in question is more complex than that of an office manager in a dental office. Although the petitioner indicates that the beneficiary will be responsible for tasks that require specialized knowledge of dentistry such as formulating dental policy and recommending procedural changes, the petitioner has not provided any explanation as to specifically what policies and procedural changes the beneficiary would be responsible for and why these purported tasks would require specialized knowledge of dentistry.

On appeal, the petitioner further states that the beneficiary will also be required to "administer and direct" dental care provided to patients. The petitioner describes these duties as follows:

She will oversee the conventional procedures such as root canal fillings. Oversee complex fixed and removable restorative procedures including tooth preparation, impressions, and occlusal recordings, filling of full, overdenture, and partial denture fabrication. Coordinates complex dental care involving periodontic and prosthodontic rehabilitation. Oversee selection of the proper specimen container and notification of the laboratory.

It is noted that none of the duties described above were listed in the petitioner's initial description of the job's duties.

Some of these duties are those of a dental assistant. A review of the *Handbook* at page 313, however, finds no requirement of a baccalaureate degree in a specific specialty for employment as a dental assistant. Most 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.

The other responsibilities described above relate to the actual work of a dentist. For example, only dentists perform oral surgery and root canals, fit patients with orthodontic devices, fill cavities, etc. Although the petitioner indicates that the beneficiary will "oversee" and "coordinate" these activities, she has not provided any explanation as to precisely how a dental specialist would "oversee" and "coordinate" such activities and why such "oversight" would require a baccalaureate degree in a specific specialty. In view of the foregoing, it is concluded the petitioner has not shown that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

Second, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

Third, the petitioner has not shown that she required a baccalaureate degree in a specific specialty as part of the hiring process for the position in question.

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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. 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 specialist. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Counsel asserts that the Bureau has already determined that the proffered position is a specialty occupation since the Bureau has previously approved another H-1B petition for a dental specialist position. In support of this assertion, counsel submits an approval notice relating to an H-1B petition filed by another petitioner on behalf of a different beneficiary. This record of proceeding does not contain a copy of that petition and its supporting documentation. If that petition was approved based on evidence similar to the evidence contained in this record of proceeding, however, the approval of that petition may have been erroneous. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988).

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.