



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

*[Handwritten signature]*

JUN 18 2004

FILE: WAC 02 288 51151 Office: CALIFORNIA 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:

[REDACTED]

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.

*Mari Johnson*

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner operates a dental clinic and 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 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief stating that the proffered position qualifies as 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 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, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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 are 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 proceedings 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) the Form I-290B with supporting documentation. 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 with attachments and the petitioner’s response to the director’s request for evidence. According to evidence, the beneficiary would: conduct research studies by performing various laboratory tests such as analysis of patient panoramic X-rays and Cephalometric X-rays, as well as tracing of Cephalometric X-rays; maintain written notes on all research performed then submit weekly and monthly reports to the dentist; conduct studies to provide effective methods of examining, diagnosing, and treating abnormalities in jaw development, position of teeth, and other dental-facial structures; evaluate and screen patients through in-depth review of the patient’s history of dental problems and previous records; monitor ongoing research studies on dental abnormalities and develop research studies on various treatment issues; conduct outside research by studying published materials and attending seminars; review major professional dental journals for issues and developments that are particularly relevant to the patients; and be involved in the effective methods of diagnosis and treatment plans involved in abnormalities in the development of the jaw, malocclusion of teeth, and other dental-facial structures. In further explaining the aforementioned duties, counsel noted that the beneficiary would have important diagnostic and advisory roles with regard to patient care. The beneficiary would assist the dentist in diagnosing problems and planning patient treatment. Counsel notes that the beneficiary would have a significant amount of influence over the type and length of treatment patients receive based on her dental research and patient observation. The petitioner requires a minimum of a Bachelor of Science degree in Dental Surgery, or its equivalent, for entry into the proffered position.

The AAO routinely consults the Depart of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are similar to those noted for dentists. The *Handbook* notes that dentists diagnose, prevent, and treat teeth and tissue problems. Although the petitioner claims that the beneficiary will not perform functions which are exclusive to a dentist or a member of the dental profession, the beneficiary would assist the dentist in diagnosing dental problems and planning patient treatment. The beneficiary would exert considerable influence over the type and length of treatment patients receive. It is, therefore, conceded that the proffered position is a specialty occupation as the position requires the beneficiary to perform duties normally performed by licensed dentists. As such, the beneficiary must satisfy governmental licensing requirements for dentists. As noted in the *Handbook*, 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. The record does not reflect that the beneficiary possesses a license to

practice dentistry. Accordingly, the beneficiary does not appear qualified to perform the duties of the offered position. The director's decision shall accordingly be withdrawn, and this matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of a licensed dentist. The director may obtain such additional information as he deems necessary in rendering his decision.

**ORDER:** The director's decision is withdrawn. This matter is remanded to the director for entry of a new decision commensurate with the directives of this opinion.