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U.S. Citizenship  
and Immigration  
Services

FILE: LIN 03 002 50653 Office: NEBRASKA SERVICE CENTER Date: MAY 17 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 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.

for 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 appeal will be dismissed. The petition will be denied.

The petitioner operates a dental clinic and seeks to employ the beneficiary as a dental specialist. 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, counsel submits a brief and additional information.

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 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 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 a dental specialist/researcher. 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: plan, organize, and maintain miscellaneous dental programs of the clinic; confer with dentist and staff to formulate new policies and improve existing policies and recommend procedural changes; develop and implement a system to be used by the dental office, clinic, and laboratory to assure a smooth flow of work and improve efficiency; evaluate staff members' work performances and ensure all safety procedures are followed; solve workers procedural problems and demonstrate proper dental techniques; coordinate with various dental laboratories that the clinic utilizes to assure that all work orders are submitted and received correctly and timely; review major professional dental journals for dental health issues and development particularly relevant to the dentists' practice, and provide dentists' with the latest information; research literature to find suggestions of modes of treatment for possible diagnosis, eliciting detailed patients' histories, discussing the patients' charts and records with dentists; and supervise billing of patients' and insurance companies financially accountable for services rendered. The petitioner requires a minimum of a Doctor of Dental Surgery degree for employment in the offered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. A portion of the duties of the proffered position are similar to those noted for medical and health service managers. In the *Occupational Outlook Handbook (Handbook)*, 2002-03 edition, the Department of Labor details the duties of health service managers:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The term "medical and health services manager" encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The duties offered to the beneficiary include: planning, organizing, and maintaining dental programs for the clinic; formulating policies and recommendation of procedural changes for office operations and flow of work between the clinic and outside service providers; work performance evaluations of staff members; and demonstrating dental techniques to staff. These duties are performed by medical and health services managers in that they are included in the planning, direction, coordination and supervision of the delivery of healthcare. The *Handbook* notes, however, that while some generalists positions require a master's degree in

health services administration, long-term care administration, health sciences, public health, public administration or business administration, a bachelor's degree is adequate for some entry-level positions in smaller facilities, and on-the-job training will suffice for other facilities such as physician's offices. A bachelor's degree is not, therefore, the standard minimum requirement for a health service manager in a dental clinic such as the petitioner's. The other duties detailed by the petitioner, research and review of medical literature to be summarized for the dentists, and supervision of patient billing and insurance filings, are not so unique or complex as to require baccalaureate level education to perform them. They are routinely performed by individuals not holding bachelor's degrees in any specific specialty. The petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to satisfy the remaining three regulatory criteria:

First, the petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations, or, alternatively, that the duties of the offered position are so unique or complex that they can only be performed by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner submitted three statements from other dental offices indicating that each employed dental specialists, and that a D.D.S. degree was required for each position. The statements did not, however, set forth the duties of those positions. It is, therefore, impossible to determine that those positions are parallel to the position offered. Furthermore, the proffer of three statements is insufficient to establish an industry standard. The petitioner also provided Internet printouts for dentists from community health centers. Those printouts indicated that those centers employed directors' of dental services who held doctor of dental surgery degrees. There is no indication that the duties of these director's are similar or related to the duties of the offered position. It should also be noted, with regard to this regulatory criterion, that the duties of offered position do not appear to be so complex or unique that they can be performed only by individuals with a baccalaureate level education in a specific specialty.

Second, the petitioner offered no evidence to establish that it normally requires a degree or its equivalent for the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if that were the case, the position would still not qualify as a specialty occupation as the performance of the position's duties does not require the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F. 2d 384 (5<sup>th</sup> Cir. 2000).

Finally, the record does not establish that the nature of the duties to be performed is so specialized or complex that the 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)(4). The duties may be performed with the attainment of knowledge provided in various educational programs, or through training and/or job related experience at less than a baccalaureate level.

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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden.

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