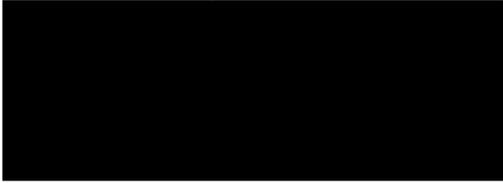


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prevent clear and warranted
invasion of personal privacy**

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



File: LIN 02 134 53275

Office: Nebraska Service Center Date:

JUL 21 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)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Kansas corporation that operates a dental laboratory. It has five employees and a gross annual income of \$226,394. The petitioner seeks to employ the beneficiary as a dental laboratory technician for a period of three years. The director determined that the proffered position was not a specialty occupation. On appeal, the petitioner asserts that the subject position is a specialty occupation and that the beneficiary's education and work experience qualify him to perform the services of that position.

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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 position subject to this petition is defined as a dental laboratory technician. The requirements of the offered position are detailed by the petitioner as follows:

Position Objectives

Ability to perform all stages of excellent prosthetic construction, from the design of a treatment plan with the Dental Practitioner, to the finished product. Performs managerial duties related to the laboratory operations including training and overseeing apprentices

in their training.

Reporting Relationships

Reports to the dental laboratory owner. Supervises all dental laboratory technicians and support staff.

Duties

- Managing personnel, overseeing technical integrity, continuing education for Dental Technician certification, managing productive output;
- Being able to answer questions about our services to the Dental Practitioner's inquiries;
- Reporting any and all problems to the owner;
- Quality Control. Secondary check to insure the highest level of performance standards, with regular checks with the Dental Practitioners for their critique;
- To oversee, train and manage "journeyman" technicians in the dental laboratory;
- Being able to answer the "journeyman" technician's questions on proper techniques and proper construction;
- To measure productivity and maintain profitability;
- Knowing and understanding proper uses and maintenance required to keep many pieces of specialized equipment in proper working condition;
- Conservation of materials and labor;
- Flexibility with workload demand from dental practitioners and any other duties that are assigned;

The Bureau does not simply rely on a position's title 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 Bureau considers.

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 qualify the offered position as a specialty occupation. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 548-549, the Department Of Labor notes that most dental laboratory technicians learn their craft on the job. Becoming a fully trained technician requires an average of three to four years, depending on an individual's aptitude and ambition. Training in dental laboratory technology is available through community and junior colleges, vocational-technical institutes, and the Armed Forces. Completion of formal accreditation programs normally take two years to complete and lead to an associate degree. Graduates of two year training programs need additional hands-on experience to become fully qualified. It is important to note however, that formal classroom experience is not required in the industry and many employers will train individuals without any classroom experience.

The proffered position is not a specialty occupation. Neither a baccalaureate degree nor its equivalent is the minimum requirement for entry into the position. There is no degree requirement in the industry for this position or parallel positions. The petitioner has not established that the duties associated with the offered position are so complex or unique that it can be performed only by an individual with a degree or its equivalent, or that the employer normally requires a degree or its equivalent for the position. Finally, the nature of the position's duties are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Indeed, technicians are deemed fully trained with an average of three - four years of on the job experience.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.