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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: EAC-02-080-52469 OFFICE: VERMONT SERVICE CENTER DATE: JAN 08 2004

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, 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 facility that employs 14 persons and has an undisclosed gross annual income. It seeks to employ the beneficiary as a dental records administrator. The director denied the petition because the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the proposed position qualifies as a specialty occupation.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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.

The petitioner's letter, dated December 20, 2001, accompanying the I-129 petition, described the beneficiary's duties as follows:

1. Develop and maintain a system of long-term treatment records of patients as a foundation of coordinating and documenting interdisciplinary treatment plans with the various in-office and outside specialists. . . .
2. Monitor [the] latest development in dentistry, analyze and review dental publications and correlate them with the medical condition and treatment of patients; and work cooperatively with all the dentists in the office with respect to patient management on both non-pharmacological and pharmacological treatment approaches.
3. Monitor diagnoses, procedures, and treatment by reviewing dental charts[,] and advise dentists of possible drug interactions using knowledge of pharmacology.
4. Plan, develop, administer, and implement an effective health information system for [the petitioner] in accordance with the [sic] state and local standards, regulations, and requirements[;] and supervise the staff in the preparation and analysis of dental documents and information.
5. Develop and implement policies and procedures for documenting, storing, information retrieval, insurance data, and correspondence requests.
6. Coordinate the processing of medical-legal documents[,] as well as insurance data and correspondence[,] to regulatory authorities, insurance companies, and patients[,] in conformity with state and local regulations, requirements[,] and

statutes.

7. Develop educational materials and conduct instructional programs for personnel and patients. Maintain dental journals on [the] latest development[s] in dentistry for dissemination to dentists in the office, and discuss with them their applicability to patients' current dental condition and treatment.
8. Analyze patient data for reimbursement, facility planning, quality care, risk management[,] and research.
9. Report to the head of the facility[,] in regard to staff training, staff development, and supervision issues.
10. Engage in frequent review of the petitioner's recording system[,] and make appropriate recommendations to modify and improve existing methods.

The letter stated that the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The letter also asserted that the beneficiary is qualified to perform the duties of the proffered position: she possesses the doctor of dental medicine degree from Centro Esolar University in Manila, Philippines, considered the equivalent of a doctor of dental medicine from an accredited American institution. In addition, the letter claimed that the beneficiary has eight years of professional experience.

On February 26, 2002, the director requested that the petitioner submit: (1) a certified labor condition application; (2) a detailed statement about the beneficiary's duties and responsibilities; (3) a statement describing the educational requirements expected of candidates for the position; and (4) an explanation of how the beneficiary's education relates to the position.

In response, counsel averred that the position qualifies as a specialty occupation because its duties are professional in nature, and counsel referred to paragraphs one through four, in the petitioner's letter, dated December 20, 2001, that describe the beneficiary's duties. Counsel stated that candidates holding associates degrees would be ill-equipped to perform the duties of the dental records administrator. First, counsel maintained that candidates must know about the complexities of dental medicine, such as the correlation of symptoms, diagnosis, and treatment of oral illnesses and disorders, applying knowledge of general dentistry, pharmacology, microbiology, pathology, embryology, and oral surgery. Second, candidates must know, counsel claimed, about non-pharmacological treatments, like oral surgery, orthodontics, and restorative dentistry. And, last, counsel stated that candidates must be familiar with oral anatomy, oral histology, and dental terminology.

Counsel maintained that the beneficiary will coordinate and document dental treatment plans; work with dentists, regarding patient management and treatment, by monitoring diagnosis, procedures, and treatment; study developments in the industry about patient care; and advise dentists about drug interactions, given the petitioner's multi-dentist, multi-specialization environment.

Counsel claimed that a bachelor's degree in dental medicine or a related field is customary in the industry as the minimum for entry into the dental records administrator position, and counsel asserted that the petitioner's four affidavits from dentists attest to this claim. Last, counsel stated that the duties of dental records administrators are akin to those of medical research assistants, a position considered a specialty occupation.

Counsel also alleged that the beneficiary is highly qualified to perform the duties of the position because of her degree in dentistry and her extensive experience in the field.

Counsel also submitted a certified labor condition application.

On November 14 2002, the director denied the petition, finding that the position did not qualify as a specialty occupation. The director stated that the beneficiary's duties, except for minor details, are similar to those of health information technicians, as shown in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), at page 226. The *Handbook*, the director stated, describes candidates for health information technician positions as entering the field with associates degrees from community or junior colleges. Moreover, the director stated that the petitioner's four affidavits are not supported by independent verifiable evidence.

On appeal, counsel alleges that the director's decision is arbitrary, capricious, erroneous, and against the weight of the evidence.

The offered position, counsel maintains, qualifies as a specialty occupation. Counsel asserts that the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree. The duties of the dental records administrator, counsel claims, requires the application of a body of highly specialized knowledge as evidenced by the professional level of duties, namely, paragraphs one through five, as previously described in the petitioner's letter of December 20, 2001. Counsel maintains that the complexity of these duties requires advanced knowledge in dentistry, only attained after completing a bachelor's degree in dental medicine. Counsel insists that the director's reliance on the *Handbook* is misplaced, in that the duties of health information technicians are purely clerical and ministerial, such as organizing and evaluating medical records for completeness and accuracy. Counsel, citing the petitioner's two affidavits and two letters

from dentists, declares that the industry standard is to require a baccalaureate degree in dental medicine for dental records administrator positions.

Counsel claims that the Associate Commissioner rendered a plethora of non-precedent cases that found that dental records administrator positions qualify as specialty occupations. Counsel maintains that non-precedent decisions, although not binding and controlling, are persuasive and probative in the absence of relevant, precedent decisions. Counsel relates that there is a paucity of cases relating to dental records administrator positions; however, the medical research assistant positions have been consistently regarded as a specialty occupation. Some of the duties of dental records administrators, counsel asserts, are akin to those of medical research assistants when medical research assistant positions qualify as specialty occupations. Counsel states, for example, that medical research assistants review professional medical journals regarding issues about health and patient developments; elicit detailed patient histories; discuss patient charts and files with a physician; and research medical literature for new modes of treatment and diagnosis. Counsel states that the Associate Commissioner has consistently held that the duties of medical research assistants require at least a bachelor's degree in a medical field as the duties presuppose a knowledge of medicine and involve a high level of responsibility, exceeding physician assistant positions.

Counsel avers that the petitioner has established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a baccalaureate or higher degree or its equivalent is the minimum for entry into the occupation. Counsel asserts that the duties of the offered position are similar to those of medical research assistants, and counsel claims that the Associate Commissioner has consistently held that medical research assistant positions require at least a bachelor's degree in a medical field.

Counsel's assertion that the beneficiary's duties reflect those of medical researchers is erroneous. In the first place, the letters from Jeffrey Sklarin, D.D.S. and Robert M. Starr, D.D.S. and the affidavits from Gigi Huang and Anglika Shein, D.D.S., do not express this claim. The letters and affidavits do state that candidates for dental records administrator positions should possess a bachelor's degree in dentistry; however, notwithstanding their relevance, the letters and affidavits lack independent corroborating evidence to support the dentists' assertions.

Second, Citizenship and Immigration Services (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 2002-2003 edition of the *Handbook* is instructive because it provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation.

According to the *Handbook*, the duties of the offered position are comparable to those performed by dentists and medical records and health information technicians. For instance, nearly one-half of the beneficiary's duties involve researching medical and dental publications; reviewing the results of tests, patient histories, and dental charts; advising dentists of possible drug interactions; and providing the dentist with the latest research for diagnosis and treatment. On pages 250-251, the *Handbook* reports that dentists diagnose, prevent, and treat teeth and tissue problems. About one-half the beneficiary's duties resemble those of medical records and health information technicians. The *Handbook*, on pages 288-289, describes medical records and health information technicians as recording patient information, such as x rays, diagnoses, treatment plans, medical history, and symptoms; ensuring forms are complete; assigning codes to each diagnosis and procedure; and using computer programs to tabulate and analyze data to help improve patient care, control costs, to use in legal actions, or to use in research studies. The *Handbook* relates that candidates usually enter the field possessing associate degrees from community or junior colleges.

The petitioner has not directly or indirectly intimated that the beneficiary will provide patient care; however, the duties of assisting dentists in determinations and diagnoses by reviewing patient records, and researching medical and dental publications, plainly constitute patient care. Thus, like a dentist, the beneficiary would need to satisfy licensing requirements. The *Handbook*, at pages 250-251, reports that all 50 States and the District of Columbia require dentists to be licensed. In most States, candidates must graduate from a dental school accredited by the American Dental Association's Commission on Dental Accreditation, and pass written and practical examinations to qualify for a license.

With respect to the beneficiary's duties that are similar to medical records and health information technicians, the beneficiary would not require a bachelor's degree. Therefore, these duties would not establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second criterion requires that the petitioner establish that the degree requirement is common to the industry in parallel positions among similar organizations, or that the beneficiary's duties are so complex and unique that they can be performed only by an individual with a degree. The beneficiary's duties reflect

those performed by dentists and medical records and health information technicians, and the *Handbook* reveals that States require dentists to hold proper licensure and employers require candidates for medical records and health information technicians to hold associate degrees. Counsel, citing the petitioner's two affidavits and two letters from dentists, declares that the industry standard is to require a baccalaureate degree in dental medicine for dental records administrator positions. The letters and affidavits essentially state that dental records administrators perform sophisticated and complex duties, requiring candidates to hold at least a baccalaureate degree in dentistry or a related field. Although the dentists' statements are relevant, they lack independent corroborating evidence.

There is no evidence contained in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, 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 of the offered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously discussed, the beneficiary's duties reflect those performed by dentists and medical records and health information technicians.

There is no evidence contained in the record indicating that the beneficiary holds a license to practice dentistry; accordingly, the beneficiary is not qualified to perform the duties of the offered position that require licensure.

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.