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FILE: LIN 02 210 55145 Office: NEBRASKA SERVICE CENTER Date: JUN 30 2006

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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 laboratory that seeks to employ the beneficiary as a dental laboratory technologist. The petitioner, therefore, 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits additional evidence.

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.

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 denial letter; and (5) 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 part-time dental laboratory technologist. Evidence of the beneficiary's duties includes: the Form I-129; the June 1, 2002 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: performing dental laboratory tests, procedures, experiments, and analyses to provide data for diagnosis, treatment, and prevention of teeth and gum disease; conducting chemical analysis to determine presence of normal and abnormal components that could indicate presence of oral diseases; studying gums, using probes to locate periodontal recessed gums and signs of gum diseases using microscopic technique; analyzing tests and entering findings in the computer; charting conditions of decay and diseases for diagnosis and treatment by a dentist; and exposing and developing dental x-ray films. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in dental laboratory technology.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the petitioner's submitted evidence, the director described the deficiencies in each document. The director also pointed out that the petitioner had expanded its job description to include responsibilities that are incongruous with its nature - a dental laboratory engaged in dental restoration - and the evidence in the record. The director stated that the record showed that patients do not visit the petitioner's facility and that the petitioner is not qualified to perform dental procedures on patients. Thus, the director found that a candidate could not "[c]hart [the] condition of decay and diseases for diagnosis and treatment by [the] dentist" and "[s]tudy gums, using probes, to locate periodontal recessed gums and signs of gum diseases using microscopic techniques." Last, the director determined that the evidence failed to establish that the beneficiary's education, training, and/or experience is equivalent to the attainment of a U.S. baccalaureate or higher degree.

On appeal, counsel states that the beneficiary is qualified to perform the proffered position, and moreover, that the position qualifies as a specialty occupation. According to counsel, the dental laboratory does not have patients. Nevertheless, counsel claims that in special cases a dentist may send patients to the laboratory to gain an assessment of teeth color matching, fittings, and applications, and counsel points to submitted evidence to support this contention. Counsel maintains that courts have held that it is impermissible to consider the size and scope of the petitioning company in determining whether a position qualifies as a specialty occupation. According to counsel, the petitioner has proved that a bachelor's degree in dental laboratory technology is normally required to enter into the position, and that the position's duties are complex. Counsel contends that the submitted employment certifications demonstrate the beneficiary's work experience and his ownership and management of a dental laboratory. Counsel emphasizes that a credentials evaluation service found that the combination of the beneficiary's education and nearly five years of experience are equivalent to a bachelor's degree in dental laboratory technology.

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 first considers 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 Department of Labor's *Occupational Outlook Handbook* (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)).

Although counsel contends that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO finds that the director correctly determined that the evidentiary record fails to support this contention. When determining whether a position qualifies as a specialty occupation, 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the 2004-2005 edition of the *Handbook* discloses that the duties of the proffered position are an amalgam of those performed by a dental hygienist and dental assistant. Dental assistants prepare materials for impressions and restorations, take dental x-rays, and process x-ray film as directed by a dentist. Those with laboratory duties make casts of the teeth and mouth from impressions, clean and polish removable appliances, and make temporary crowns. Most States regulate the duties that dental assistants are allowed to perform through licensure or registration. Hygienists examine patients' teeth and gums, recording the presence of diseases or abnormalities and take and develop dental x rays. Although hygienists may not diagnose diseases, they can prepare clinical and laboratory diagnostic tests for the dentist to interpret. Dental hygienists must be licensed by the State in which they practice. According to the *Handbook*, neither the dental hygienist nor the dental assistant position requires a bachelor's degree in a specific specialty.

The AAO finds that the director appropriately determined that the submitted evidence is not probative in establishing the first criterion. The letter from [REDACTED] stated that it requires a dental laboratory technologist to possess a bachelor's degree in dental technology or its equivalent. Since the letter does not delineate the duties of the position, the AAO cannot determine whether it is parallel to the proffered position. The untitled document describing the title and class code for a lab technology IV position seeks a medical technologist; however, this position seems different from a dental laboratory technologist inasmuch as the document specifically stated that "[p]ositions with working assignments as [a] dental laboratory technologist must have five years of experience, knowledge of dental technology[,] and some may require certification." Most important, the document also stated that "[w]ork experience that provides the same kind, amount[,] and

level of knowledge acquired in the required education may substitute for the education.” Thus, a specific bachelor’s degree is not required. The documents describing the baccalaureate degree in dental laboratory sciences are irrelevant. This degree program does not, ipso facto, evince that a degree in this field or its equivalent is the normal minimum requirement for entry into the proffered position. The documents from the American Medical Association and Wadsworth do not express that the positions of dental laboratory technician or technologist require a bachelor’s degree. Because the Wadsworth document is silent regarding the duties of technologists and technicians, the AAO cannot determine the relevancy of this document. Not only does the posting from the [REDACTED] not describe the duties of the medical technologist position, it never explicitly states that a specific baccalaureate degree is required. The article by Jay Fisher is irrelevant because it is not specific to field of dentistry: the article merely discusses the generic titles “technician” and “technologist.” For a similar reason, the document entitled “Technicians and Technologists: What do they do?” is irrelevant given that it discusses a company that manufactures computers and electronic devices. Last, the document from [REDACTED] focuses on medical laboratory technicians and technologists - positions with duties that differ dramatically from the proffered position. This document, for example, states that medical laboratory technicians and technologists may study body samples to learn how to create medicinal drugs or aids to prevent diseases, and that they may work in industries such as health care, agriculture, environmental sciences, and food and chemical testing. Accordingly, the evidence in the record fails to establish the first criterion.

The AAO has already discussed the deficiencies in the submitted evidence. Accordingly, no evidence in the record establishes the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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 is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. According to counsel, the duties of the proffered position are complex, requiring a candidate holding a bachelor’s degree in dental laboratory technology. On appeal, counsel submits an article from AGD Impact that describes the relationship between dentists and dental laboratories. This article mentions that dentists send their patients “to a small local specialty lab to meet with the technician for the best color match through an examination of the adjacent teeth” and that the lab can “pinpoint problems you might not see, such as technical problems in the fabrication.” These duties fall within those performed by a dental hygienist and dental assistant. The deficiencies in the other evidence in the record have already been discussed by the AAO.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. The AAO concurs with this finding.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The current record contains an educational evaluation from e-ValReports. The evaluation stated that the beneficiary has the equivalent of an associate degree in dental laboratory technology from an accredited U.S. community college, a bachelor's degree in philosophy from an accredited U.S. university, and five years of experience in dental laboratory technology. The record also contains a graduation diploma and transcripts from granted by Medical Vocational School following a two and one-half year course of study in dental technique, student records from the philosophy department at Silesian University in Katowice, two work certificates (totaling two years of employment), and one certificate of registering an economic activity. The petitioner submitted translations of the documents.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel contends that the beneficiary has the equivalent of a bachelor's degree in dental laboratory technology based on his education and five years of experience in the field, and refers to the educational evaluation from e-ValReports to support his contention.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary does hold a foreign degree determined to be equivalent to a baccalaureate degree from an accredited U.S. college or university in philosophy and a foreign degree deemed to be equivalent to an associate degree in dental laboratory technology. The petitioner requires a bachelor's degree in dental laboratory technology. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation from e-ValReports, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in dental laboratory technology from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education, training, and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the director properly determined that the evaluation carries no weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary's foreign degree in philosophy is unrelated to the field of dentistry. The AAO must determine whether the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. As described by each employer, the beneficiary's duties did not appear to extend beyond those required of a dental assistant or dental hygienist. One employer assigns duties to the beneficiary such as designing and making metal frameworks and composite "Dentacolor" crowns. Another employer assigns "preparing prosthetic restorations." Both employers describe the beneficiary's duties generically; no specificity as to the beneficiary's daily activities or his level of responsibility is provided. The record does not contain evidence describing the beneficiary's duties as related to his dental laboratory office other than the certificate of registering an economic activity that indicates that the scope of the company's activity was dental prosthetics. The record does not contain the beneficiary's resume. Thus, based on the evidence in the record, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Furthermore, neither employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from e-ValReports cannot be considered a "recognized authority" because the evaluator's education and experience is not in the field of dentistry.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. As previously discussed, the petitioner failed to establish that the proffered position qualifies as a specialty occupation. Accordingly, the AAO shall not disturb the director's 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 is denied.