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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: WAC 02 105 51790 Office: CALIFORNIA SERVICE CENTER

Date: **MAR 15 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)

ON BEHALF OF PETITIONER:



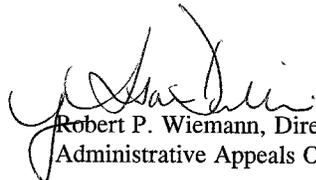
INSTRUCTIONS:

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 which 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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner provides dental services to the general public. It has eight employees, a gross annual income of \$378,000, and seeks to employ the beneficiary as a medical research assistant for a period three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel states that the duties of the offered position are so complex and unique that they can only be performed by a person with a degree.

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.

The issues to be discussed in this proceeding are: whether the position offered to the beneficiary qualifies as a specialty occupation; and whether the beneficiary qualifies to perform the duties of 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

In the position of Medical Research Assistant with our firm, [the beneficiary] will assist licensed dentists to provide dental care to a variety [sic]. She will review major professional journals, referenced works, research publications, and statistical records to provide diagnostic, therapeutic, and preventive health care services under the direction of dentists. She will research general health issues as well as specific developments in dentistry, surgery, and anesthesiology for application to patients with illnesses. [The beneficiary] will elicit detailed patient histories through interview and examination. She will discuss patient charts and files with dentists, and interpret laboratory tests and X rays. [The beneficiary] will research medical literature to find research suggestions, and assist dentists in making diagnoses based upon patient age and medical conditions. [The beneficiary] will analyze statistical data to prepare reports and recommendations. She will write reports or present research to dentists in formats such as abstracts, bibliographies, graphs, and

presentations for inclusion in patient charts and records.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide: a detailed job description setting forth specific job duties, the percentage of time to be spent on each duty, the beneficiary's level of responsibility, the hours per week of work, the types of employees to be supervised, and the minimum educational requirements for the position; and evidence that the offered position satisfied at least one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response to the director's request, the petitioner discussed the beneficiary's proposed duties and described the amount of time to be spent on various duties. The petitioner also provided copies of medical literature to demonstrate the kind and complexity of literature that the beneficiary would research in the course and scope of her employment, as well as diagnostic worksheets to be kept and reviewed on various patients. The AAO has reviewed all evidence provided and notes that the petitioner requires an employee with a minimum of a Doctor of Dental Medicine Degree for the offered position.

In denying the I-129 petition, the director held that the proffered position did not qualify as a specialty occupation, stating that the position mirrored the duties of an Office Manager/Administrative Services Manager for a small dental office as described in the U.S. Department of Labor's *Occupational Outlook Handbook*, 2002-03 edition, (*Handbook*), at 25.

On appeal, counsel states that the duties described are not those of an Office Manager/Administrative Services Manager, and are far more complex than those described for that position. Counsel asserts that the complexity of the offered position qualifies it as a specialty occupation.

The AAO routinely consults the *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 provide direct patient care, the following duties to be performed by the beneficiary involve patient care: review major professional journals, referenced works, research publications, and statistical records to provide diagnostic, therapeutic, and preventive health care services under the direction of dentists; interpret laboratory tests and X rays; and assist dentists in making diagnosis. 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 will be withdrawn and the matter remanded to the director to determine whether the beneficiary qualifies to perform the duties of the specialty occupation. The director may obtain such evidence as she deems necessary in rendering that opinion.

ORDER: The director's April 15, 2002, decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the directives of this opinion.