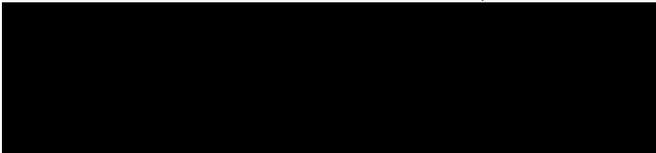


PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
Citizenship and Immigration Services

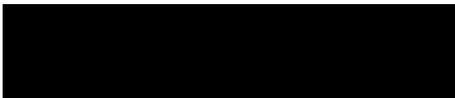
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC 02 034 55038 OFFICE: CALIFORNIA SERVICE CENTER

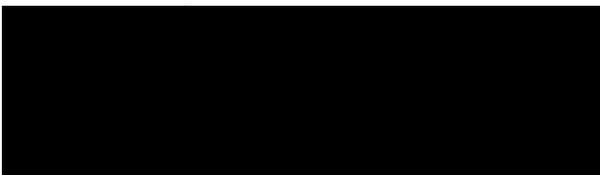
DATE: **JAN 06 2004**

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)

IN BEHALF OF PETITIONER:



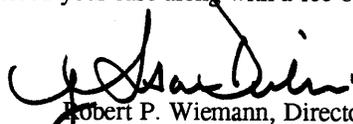
INSTRUCTIONS:

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 Director of the California 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 employs twenty persons and has a gross annual income of \$1,800,000. It seeks to employ the beneficiary as a dental specialist. The director denied the petition because he found that the position did not qualify as a specialty occupation.

Counsel filed a timely Form I-290B Notice of Appeal on which counsel is indicated that a brief was to be submitted within thirty days. Attached to the Form I-290B, counsel also submitted a letter. As of this date, however, no brief or additional evidence has been received. Thus, the record is complete. On appeal, counsel states, in part, that the dental specialist position requires expertise in dentistry; thus, it should be considered 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.

In the original petition, the petitioner indicated that the beneficiary would administer and direct the activities of the dental practice in accordance with accepted national standards, administrative policies and OSHA compliance guidelines. He would formulate policies and procedures, hire and fire staff, handle the billing, and coordinate with dental laboratories. On February 15, 2002, the director requested further information regarding the specific job duties. In response, counsel provided essentially the same list of job duties as that found in the petition, adding a breakdown of the time spent on each duty. The director denied the petition on July 12, 2002,

finding that the evidence did not demonstrate that the proffered position requires the services of an individual with a bachelor's degree or higher in a specific specialty.

On appeal, counsel states that the beneficiary would be required to diagnose existing conditions of patients, and thus, would require a minimum of a bachelor's degree. Previously submitted statements on the record, however, indicate that dentists would be making the diagnoses, and that the beneficiary would be required to merely record patients' dental conditions. A petitioner cannot materially change a position's associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The following analysis of the offered position will not include the unsupported claim set forth on appeal that the beneficiary would be required to diagnose dental conditions.

Counsel previously asserted that the offered position resembles that of a health services manager, as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The 2002-2003 edition of the *Handbook* at page 75 contains the following description of the health services manager position:

The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility of system. . . . A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in the field. . . . Physicians' offices and some other facilities may substitute on-the-job experience for formal education.

Compare the health services manager position with that of the office manager, as described in the *Handbook* on page 417:

[S]upervisors perform administrative tasks to ensure that their staffs can work efficiently. . . . Planning the work of their staff and supervising them are key functions of this job. . . . After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards. . . . Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees.

The duties of the proffered position do not resemble those of a health services manager, but are similar to those of an office manager. The *Handbook* does not indicate that any specific degree or educational background is necessary to perform the duties of an office manager. The record contains no evidence that a degree in dentistry, or in any specific specialty, would be a minimum qualification necessary to perform the duties listed in the record. Thus, the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) has not been established.

Furthermore, the record contains no documentation to support the second, third, or fourth criteria of the above-mentioned regulatory standard. The petitioner fails to establish that the offered position is a specialty occupation.

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.