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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 I Street, N.W.  
Washington, DC 20536



FILE: WAC-02-122-50175

OFFICE: CALIFORNIA SERVICE CENTER

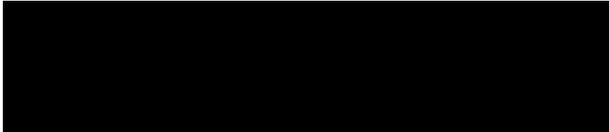
DATE: OCT 17 2003

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)

IN BEHALF OF PETITIONER:



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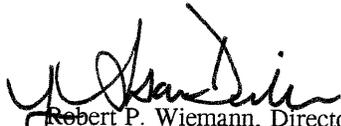
INSTRUCTIONS:

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 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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a dental clinic that employs two persons and has a gross annual income of \$221,000. It seeks to employ the beneficiary as a dental specialist. The director denied the petition because the petitioner had not demonstrated that the offered position is a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states that the position qualifies as a specialty occupation. Further, counsel maintains that the Immigration and Naturalization Service, now Citizenship and Immigration Services, had approved other, unrelated petitions, for the position of dental specialist.

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

The first 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 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 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.

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's initial I-129 described the position of dental specialist as follows:

[A]dminister a dental program in the clinic and direct activities in accordance with accepted national standards and administrative policies;

[C]onfer with clinical staff to formulate and/or improve existing policies and recommend procedural changes;

[O]versee the billing of patients and insurance companies;

[C]oordinate with various dental laboratories that the clinic utilizes to assure that orders are submitted and received in a timely manner; [and,]

[S]et up a system to be used by the dental office and laboratory to assure a smooth flow of work and improve efficiency.

On March 12, 2002, the director requested additional information from the petitioner: a detailed description of the work to be done; the percentage of time to be spent on each duty; the level of

responsibility; hours per week of work; types of employees supervised; the minimum education, training, and experience necessary to do the job; and why the work requires a person who has a college degree or its equivalent in the occupational field. In addition, the director requested evidence that would show the petitioner satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, the petitioner submitted a letter and documentary evidence. The letter described the offered position, and the percentage of time to perform its duties were stated as follows:

Plan, organize, and maintain miscellaneous dental programs of the clinic - 20%;

Confer with [the] dentist and staff to formulate new policies and improve existing policies and recommend procedural changes - 15%;

Develop and implement [a] system to be used by [the] dental office, clinic, and laboratory to assure smooth flow of work and improve efficiency - 15%;

Formulate personnel hiring, promotion, and termination procedures, and coordinate [the] staff's assigned tasks and work schedules - 10%;

Evaluate staff members' [sic] work performances and ensure all safety procedures are followed - 10%;

Solve workers' [sic] procedural problems and demonstrate proper dental techniques - 10%;

Coordinate with various dental laboratories that the clinic utilizes to assure that all work orders are submitted and received in a correct and timely manner - 5%;

Review major professional dental journals for dental health issues and development[s] particularly relevant to the [dental] practice and provide [the] dentists' [sic] with [the] latest information - 5%;

Research literature to find research suggestions of modes of treatment for possible diagnosis, eliciting detailed patients' [sic] histories, discussing the patients' [sic] charts and records with dentists; and

Supervise billing of patients and [the] insurance companies [that are] financially accountable for

services rendered - 5%.

In the letter, the petitioner emphasized that the doctor of dental surgery degree is a common requirement in the industry for parallel positions. The petitioner submitted two letters to substantiate this claim. Further, the petitioner stated that several sources, including the Department of Labor's *Occupational Outlook Handbook (the Handbook)*, have described the position as requiring a master's or a bachelor's degree. The petitioner also claimed that the complexity of the position's duties require that the candidate hold at least a doctor of dental surgery degree.

On March 28, 2002, the director denied the petition finding that the petitioner failed to establish at least one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). First, the director determined that the offered position would not require a bachelor's degree because its duties mirrored those of an office manager/administrative services manager for a small dental office. Second, the director further determined that the record did not show that the petitioner in the past had required a bachelor's degree in a specialized area for the offered position or that businesses similar to the petitioner's had this requirement as well. And, third, the petitioner failed to show that the position is so specialized and complex that the knowledge required to perform it is associated with a bachelor's degree.

On April 12, 2002, counsel submitted an appeal and additional evidence. In the appeal, counsel states that the petitioner has satisfied at least one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that according to the Department of Labor's *Dictionary of Occupational Titles (DOT)*, the position of dental specialist resembles that of a director for dental services, a specialty occupation. Moreover, counsel maintains that the offered position is complex and the candidate would not be able to perform the majority of its duties without the required degree. Last, counsel asserts that, in the past, the Immigration and Naturalization Service, now Citizenship and Immigration Services, had approved unrelated H-1B petitions for the dental specialist position. To support this assertion, counsel provides four approval notices.

Counsel's statements on appeal are not persuasive. The petitioner fails to satisfy at least one criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

One of counsel's assertions is that under the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev.

1991), the offered position resembles that of a director of dental services, a position requiring a bachelor's degree. However, the DOT is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the DOT with the Occupational Information Network (O\*Net). Both the DOT and O\*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's (DOL) 2002-2003 edition of the *Occupational Outlook Handbook (the Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation.

According to the *Handbook*, the petitioner's offered position combines the duties of administrative services managers with those of human resources managers. For instance, the petitioner states the candidate will "[p]lan, organize, and maintain miscellaneous dental programs of the clinic"; will "[c]onfer with [the] dentist and staff to formulate new policies and improve existing policies and recommend procedural changes"; and will "[d]evelop and implement [a] system to be used by [the] dental office, clinic, and laboratory to assure [a] smooth flow of work and improve efficiency." Administrative services managers perform these duties. The petitioner also states the candidate will "[f]ormulate personnel hiring, promotion, and termination procedures, and coordinate [the] staff's assigned tasks and work schedules." Human resources managers perform this role.

According to the *Handbook*, on pages 24-25, administrative services managers perform a broad range of duties. They coordinate and direct support services and manage the many other services that allow organizations to operate efficiently. They develop department plans, set goals and deadlines, and implement procedures to improve productivity. In small organizations, they may oversee all support services.

On page 25, the *Handbook* states that the educational requirement of administrative services managers varies widely, depending on the size and complexity of the organization and the position's responsibilities. In small organizations, experience may be the only requirement.

On page 60, the *Handbook* states that human resource generalists usually develop and coordinate personnel programs and policies. The educational background for this position varies, depending on the duties and level of responsibility. Some employers seek college graduates with degrees in human resources, personnel administration, or industrial and labor relations. Others seek graduates with a technical or business background or a well-rounded liberal arts degree.

Thus, the petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) - showing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position of dental specialist.

Another of counsel's assertions is that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel submits two letters, one from Sunwest Dental Group and another from Emelito Reyes, DDS, to show this. However, the letters are silent regarding the size and scope of the businesses and fail to describe the responsibilities of their dental specialists. Moreover, the letter from Sunwest Dental Group does not state whether it requires a degree for its dental specialist. Furthermore, the record fails to show that the petitioner itself normally requires a degree or its equivalent for the offered position.

The record does not support counsel's statement that the nature of the duties is specialized and complex, requiring a doctor of dental surgery or its equivalent to perform the majority of the duties. Again, administrative services managers and human resources managers perform these duties.

The second and last issue is counsel's statement that the instant petition should be approved because the Immigration and Naturalization Service, now Citizenship and Immigration Services, had approved unrelated H-1B petitions for the dental specialist position in the past. To support this statement, counsel submits copies of several approval notices. However, this record of proceeding does not contain all of the supporting evidence submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in the prior proceedings, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the petitions were parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. §

103.2(b)(16)(ii).

In conclusion, the petitioner has failed to establish any of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. The petition is denied.