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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: EAC-01-125-55013 Office: Vermont Service Center Date: **MAR 19 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)

**PUBLIC COPY**

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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

The petitioner is an orthodontics business with seven employees and a gross annual income of \$500,000. It seeks to employ the beneficiary as a clinical orthodontic technologist 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. The petitioner had indicated that additional evidence would be submitted in support of the appeal on or before December 20, 2001. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 demonstrated that a baccalaureate degree is required for the proffered position. On appeal, the petitioner lists its current and past employees who hold dental degrees. He also lists other offices that require such degree.

The petitioner's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

...he will be assisting in the examination, diagnosis and treatment of the abnormalities of the teeth, jaws, and other dental-facial structures. He will be taking dental, cephalometric, and [sic] panoramic radiographs. He will be assisting [sic] in the placement of archwires to alter the position and relationship of teeth and jaws and will

be preparing teeth for bonding and banding, taking orthodontic impressions, and other chairside duties.

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 the petitioner's argument that the proffered position would normally require a bachelor's degree in dentistry or a related field. The proffered position is similar to that of a dental assistant. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 312-313, the Department of Labor (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. They make patients as comfortable as possible in the dental chair, prepare them for treatment, and obtain dental records. Assistants hand instruments and materials to dentists, and keep patients' mouths dry and clear by using suction or other devices. Assistants also sterilize and disinfect instruments and equipment, prepare tray setups for dental procedures, and instruct patients on postoperative and general oral health care.

Some dental assistants prepare materials for making impressions and restorations, expose radiographs, and process dental x-ray film as directed by a dentist. They

also may remove sutures, apply anesthetics to gums or cavity-preventive agents to teeth, remove excess cement used in the filling process, and place rubber dams on the teeth to isolate them for individual treatment.

Those with laboratory duties make casts of the teeth and mouth from impressions taken by dentists, clean and polish removable appliances, and make temporary crowns. Dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a dental assistant, as described by the DOL in its *Handbook*. According to the DOL at page 313 of the *Handbook*, 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. 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, although the petitioner has indicated that it has hired individuals with baccalaureate degrees in dentistry for the proffered position, the petitioner did not present any evidence that the degree was a requirement for employment. The petitioner did not present copies of any of its past job advertisements or the advertisement for the present position. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Therefore, it cannot be determined whether the petitioner's employees held a baccalaureate degree or its equivalent because these credentials were required for the position, or because the job applicants coincidentally held a degree.

Third, the petitioner did not present any 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. It is noted that although the petitioner submits a copy of the baccalaureate degree of [REDACTED] an employee in another office, the record contains no evidence that such degree is a degree in dentistry. 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 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.