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

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



NOV 22 2003

File: SRC 02 167 50791 Office: TEXAS SERVICE CENTER Date:

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:  
[Redacted]

**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 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 Citizenship and Immigration Services (CIS) 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a general dentist practice specializing in oral rehabilitation and reconstruction. He has seven employees, a gross annual income of \$426,930 and seeks to employ the beneficiary as a patient care coordinator. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the proffered position qualifies as a specialty occupation. Counsel asserts that the petitioner's letters detailing the duties of the offered position, the opinion letter of Dr. [REDACTED] and supporting documentation indicating the use of patient care coordinators in the dental industry, establish that the offered position qualifies as a specialty occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

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 director denied the I-129 petition on the ground that the proffered position failed to qualify as a specialty occupation. The duties of the position were detailed as follows with the filing of the petition:

In order to continue the success of our dental practice and improve upon our high levels of care, we require the service of a Patient Care Coordinator to direct our counseling services and facilitate patient treatment. The Patient Care Coordinator would have both intra-office and inter-office responsibilities. She would improve the capabilities of staff by developing a deeper understanding of our patient's [sic] counseling needs. Many of our patients have special psychological needs in addition to medical reconstructive treatment. The Patient Care Coordinator would profile each patient's personality and cultural background to allow our team to better understand the patient's condition and adapt a treatment style that is appropriate to that patient's particular situation. The Patient Care Coordinator would direct all aspects of client communication and staff education. In addition, she would follow up and coordinate continuing treatment with the different medical groups which provide interdisciplinary care for our clients. This

aspect of our practice would involve coordinating treatment in our client's [sic] home countries.

[The beneficiary] is being offered temporary employment in the specialty occupation of Patient Care Coordinator. In this position, she would direct the practice's counseling services. She would develop patient personality profiles to allow staff to better serve our patients. [The beneficiary] would assist Dr. Whiting in developing treatment schedules. She would develop staff training programs focusing on patient counseling, personality profiling, active listening, communication skills, handling of phobias, stress management, and cross-cultural communication. She would supervise communication with other medical service providers. She would coordinate treatment between our office and other medical service providers.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide: evidence that the offered position qualifies as a specialty occupation; the percentage of the petitioner's patients that have special psychological needs; and a statement indicating whether the beneficiary would be working as a psychologist and whether the beneficiary is authorized to work as a psychologist in the United States.

In response to the director's request, the petitioner stated that the need for a patient care coordinator stems from an existing pervasive atmosphere of fear of the dentist's chair. The position is designed to be an intermediary between the practitioner and the patient in order to aid in overcoming that fear. The petitioner indicated that most dental practitioners do not have the time or training to perform necessary patient counseling. The beneficiary's duties were further detailed as follows:

The necessity to communicate and explain to patients the preparation required for the procedures, the actual surgery, the steps for recovery and the eventual need of scheduled maintenance and intervention require the ability to utilize professional level language. This position has to be filled by a person that can provide the ultimate in patient service from assessment of psychological needs to completion of dental procedure. This person must have the ability to prioritize and make executive decisions in the fast-paced day-to-day activity with a courteous, pleasant and professional presence from the moment of the first contact with the patient. Moreover, my clientele are from different countries (Central and South America, Europe) and they

need to receive an explanation of the procedures and post-intervention instructions in their native language. By being aware of multicultural diversities among my patients and by paying attention to details of different cultures, the Patient Care Coordinator will allow each patient to feel "at home" and enabled to answer questions and concerns in an efficient, accurate and professional manner that will provide a safe environment for fearful patients. When patients undergo oral surgery and/or dental reconstruction they need to be at ease. In providing communication regarding their surgery in their native language the patients are more aware of what to expect. This improves the outcome of the surgery and relaxes the patient. The patient care coordinator position will develop, manage, and maintain the international contacts with my international patients and their care provider in their countries.

The beneficiary will use her training in mental health counseling in regard to the duties associated with the proffered position. She will not provide professional counseling services as a psychologist.

In further response to the director's request for evidence, the petitioner provided an opinion letter from Dr. [REDACTED] Assistant Professor, School of Nursing, Seattle University. Dr. [REDACTED] opined that the position of patient care coordinator is a specialty occupation that requires the equivalent of a U.S. Bachelor's Degree in nursing, psychology, or other health related field. Dr. [REDACTED] set forth the following general job description for a patient care coordinator:

**Job Description:**

Responsible for supervision of counseling services, facilitate patient treatment, monitor clinical utilization of resources, coordinating and facilitating appropriate patient care services and operational resources to provide effective patient care.

The director determined that the position of patient care coordinator is a specialty occupation. The director further determined, however, that the duties of the proffered position are not those of a patient care coordinator, and that the duties are not those of a specialty occupation.

On appeal, counsel states, in part, that the proffered position qualifies as a specialty occupation. Counsel asserts that the petitioner's letters detailing the duties of the offered position, the opinion letter of Dr. [REDACTED] and supporting documentation indicating the use of patient care

coordinators in the dental industry, establish that the offered position qualifies as a specialty occupation.

The petitioner has failed to qualify the proffered position as a specialty occupation. Essentially, the beneficiary will perform the following duties:

- Assist in developing treatment schedules;
- Coordinate treatment between the petitioner's office and other medical providers;
- Explain treatment procedures and necessary follow-up to patients;
- Provide training to staff on communication skills, patient stress management and phobias; and
- Act as liaison between the petitioner and the patient, communicating with the patient in such a manner as to put the patient at ease and relieve fears and anxieties.

The duties/responsibilities for a patient care coordinator listed by Dr. [REDACTED] in her opinion letter include numerous responsibilities that would not be performed by the beneficiary. For example, the beneficiary's duties would not include: safety management including infection control in accordance with established government regulations; participating in organizational wide process improvement; demonstrated knowledge of medical treatment regarding patient age differences; proposal of alternative treatment plans to the treating physician; clinical intervention in the treatment of patients; monitoring and ensuring treatment standards of care; direct involvement with financial issues that may impede patient care; identification of risk management issues; or management of patient medical records and entry of clinical information into appropriate data bases. The majority of the duties detailed by Dr. [REDACTED] are, quite simply, not those detailed by the petitioner for the proffered position. The duties to be performed by the beneficiary are far less complex.

The duties assigned to the beneficiary are similar to those performed by medical assistants. In the *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*) at 314, the Department Of Labor describes, in part, the duties of the above designated position as follows:

Medical assistants perform routine administrative and clinical tasks to keep the offices and clinics of

physicians, podiatrists, chiropractors, and optometrists running smoothly. . . .

The duties of medical assistants vary from office to office, depending on office location, size, and specialty. In small practices, medical assistants usually are "generalists", handling both administrative and clinical duties and reporting directly to an office manager, physician, or other health professional. Those in large practices tend to specialize in a particular area under the supervision of department administrators.

Medical assistants perform many administrative duties. They . . . greet patients, update and file patient medical records . . . handle correspondence, schedule appointments, arrange for hospital admission and laboratory services. . . .

Clinical duties vary according to State law and include taking medical histories and recording vital signs, explaining treatment procedures to patients, preparing patients for examination, and assisting the physician during the examination. . . . They instruct patients about medication and special diets. . . .

The *Handbook* further notes that most employers prefer graduates of formal programs in medical assisting. Those programs are offered in vocational-technical high schools, postsecondary vocational schools, community and junior colleges, and in colleges and universities. *Id.* at 315. A baccalaureate or higher degree, or its equivalent, is not the minimum requirement for entry into the position. The position does not, therefore, satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that the offered position meets any of the remaining criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). It has not established that: a degree requirement is common in the industry for the position offered, or alternatively, that the position is so complex or unique that it can be performed only by an individual with a degree; the employer normally requires a degree or its equivalent for the position; or 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 performance of the duties associated with the proffered position do not require the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The position is not, therefore, a specialty occupation.

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.