

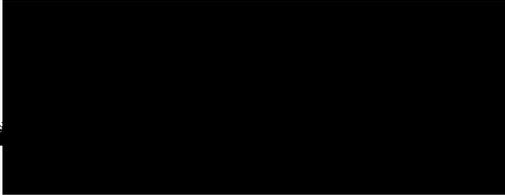
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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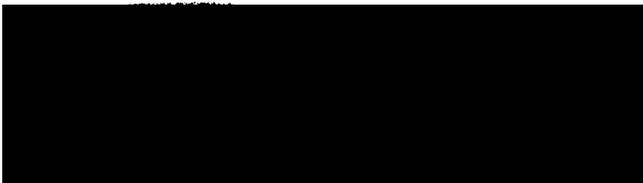
D2

FILE: WAC 03 227 54757 Office: CALIFORNIA SERVICE CENTER Date: DEC 28 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:



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 nonimmigrant visa petition was approved by the service center director. Based upon further review, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly gave the petitioner a detailed statement of the grounds for revocation in the notice of intent to revoke and afforded the petitioner 30 days within which to submit a rebuttal as required by 8 C.F.R. § 214.2(h)(11)(iii)(B). The director found that the approval of the petition violated 8 C.F.R. § 214.2(h) and revoked the approval of the petition. *See* 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO concurs with the director's decision. The appeal will be dismissed. The approval of the petition will be revoked and the petition denied.

The petitioner is a dental laboratory and office that seeks to employ the beneficiary as a dental lab supervisor. 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 revoked the approval of and denied the petition because the proffered position is not a specialty occupation. The director also determined that the beneficiary was not eligible for a change of nonimmigrant status. On appeal, counsel submits a brief.

Pursuant to 8 C.F.R. § 248.3(g), there is no provision for an appeal from the denial of a change of status. Therefore, the issue of the beneficiary's nonimmigrant status will not be discussed in this proceeding.

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 motion to reopen/reconsider and notice of intent to revoke letter; (5) the petitioner's response; (6) the director's decision to revoke the approval of and deny the petition; and (7) 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 lab supervisor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 17, 2003 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: planning, directing, and coordinating support and technical services; overseeing, supervising, and coordinating functions and activities; providing laboratory services and ensuring that such services are performed in accordance with accepted standards and practices; coordinating with contract laboratories; and acting as a general laboratory supervisor when the doctor is absent. The petitioner indicated that the petitioner is well qualified for the job because she holds a Doctor of Dental Medicine degree conferred by a Filipino institution.

The director found that the proffered position, which is similar to a dental laboratory technician, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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 states, in part, that the proffered position, which entails overseeing, supervising, and coordinating all the functions and activities of the dental laboratory, is more complex than a dental laboratory technician. Counsel submits job postings to demonstrate that the degree requirement is common to the industry.

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 *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 primarily that of a dental laboratory technician with oversight duties, is a specialty occupation. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a dental laboratory technician with oversight duties.

Regarding parallel positions in the petitioner's industry, counsel submitted Internet job postings for dental-related managers. One of the positions is that of a dental facility manager whose duties include patient care. There is no evidence, however, to show that advertised position is parallel to the instant position. The proposed duties of the proffered position do not include providing patient care. Another position is that of a lab supervisor for the American Red Cross Blood Services. This position is not similar to the proffered position and, furthermore, it prefers rather than requires a bachelor's degree. It is further noted that the proposed duties are not as complex as the duties described in the advertised positions. 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. On appeal, counsel states that the petitioner normally requires the equivalent of a baccalaureate degree for the proffered position. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 revocation of the petition's approval, and his 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's approval is revoked and the petition denied.