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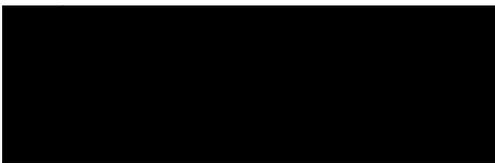
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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

U.S. Citizenship  
and Immigration  
Services



FILE: WAC 01 284 53777 Office: CALIFORNIA SERVICE CENTER Date: **MAR 11 2004**

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center acting 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 is a dental laboratory that seeks to employ the beneficiary as a dental technician/ceramist. 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 acting director denied the petition on two independent grounds, namely, the petitioner's failure to establish that (1) the proffered position is a specialty occupation, and (2) the beneficiary is qualified to serve in a specialty occupation.

On appeal, the petitioner submits a letter and additional documentary evidence.

Before issuing its decision, the AAO has reviewed the entire record in this proceeding, including all of the petitioner's submissions in this proceeding. This record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the acting director's request for additional evidence (RFE); (3) the petitioner's response to the RFE, with documentation; (4) the acting director's denial letter; and (5) the matters submitted on appeal, including: the Form I-290B; the March 28, 2002 letter from the petitioner's owner and president; and the documentary evidence submitted with the letter.

Upon full review of the entire record, the AAO has determined that the acting director had acted correctly in denying the petition on the basis that the evidence of record had not established that the proffered position was a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). As this determination is dispositive of the proceeding on appeal, the AAO need not address the alternate ground for the denial.

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.

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.

Upon review of the entire record and all of counsel’s assertions on appeal, the AAO has determined that 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.

As simply stated on the Form I-129, in the proffered dental technician/ceramist position the beneficiary would be making dentures, crowns, and bridges.

That the proffered position requires specialized knowledge is well established by the letters from Ivoclar Vivadent, Inc.’s assistant corporate counsel; Dr. [REDACTED] DDS; and the petitioner’s owner and president.

However, that fact does not satisfy any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Under the Act and its implementing provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify a position as a specialty occupation the evidence of record must establish that performance of the position requires the practical and theoretical application of highly specialized knowledge that is (1) attained by a baccalaureate degree or higher, or the equivalent, in a specific specialty, or (2) associated with the level of a baccalaureate degree or higher in a specific specialty. The evidence in the record does not establish that performance of the proposed dental technician/ceramist position requires the application of such knowledge.

In analyzing the evidence, the AAO first applied the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): a baccalaureate or higher degree, or its equivalent, is the normal minimum requirement for entry into the particular position.

No evidence in the record presents the dental technician/ceramist position as one requiring the aforementioned credentials.

CIS recognizes the Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and performance requirements of a wide variety of occupations. In its section “Dental Laboratory Technicians,” the 2002-2003 edition of the *Handbook* indicates that most dental

laboratory technicians learn their craft on-the-job, in three or four years of on-the-job training at a dental laboratory. The *Handbook* also states that community and junior colleges, vocational-technical institutes, and the Armed Forces provide training in dental laboratory technology. The *Handbook* further notes that there are accredited classroom programs in dental laboratory technology. However, these programs, which would be followed by on-the-job training, normally take only two years, and they lead to an associate, not a baccalaureate, degree.

The AAO noted Dr. [REDACTED] opinion that true qualification as a dental laboratory technician requires certification after attending Dental Laboratory Technology School. This evidence does not conflict with the *Handbook* on educational requirements and programs for dental laboratory technicians.

Accordingly, the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) is not satisfied.

Next, the petitioner has not presented evidence that would qualify the proffered position under either section of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

First, the evidence of record has not satisfied the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) by establishing that the necessary degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether a degree requirement is common to the industry in parallel positions among similar organizations, factors often considered by CIS include: whether 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)).

As just discussed, the *Handbook* does not report that dental laboratory technician positions require a baccalaureate or higher degree in a specific specialty. Also, there are no submissions from professional associations in the petitioner's industry. Finally, the letters submitted into the record from others in the dental and dental laboratory fields do not show an industry-wide requirement for baccalaureate or higher specialty degrees for positions like the one proffered here.

Accordingly, the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) is not satisfied.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides that "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."

The evidence of record does not convey that this particular proffered position is so complex or unique as to be distinguishable from dental technician/ceramist positions that persons can perform without a baccalaureate degree in a specific specialty.

For the reasons just discussed, the petitioner has not satisfied either of the specialty occupation qualifying criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

Next, the record contains no evidence that the petitioner has required a bachelor's degree in a specific specialty for previous employees in the proffered position. Accordingly, the position cannot qualify as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turned to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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 has not satisfied this criterion. The nature of the duties depicted in the record is specialized, but not to the extent that it requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Rather, the requisite knowledge can be obtained by on-the-job training, training offered in junior and community colleges and the Armed Forces, participation in vocational-technical institutes, and completion of accredited classroom programs leading to an associate degree.

Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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