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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 02 162 52042 Office: CALIFORNIA SERVICE CENTER

NOV 20 2014

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 office that seeks to employ the beneficiary as a dental specialist/researcher. 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 the position is not a specialty occupation and the beneficiary is also not qualified to perform the duties of the position. On appeal, counsel states that the position is a specialty occupation and that the beneficiary is qualified to perform the duties of the position. Counsel submits further documentation.

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.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated September 10, 2002; (4) counsel's letter that responds to the director's request, dated November 26, 2002; (5) the director's denial letter; and (6) 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 dental specialist/researcher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the letter of support submitted by the petitioner, the beneficiary would administer a dental program and direct the activities in accordance with accepted national standards and administrative policies. The beneficiary would maintain complete dental reports and related patient documentation, and examine patients' records to compose complete dental reports for the final approval of the dentist. The beneficiary would keep up to date on the latest dental research results and utilize the dental library to perform her duties. She would coordinate dental care evaluation and develop criteria and methods for such evaluations/reports. The beneficiary would confer with clinical staff to formulate policies and recommend procedural changes. She would also confer with the staff regarding operational policies and recommend procedural changes. The beneficiary would be responsible for starting up a system of operations and activities to be implemented in the petitioner's office and laboratory to ensure a smooth workflow and overall efficiency. According to the petitioner, the beneficiary would have no direct patient care and thus, would not have to be licensed to practice dentistry in the state of California.

In its response to the director's request for further evidence, counsel added more specific duties in the field of dentistry, such as the ability to interpret "periapical, bitewing panoramic, cephalometric, and occlusal" x-rays. The beneficiary would also diagnose existing conditions and fully present differential diagnoses in dental documentation forms to insurance companies. The beneficiary would also be aware of the different stages of dental procedures and work with different types of impression materials, as well as review professional medical journals, reference works and research publications relating to providing diagnostic, therapeutic and preventive dental healthcare. According to counsel, 60 per cent of the beneficiary's time would be spent doing medical and dental research and composing reports based on such research, and 40 per cent of the beneficiary's time would be spent on working with patients' records and assisting other dentists to make proper determinations and diagnoses. In a letter that accompanied counsel's response to the director's request for further evidence, the petitioner stated that it is an expanding office, and it needed an experienced dental specialty/researcher to focus more on preventive care, including teaching people how to take better care of their teeth. The petitioner stated that it required a candidate to possess a baccalaureate degree, and a working knowledge of dentistry and the dentistry field. Counsel asserted that the job could not be performed by anyone who did not have, at a minimum, a bachelor's degree in a related scientific discipline, and that the petitioner is not willing to hire anyone with less than a medical degree in dentistry. Counsel also asserts that the position is analogous to that of a health services manager.

The director reviewed the duties of the position and stated that a variety of occupations, including dental technicians, dental assistants, dental office managers, and medical and health services managers, could perform the duties of the position. The director further stated that none of these occupations requires a baccalaureate degree in dentistry for entry into the position. The director also disputed the fact that the beneficiary could supervise the office staff as well as dentists. In addition, the director questioned whether the review of professional medical journals could only be performed by an individual with a medical degree in dentistry. In sum, the director determined that the majority of the duties of the position did not require the

knowledge or skills inherent to a baccalaureate degree in a specific specialty. The director also determined that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the beneficiary's qualifications to perform the duties of the position, the director noted that the duties of a medical and health services manager usually required a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration for most generalist positions. The director stated that, since the beneficiary did not possess a degree in the above-mentioned health fields, she was not qualified to perform many of the duties suggested by both the petitioner and counsel. Finally, the director stated that since the petitioner already had an office manager, and assistant manager, it was not clear whether there were sufficient duties to support the position of a medical and health services manager.

On appeal, counsel states that the duties of the proffered position are similar to a health services manager, except that the proffered position is within a dental practice rather than a general medical practice. Counsel refers to the *Handbook's* classification of health services manager and states that a bachelor's degree is adequate for some entry-level positions in smaller operations. Counsel states that the beneficiary will not have authority over the dentists, but rather that the beneficiary and the dentists would be working together. Counsel then explains the three areas of work that the beneficiary would perform. Counsel states that the beneficiary would hire additional staff as needed, and evaluate their work; oversee the billing of the petitioner's patients and insurance companies, coordinate with various dental laboratories to ensure that orders are submitted and received in a timely manner, and set up a system to ensure a smooth work flow and efficiency. Second, the beneficiary would assist office dentists with the analysis of patients' records; and third, the beneficiary would be involved in extensive research of new developments in the medical and dental care industries. In this third area, counsel asserts that the beneficiary would participate in research groups consisting of other dentists involved in research projects and would represent the petitioner's dental clinic in such projects. Counsel provides the following breakdown of the beneficiary's duties: 20 per cent, administrative and managerial duties; 40 per cent, study of patients' records to make recommendations for final approval of the clinic's dentists; 60 per cent research in the area of dental medicine. With regard to the proper academic credentials for the proffered position, counsel states that since the beneficiary has a degree in health sciences, which the *Handbook* identifies as a requirement of the job of medical and health service manager, the beneficiary is qualified to perform the duties of the position.

Upon review of the record, the petitioner has established none of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The position as described by the petitioner is both a health administration position as well as a dental assistant and research position. According to the 2004-2005 edition of the *Handbook*, these positions usually involve managers of entire clinical departments or specific areas of larger healthcare organizations. The *Handbook* notes that individuals with bachelor's degree in health administration usually begin as administrative assistants or assistant department heads in larger hospital. They may also begin as department heads or assistant administrators in small hospitals or nursing care facilities.

Contrary to counsel's assertions, the proffered position is not a health services manager. The proffered position is an amalgam position that combines the duties of dental technicians, such as the examination of x-rays with the duties of an office administrator, which includes handling the billing of insurance companies. The initial petition stressed the administrative aspects of the position. In the response to the director's request for further evidence, counsel then explained duties that stressed the beneficiary's involvement in research, and her supervision of the office staff as well as the dental team. Counsel's assertions as to job duties appear at variance with the comments of the petitioner in the same response. In its letter, the petitioner stated that it needed an experienced dental specialist/researcher to focus more on preventive care, including teaching people how to take better care of their teeth. Upon review of these duties, the position does not appear to be that of a health services manager.

With regard to the dental research duties of the proffered position, according to the *Handbook*, whatever the branch of science involved, and no matter what the setting for the research may be, it appears that the main focus of such researcher is on finding solutions to very specific problems, or answers to very specific questions. The solutions or answers which they seek, however, have a broad application rather than an individual scope. The goals of medical researchers are not necessarily the same as those of medical or dental practitioners, who diagnose individuals and seek solutions for those particular patients.

The duties of the proffered position appear to be focused on individual patient diagnosis and care. The research involved, consisting of the interpretation of x-rays, and the review of professional medical journals, reference works and research publications relating to providing diagnostic, therapeutic and preventive dental healthcare is the type of research done by dentists and their staff in order to treat patients. This is not the type of research contemplated by the *Handbook* in reference to the researcher positions. The dental literature the beneficiary would read, in fact, publishes the work of the medical and dental scientists conducting studies in laboratories and clinical facilities. There is no information on record to indicate that this is the type of work to be performed in the proffered position. It also appears that the proffered position is not that of a dentist, as the beneficiary would work only under the direct supervision of a dentist, and only in an auxiliary capacity. Thus, neither the *Handbook* nor the petitioner has established that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar firms, on appeal, the petitioner submitted two vacancy announcements for health services manager positions. These two announcements are not for parallel positions in similar firms. The first position is a coordinator for a medical plan's regional health services office who also serves as a liaison between regional offices. This position requires a registered nurse with a bachelor's

degree, while a master's degree is preferred. The second job vacancy announcement is for a dental operations manager/administrator for a management services organization in southwest Florida. This position requires a bachelor of science in health care administration or health care management with five years of experience in dental management or health care experience. The employer also prefers a master's degree in health care administration along with experience managing a multi-dental practice. While the latter vacancy announcement involves work in the dental care field, the job does not appear to be a position similar to the proffered position of dental specialist/researcher. The petitioner did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. According to the petitioner, the dental specialist/researcher job is a new position in its dental practice. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. As previously noted, the proffered position is not that of a health services manager, and thus does not require a baccalaureate degree in any of the related fields of study identified in the *Handbook*. To the extent that they are depicted in the record, the majority of duties of the position appear routine to the operations of a dental office, and could be performed by individuals such as dental assistants and technicians, office managers, and others. While counsel stated that the duties of the position were both complex and specialized, his assertions do not constitute evidence. *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the beneficiary's qualifications to perform the duties of the position, the petitioner submitted a diploma that established that the beneficiary has a doctor of dental medicine degree from De Ocampo Medical College in the Philippines, and is both licensed and registered to practice dentistry in the Philippines. While the beneficiary is qualified to perform dentistry in the Philippines, as stated previously, the proffered position is described as a health services manager which does not require a medical degree in dentistry for entry into such a position. As outlined in the *Handbook*, a baccalaureate or master's degree in health services administration is the more common academic credential for a health services manager. While counsel asserts that a medical degree in dentistry is analogous to a degree in health sciences, he provides no further evidentiary documentation to substantiate his assertion. The petitioner failed to submit an educational credentials evaluation or substantive letters of work experience from which CIS could analyze the beneficiary's qualifications. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the petitioner has not established that the beneficiary is qualified to perform the duties of the position.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of the position. 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.