



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 02 277 50513 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

JUN 22 2007

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:

SELF-REPRESENTED

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.

Marif Johnson

RP Robert P. Wiemann, Director
Administrative Appeals Office

JUN 22 2007

DISCUSSION: The service center director 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 operates a dental clinic, and seeks to employ the beneficiary as a dental assistant/laboratory technician assistant. 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 on the basis that the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

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 counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a dental assistant/laboratory technician assistant. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to the I-129 petition attachment, the beneficiary would: review dental journals and studies to assist the dentist in patient treatment and management (25 percent of the time); discuss with the dentist procedures, techniques, and patient management in relation to research performed on patients (25 percent of the time); take and record dental history to assist in research (15 percent of the time); review treatment information in patients’ records (15 percent of the time); supervise the shaping, grinding, polishing, and assembly of dental appliances (10 percent of the time); and make preliminary dental impressions for patient study casts under the direction of the dentist (10 percent of the time). The petitioner requires a degree in dental medicine as a minimum requirement for entry into the offered position.

In response to the director’s request for evidence, the petitioner significantly changed the duties of the proffered position. The petitioner stated that in addition to the aforementioned duties, the beneficiary would also prepare briefs and digests of studies, create indexes, and cross reference research materials. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position’s title or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 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 new duties described in the response to the director’s request for evidence will, therefore, not be considered.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner submits a brief stating that the proffered position qualifies as a specialty occupation. Further, the petitioner attempts to change the title of the proffered position and characterize it as a medical or technical writer

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. Though vaguely described, many of the position’s duties are essentially those noted for dental assistants and dental

laboratory technicians. Dental laboratory technicians fill prescriptions from dentists for crowns, bridges, dentures, and other dental prosthetics. The *Handbook* notes that most dental laboratory technicians learn their craft on the job. Becoming a fully trained technician requires an average of three to four years, depending on an individual's aptitude and ambition. Training in dental laboratory technology is available through community and junior colleges, vocational-technical institutes, and the Armed Forces. Completion of formal accreditation programs normally take two years to complete and leads to an associate degree. Graduates of two year training programs need additional hands-on experience to become fully qualified. It is important to note however, that formal classroom experience is not required in the industry and many employers will train individuals without any classroom experience. The remaining duties of the offered position are routinely performed by dental assistants. Dental assistants prepare patients for treatment, assist dentists in patient treatment, obtain dental records, and review patient treatment records. Most dental assistants learn their skills on the job, though some are trained in dental assistant programs offered by community and junior colleges, trade schools, technical institutes, or the Armed Forces. It is, therefore, apparent that a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A). Furthermore, the duties of reviewing dental journals/studies to assist the dentist in patient treatment and studies, as described, are not so complex as to require a bachelor's degree in a specific specialty to perform them. The research does not appear to be outside that normally performed in a dentist office when reviewing medical text or reference materials in the day-to-day treatment of patients.

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, or that he normally requires a degree or its equivalent for the position offered. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3). Finally, the duties of the proffered position are routine for dental assistants and laboratory technicians in the industry. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petitioner also asserts that previous agency decisions for similar positions have classified the offered position as a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire records of proceeding in the petitions referred to by the petitioner. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. (Emphasis added.) CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a dental assistant/laboratory technician assistant. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into

the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.