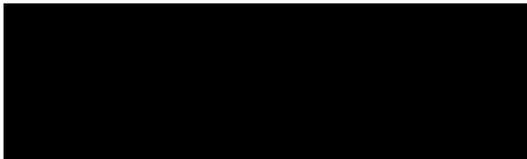


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: EAC-02-082-52826 Office: Vermont Service Center

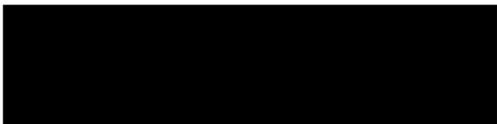
Date: MAR 25 2003

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:



PUBLIC COPY

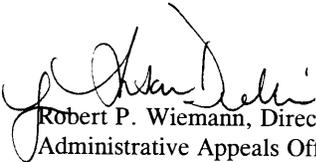
INSTRUCTIONS:

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 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 a dental practice with five employees and a gross annual income of \$380,000. It seeks to employ the beneficiary as a special dental assistant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

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 the proffered position requires a baccalaureate degree. On appeal, counsel states, in part, that the petitioner is engaged in a practice that specializes in superlative cosmetic dentistry, providing, in part, such services as mercury free restoration, emergency treatment, bleaching, cosmetic bonding, and gum treatments. Counsel further states that a dental assistant who works in such a specialized practice performs more complex and unique tasks than an ordinary dental assistant, and thus requires a baccalaureate degree in dentistry.

Counsel'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 assist the dentist in the management of dental office practice. He obtains and record [sic] patients' preliminary dental and medical case history. Prepares patients for dental examination, and makes preliminary impressions for study casts. Charts conditions of gum for diagnosis and treatment by the dentist. He removes dental cements and cleans stains from teeth. He prepares patients' x-rays; exposes and develops films; reports and consults with the dentist on preliminary matters. Performs a variety of dental assisting duties to promote quality dental care for patients in a stress free, safe environment. Assists the doctor in teaching patients how to care for their oral health though [sic] communicating effectively with patients, and discuss treatment and fees. Maintains equipment and inventory, and follows universal precautions and all OSHA requirements to ensure a safe environment for patients and staff. He follows rules and regulations of the office, and any other tasks requested by the Dentist or staff that is consistent with office operation.

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 proffered position would normally require a bachelor's degree in dentistry or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 312-313, the 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*. Although counsel maintains that a dental assistant who works in such a specialized practice performs more complex and unique tasks than an ordinary dental assistant, he does not present any evidence in support of his assertions.

The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, counsel does not demonstrate that the dental assistant industry is comprised of "professional level" and "ordinary level" positions. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as dentistry, for the offered position. Third, with respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. Mar. 15, 2000), aff'd 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001). 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.

Counsel has provided a letter from a dentist who states that the usual requirement for positions such as the proffered position is a baccalaureate degree in dentistry or an equivalent thereof. One letter is insufficient evidence of an industry standard. In addition, the writer has not indicated the number or percentage of dental assistants who hold such degrees.

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.