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

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: WAC 03 178 51910 Office: CALIFORNIA SERVICE CENTER Date: OCT 0 8 [illegible]

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 is a dental laboratory that seeks to employ the beneficiary as a dental health manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 dental health manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 15, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: developing, planning, administering, and maintaining the petitioner's health information system; developing and implementing policies and procedures for documenting, storing, and obtaining information to process medical, legal, and dental documents, insurance data, and correspondence; supervising and training staff and lab technicians; accessing and retrieving computer data; acting as liaison between administration, support staff, and dental professionals; maintaining machinery reports; relaying information to technicians; and coordinating health and safety policies. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in health sciences, medical record administration, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the evidence does not establish that the job is so complex or unique as to require a baccalaureate degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that information in the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) indicates that the industry standard for a dental health manager is a bachelor's degree. Counsel states further that the petitioner normally requires a baccalaureate degree for the proffered position, and provides job postings to demonstrate that the petitioner's competitors also normally require such a degree. Counsel additionally states that the proposed duties are so specialized and complex as to require a baccalaureate degree.

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 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 AAO does not concur with counsel that the proffered position, which combines the duties of a dental technician supervisor or manager with an office and administrative support worker supervisor or manager, is a specialty occupation. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a dental laboratory technician job or a related supervisory or managerial job. On page 603, the DOL finds that most dental technicians learn their craft on the job, and that dental technicians in large dental laboratories may become supervisors or managers. There is also no evidence in the *Handbook* that indicates that a baccalaureate or higher degree, or its equivalent, is required for an office and administrative support worker supervisor or manager.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for a medical clinic manager for a medical clinic, a quality control manager for a manufacturer of polyester resins, and a clinical laboratory scientist/laboratory instrumentation service analyst for a healthcare system. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or 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. On appeal, counsel states that the petitioner's owner, who is a degreed professional, is currently performing the proffered position. Counsel also states that all of the petitioner's ten technicians hold a bachelor's degree or an associate's degree with several years of work experience. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.[1] In this regard, the petitioner fails to establish that the dental health manager position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge. Furthermore, as previously noted, there is no evidence in the *Handbook* indicating that a baccalaureate or higher degree, or its equivalent, is required for a dental technician supervisor or manager or an office and administrative support worker supervisor or manager.

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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. 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.

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[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

The director also found that the beneficiary is not qualified to perform the duties of a dental health manager. As noted previously, information in the *Handbook* indicates that most dental technicians learn their craft on the job, and that dental technicians in large dental laboratories may become supervisors or managers. For office and administrative support worker supervisors or managers, information in the *Handbook* indicates that most firms fill such positions by promoting clerical or administrative support workers from within their organizations. In this case, the beneficiary holds a dental laboratory technician diploma from an institution in Ukraine and related employment experience. An evaluator from Washington Evaluation Service, a company that specializes in evaluating academic credentials, concluded that the beneficiary's diploma is equivalent to two years of university-level study at an accredited U.S. university. The petitioner has therefore established that the beneficiary qualifies for the proffered position. The petition may not be approved, however, because the proffered position is not a specialty occupation.

It is additionally noted that, although the evaluator from Washington Evaluation Service also concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in dental laboratory technology from an accredited U.S. college or university, this conclusion 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, this portion of the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). 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.