

Administrative Review Process  
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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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DA

DEC 02 2004

FILE: LIN 02 128 53661 Office: NEBRASKA SERVICE CENTER Date:

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:



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. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal, reasoning that no additional evidence was received in support of the appeal. The matter is again before the AAO on a motion to reopen or reconsider. On motion, counsel submits evidence that additional evidence was timely submitted in support of the appeal. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a dental office that seeks to employ the beneficiary as an orthodontics research associate. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 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; (5) Form I-290B and supporting documentation; (6) the AAO's summary dismissal; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an orthodontics research associate. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's undated 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: evaluating and screening patients who meet the criteria for inclusion in the study; completing orthodontic clinical examination charts; performing various orthodontic study models; tabulating all findings and comparing data; and reviewing relevant literature. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in medical sciences.

The director found that the proffered position was not a specialty occupation because the proposed duties were not so complex as to require a baccalaureate degree. 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 motion, counsel states, in part, that the proffered position, which requires the individual to perform analytical thinking and scientific reasoning, is so complex and unique that it can be performed only by an individual with a degree. Counsel cites an unpublished CIS decision as supporting evidence and states further that the record contains several job postings for parallel positions.

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 Department of Labor's *Occupational Outlook Handbook (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 *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position, which is entitled "dental research associate," is a specialty occupation. According to the *Handbook*, 2004-2005 edition, medical scientists work in research and development. Basic medical research provides the building blocks necessary to develop solutions to human health problems. Whatever the branch of science involved, and no matter what the setting for the research may be, it appears that the main focus of such researchers is on finding solutions to very specific problems, or answers to very specific questions. The solutions or answers they seek, however, have a broad application rather than an individual scope. The goals of medical researchers are not necessarily the same as those of medical or dental practitioners, who diagnose individuals and seek solutions for those particular patients.

In this case, the specific nature of and the scope of the proposed research have not been defined. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The

proposed duties of the proffered position, which include evaluating and screening the petitioner's patients as well as completing orthodontic clinical examination charts, appear to be focused on individual diagnosis and care. This is not the type of research contemplated by the *Handbook* in reference to researcher positions. Furthermore, the proffered position is not that of a dentist, as the beneficiary would not be involved with direct patient care.

Counsel submits an unpublished AAO decision in support of the appeal. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, the proffered position in the unpublished decision was found to be parallel to that of a physician assistant. The proffered position in the instant case is not that of a physician assistant, who examines, diagnoses, and treats patients under the direction of a physician. *See the Handbook*, 2004-2005 ed. at 292-293. The petitioner's undated letter that was submitted at the time of filing specifically states that the beneficiary would not be involved with direct patient care.

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. Counsel's personal observations do not constitute evidence in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various research 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. None of the employers in the advertisements is a dental office. Rather, the advertisements are for positions in a variety of industries including manufacturing and pharmaceuticals. 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, therefore, has 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 the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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.

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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 decision of the AAO is affirmed. The petition is denied.