



U.S. Citizenship
and Immigration
Services



FILE: SRC 02 138 51837 Office: TEXAS SERVICE CENTER Date: August 12

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:

SELF-REPRESENTED

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.

to Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 office that seeks to employ the beneficiary as a dental hygienist. The petitioner, therefore, 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, the petitioner contends that the position 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.

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 dental hygienist. Evidence of the beneficiary's duties includes: the Form I-129; the documents accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail performing prophylaxis, restorative needs, and periodontal exams; taking and developing x-rays; giving fluoride treatments; educating patients; preparing hygiene instruments; ordering supplies; recording treatment needs and charting existing restorations; disinfecting the room; and placing pit and fissure sealants. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in dental hygiene.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the duties of the proffered position resembled those performed by a dental hygienist, an occupation that does not require a bachelor's degree. The director found that the petitioner's submitted evidence, the document governing the practice of dental hygienists, confirmed that a certificate of graduation from a dental hygiene school qualifies a person to be a dental hygienist in the state of Tennessee.

On appeal, the petitioner states that the position qualifies as a specialty occupation. The petitioner agrees that the *Handbook* states that a bachelor's degree is not required for the proffered position. However, the petitioner contends that the beneficiary is overqualified and exceptional for the job. The petitioner furthermore states that a dental hygienist job requires a theoretical application of a body of highly specialized knowledge. Last, according to the petitioner, the requirements of the H-1B petition differ from the state of Tennessee's requirements.

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 first considers 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 DOL's *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)).

There is no evidence that satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). When determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as

required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the 2004-2005 edition of the *Handbook* discloses that the director properly determined that the duties of the proffered position parallel those performed by a dental hygienist who examines patients' teeth and gums, records the presence of diseases or abnormalities, educates patients, and takes and develops dental x-rays. Although hygienists may not diagnose diseases, they can prepare clinical and laboratory diagnostic tests for the dentist to interpret. Dental hygienists must be licensed by the state in which they practice. According to the *Handbook*, a dental hygienist job does not require a bachelor's degree in a specific specialty.

The director appropriately determined that the submitted evidence from the state of Tennessee is not probative in establishing the first criterion. This document "Rules Governing Practice of Dental Hygienists" confirms that a dental hygienist job does not require a bachelor's degree. According to the document, an applicant seeking a license to practice as a dental hygienist in Tennessee must submit from a dental hygiene school, college, or university approved by the Commission on Dental Accreditation of the American Dental Association to the Board Administration Office a certificate of graduation showing certain information such as the applicant's transcript and the degree and diploma conferred. Nowhere does the document indicate that a bachelor's degree is required for a dental hygienist position. Accordingly, this evidence fails to establish the first criterion. Most important, the petitioner concedes on appeal that a bachelor's degree is not required for the proffered position.

No evidence in the record establishes the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. And similarly, there is no evidence in the record that would establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. As previously discussed, the *Handbook* describes the duties of the position as those performed by a dental hygienist, a position that does not require a bachelor's degree. The petitioner contends that the fourth criterion is established. Conversely, it also openly admits that the proffered position does not require a bachelor's degree, and that the beneficiary is overqualified and exceptional for the job. The AAO notes that the mere requirement of a college degree to obtain what an employer perceives to be a higher caliber employee, does not establish eligibility of a specialty occupation. *Matter of Hertz Assoc.*, 19 I&N Dec. 558 (Comm. 1988).

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.

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ORDER: The appeal is dismissed. The petition is denied.