



U.S. Citizenship  
and Immigration  
Services



FILE: SRC 03 020 52661 Office: TEXAS SERVICE CENTER Date:

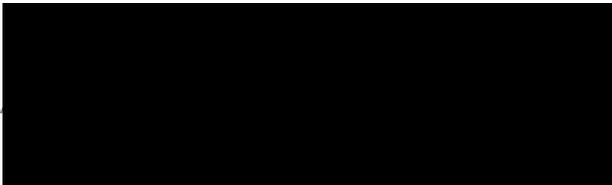
AUG 04 2004

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:



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.

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 laboratory that seeks to employ the beneficiary as a dental laboratory technician. 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 on the basis that the proffered position did not meet the definition of a specialty occupation.

The director denied the petition because the proffered position is not a specialty occupation, and the petitioner failed to provide a certified Labor Condition Application for H-1B Nonimmigrants (LCA), Form ETA 9035. Counsel submitted a timely Form I-290B on October 17, 2003 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete. On the form I-290B, counsel indicates that a bachelor's degree is a normal entry requirement in the industry, and the instant position is so specialized and complex that it is associated with the attainment of a bachelor's degree.

Counsel also attaches to the Form I-290B an LCA which was certified by the Department of Labor subsequent to the initial filing of the petition. Pursuant to 8 C.F.R. § 214.2(h)(4)(i)(B), however, a certified LCA in the specialty occupation must be obtained prior to the filing of a petition. The petitioner has not provided evidence that it complied with the regulatory requirements regarding the LCA.

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 laboratory technician. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s job description submitted 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: assisting in the design and construction of dental restorations; casting, waxing, and creating porcelain fused to metal dental restorations; and assisting in training assistants and technologists. Although not explicitly stated, it appears the petitioner requires candidates for the job to possess a bachelor’s degree or its equivalent in dental technology.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position of dental laboratory technician was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded 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 states that the many dental laboratories hire dental technicians with bachelor’s degrees. The record, however, contains no evidence to support this contention; thus, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a degree requirement is common to the industry in parallel positions among similar organizations. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel also indicates that the proffered position requires artistry and technological and mechanical skills, apparently asserting that 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. However, to the extent that they are depicted in the record, the duties do not appear more specialized or complex than the responsibilities ordinarily attributed to the job of a dental technician. 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).

The record contains no evidence in support of any of the other criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, 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.