

D2

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

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



File: WAC-01-048-50438

Office: CALIFORNIA SERVICE CENTER

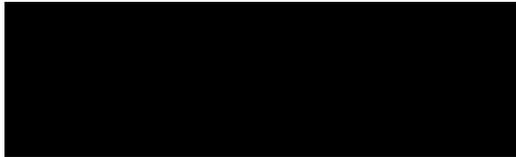
Date: OCT 17 2003

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**

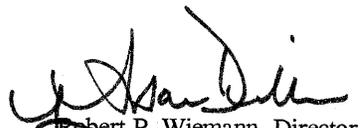
INSTRUCTIONS:

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

The petitioner is a dental clinic with five employees and a gross annual income of \$224,245. It seeks to employ the beneficiary as a dental services director 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.

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, which is that of a health services manager, is that of a specialty occupation. Counsel further states that the record contains various job advertisements for similar positions to demonstrate that a baccalaureate degree is required.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers.

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

[S]he will be responsible for administering the dental program and directing the operations and activities of the clinic in accordance with accepted standards of the Dental Board of California. With the knowledge of dental medicine and how a dental office should be managed, beneficiary shall recommend clinic policies, practices and procedures and the necessary changes in the existing ones, if any; and implement such policies/changes. Beneficiary shall determine the need to hire and fire additional staff as well as evaluate the qualifications of dental staff to be hired; prepare the work schedules and evaluate the work of such staff. She shall also be responsible for ensuring that the clinical skill levels of the dental clinic's associate dentists and dental staff are at par with current developments in dental medicine and technology, and towards this end, propose, establish and implement an internal training program for the dental clinic's associate dentists and staff. The beneficiary shall also observe and oversee staff members to ensure safe and ethical practices. It is also her duty to prepare and submit a budget to the petitioner to justify expenditures for dental equipment and supplies, and personnel.

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 AAO does not agree with counsel's assertion that the beneficiary is a health services manager, an occupation that would normally require a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration, or a bachelor's degree for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations.

In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 75, the Department of Labor (DOL) describes the job of a health services manager as follows:

The structure and financing of healthcare is changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. . . . Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of interrelated services, for example, those ranging from inpatient care to outpatient follow-up care.

. . . .

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finance, facility operations, and admissions, and have a larger role in resident care.

The record reflects that the petitioner, which is a dental clinic, employs five persons and has a gross annual income of \$224,245. Information on the petition indicates that the petitioner's employees include one dentist, two dental assistants, and staff. The petitioner has not persuasively established that the proposed duties are those of a health service manager, as described above. For example, there is no persuasive evidence that the position offered includes complex health service managerial duties such as

optimizing efficiency of a variety of interrelated services, for example, those ranging from inpatient to outpatient follow-up care.

In its *Handbook* 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.

. . . . .

Dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials.

In its *Handbook* at pages 417-418, the DOL describes the job of an office and administrative support worker supervisor and manager, in part, as follows:

Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments.

The types of duties the petitioner ascribes to the beneficiary primarily fall within the scope of a dental assistant and an office and administrative support worker supervisor and manager, as described by the DOL in its *Handbook*. According to the DOL at page 313 of the *Handbook*, most dental 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 addition, the DOL at page 418 of the *Handbook* finds that most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. 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 such as dental medicine, for the offered position.

Third, the petitioner did not present any persuasive 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. Counsel submits a copy of the *California Occupational Guide* that discusses hospital and health services administrator positions, as evidence that a health service administrator position normally requires a master's degree. This publication, however, does not discuss dental services director positions; rather, the information that is provided pertains to positions such as nursing home administrators and hospital administrators. Counsel also submits various job advertisements. The petitioner has not established, however, that the duties of the proffered position are as complex as those listed in the advertised positions. For example, the duties in the advertised positions include: "[providing] overall management and direction to the non-clinical operations (such as Research & Review Reps., Procedural Specialists, Eligibility Technicians, Claims Adjusters, Team Assistants, Intake Supervisors, Provider Relations and Phone Monitors)" and "[providing] coordination of direct and indirect patient/client services provided by Agency personnel of Help-At-Home Skilled Care and Agency Hire."

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.