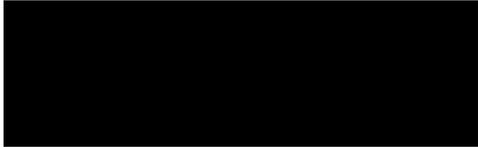


**PUBLIC COPY**

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.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: WAC-02-071-53799

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:  
Beneficiary:



MAY 19 2003

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:



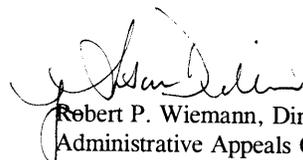
INSTRUCTIONS:

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 general and cosmetic dentistry practice with one employee and a gross annual income of \$200,000. It seeks to employ the beneficiary as an administrative assistant 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.

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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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, counsel states, in part, that the proffered position is similar to an operations research analyst position and, therefore, qualifies as a specialty occupation.

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:

- (1) Aid the dentist in staff capacity by coordinating offices [sic] tasks such as budget preparation and control, housekeeping and records control;
- (2) Analyze office operating practices such as recordkeeping [sic], budget and expenditures to create or revise new system.
- (3) Prepare insurance claims and other office reports.

First, the Bureau does not agree with counsel's assertion that the beneficiary is an operations research analyst, an occupation that would normally require a master's degree in operations research, engineering, business, mathematics, information systems, or management science, coupled with a bachelor's degree in computer science or a quantitative discipline such as economics, mathematics, or statistics. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 176, the Department of Labor (DOL) describes the job of operations research analysts, in part, as follows:

The prevalence of operations research in the Nation's economy reflects the growing complexity of managing large organizations that require the effective use of money, materials, equipment, and people. Operations research analysts help determine better ways to coordinate these elements by applying analytical methods from mathematics, science, and engineering. They solve problems in different ways and propose alternative solutions to management, which then chooses the course of action that best meets the organization's goals. In general, operation research analysts may be concerned with diverse issues such as top-level strategy, planning, forecasting, resource allocation, performance measurement, scheduling, design of production facilities

and systems, supply chain management, pricing, transportation and distribution, and analysis of data in large databases.

The record reflects that the petitioner, which is a general and cosmetic dentistry practice, employs one person and has a gross annual income of \$200,000. The business in which the beneficiary is to be employed does not require the services of an operations research analyst who manages a large organization that requires the effective use of money, materials, equipment, and people. Furthermore, there is no evidence that the position offered includes complex or advanced operations research analysis duties such as top-level strategy, planning, forecasting, resource allocation, performance measurement, scheduling, design of production facilities and systems, supply chain management, pricing, transportation and distribution, and analysis of data in large databases.

The duties that the petitioner endeavors to have the beneficiary perform are dental assistance duties, which are similar to the duties that a dental assistant would execute in a dental office. In contrast to the description of an operations research analyst, at pages 312-313, the DOL describes the job of a dental assistant, in part, as follows:

Dental assistants perform a variety of patient care, office, and laboratory duties. . . .

. . . .

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 primarily within the scope of a dental assistant position rather than an operations research analyst position. For example, the petitioner states that the beneficiary will assist the dentist by coordinating budget preparation and control, housekeeping and records control, and by preparing insurance claims and other office reports. Such duties are not duties normally associated with an operations research analyst. 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, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, although the record contains two job advertisements, such advertisements are not persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations, as they do not require a baccalaureate degree in a specific specialty as a minimum requirement for entry into the occupation. 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.