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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



File: WAC-01-210-51067 Office: California Service Center

Date: MAR 11 2003

IN RE: Petitioner: [Redacted]
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:



**identifying data deleted to
prevent disclosure by unwarranted
invasion of personal privacy**

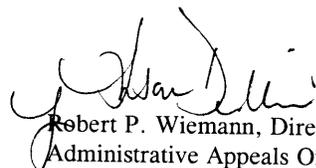
INSTRUCTIONS:

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 on appeal. The appeal will be dismissed.

The petitioner is a dental office with five employees and an approximate gross annual income of \$975,000. It seeks to employ the beneficiary as a dental lab supervisor for a period of three years. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a statement. Counsel had indicated that a brief and/or additional evidence would be submitted in support of the appeal on or before March 13, 2002. To date, no brief or additional evidence has been received by this office. Therefore, the record must be considered complete.

The term "specialty occupation" is defined at Section 214(i)(1) of 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 petitioner had not shown that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation; that the petitioner normally requires such degree for the proffered position; or 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.

On appeal, counsel asserts that the director erred in finding that a position as a dental lab supervisor does not qualify as a specialty occupation. Counsel asserts that the proposed duties of the proffered position are sufficiently more complex than those normally encountered in the field to warrant a finding that the position qualifies as a specialty occupation.

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

The Dental Laboratory Manager will supervise and coordinate the activities of workers engaged in the fabrication, assembly and repair of partial dentures. She will be responsible for reading prescriptions and consulting with dentists, resolving problems concerning specifications of prescriptions. She will also establish costs and delivery agreements, train workers in the performance of tasks and implement quality control for outgoing work.

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.

In these proceedings, the duties of the position are dispositive and not the job title. In this case, the offered position appears to be that of a supervisory dental technician. The Department of

Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 Edition at page 548 describes the work of dental laboratory technicians as follows:

Dental laboratory technicians fill prescriptions from dentists for crowns, bridges, dentures, and other dental prosthetics. First, dentists send a specification of the item to be fabricated, along with an impression (mold) of the patient's mouth or teeth. Then, dental laboratory technicians, also called dental technicians, create a model of the patient's mouth by pouring plaster into the impression and allowing it to set. Next, they place the model on an apparatus that mimics the bite and movement of the patient's jaw. The model serves as the basis of the prosthetic device. Technicians examine the model, noting the size and shape of the adjacent teeth, as well as gaps within the gumline. Based upon these observations and the dentist's specifications technicians build and shape a wax tooth or teeth model. . . . They use this wax model to cast the metal framework for the prosthetic device.

After the wax tooth has been formed, dental technicians pour the cast and form the metal and, using small hand-held tools, prepare the surface to allow the metal and porcelain to bond. They then apply porcelain in layers, to arrive at the precise shape and color of a tooth. . . .

According to the Handbook at pages 548-549, most dental laboratory technician jobs are in commercial dental laboratories, which usually are small, privately owned businesses with fewer than five employees. The DOL states at page 549 of the *Handbook* that some dental technicians become supervisors or managers. The petitioner is precisely this type of business, and the duties of the offered position appear to be primarily those of a supervisory dental technician. Only an experienced dental laboratory technician would be able to evaluate the quality of the finished product of other dental laboratory technicians to ensure that the dentures are in compliance with the company's established quality standards.

A review of the Handbook at page 549 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a dental laboratory technician. Most dental laboratory technicians learn their craft on the job. Becoming a fully trained technician requires an average of 3 to 4 years, depending upon the individual's aptitude and ambition, but it may take a few years more to become an accomplished technician. Training in dental laboratory technology also is available through community and junior colleges, vocational-technical institutes, and the Armed Forces.

Additionally, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the proffered position.

Furthermore, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with baccalaureate degrees in a specific specialty in parallel positions.

Finally, the petitioner has not demonstrated 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. Accordingly, it is concluded that the petitioner has not demonstrated that the proffered 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.