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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: LIN 03 045 52482 Office: NEBRASKA SERVICE CENTER Date: APR 23 2004

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:



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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a dental clinic that seeks to employ the beneficiary as a clinical manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a clinical manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 29, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would

perform duties that entail: overseeing and directing the activities of one or multiple dental clinics and coordinating the multidisciplinary settings; training dental hygienists and assistants in the use of dental instruments, use of medication, and treatment of patients; establishing and maintaining work schedules and assignments of dental assistants and ancillary personnel; interpreting and administering personnel policies; providing for training and development programs; reviewing clinic activities and recommending changes; evaluating and examining the proper and efficient use of medical supplies and equipment; preparing reports for managing executives; meeting with public health officials; and overseeing clinic operations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree or higher in health information, dentistry, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex that a baccalaureate degree is required. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts, in part, that the proffered position, which is that of a manager of dental assistants, hygienists, and the entire dental clinic, requires at least a bachelor's degree in dentistry or an equivalent thereof. Counsel further states that the record contains Internet job advertisements in support of her assertion.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The record does not demonstrate that the proffered position is as complex as that of a medical and health services manager, a position that normally requires a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration. None of the beneficiary's job duties entails the level of responsibility of that occupation. The types of duties the petitioner ascribes to the beneficiary primarily fall primarily within the scope of a dental assistant with office duties and an office and administrative support worker supervisor and manager, as described by the DOL in its *Handbook*, 2004-2005 edition. According to information in 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, most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. As such, the director concluded correctly that the proffered position does not require a baccalaureate degree, or its equivalent, in a specific specialty.

Counsel's reference to and assertions about the relevance of information from the DOL's *Dictionary of Occupational Titles (DOT)* are noted. The DOT's SVP rating, however, does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the positions is that of a clinic manager for a large healthcare organization, with duties that entail performing clinical nursing triage and nursing case management. It is noted that a baccalaureate degree in nursing is preferred. Another position is that of a clinic manager for a healthcare "Over Sixty" facility, with duties that entail working with a multi-disciplinary team to provide leadership and clinic management. Not only are these advertised positions unparallel to the proffered position, the petitioner also has not demonstrated that their level of complexity parallels that of the proffered position. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.