



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: WAC 03 024 53188 Office: CALIFORNIA SERVICE CENTER Date: **OCT 25 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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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 office and seeks to employ the beneficiary as a dental researcher. 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 first 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 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 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 are 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 researcher. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the evidence, the beneficiary would: perform medical research by reviewing dental journals and literature to analyze issues, innovations, and developments relevant to dental surgery, diagnosing and treating diseases, injuries, and malformations of teeth, gums and related oral structures, diagnostic systems and surgical implements, and modes of treatment, surgery and other methods of rehabilitation; suggest possible diagnosis for unusual cases; recommend diagnostic tests and procedures for dentists' consideration; update and discuss patients' charts and files; elicit detailed patient histories; monitor dental equipment to ensure optimum operating conditions, safety, or need for repair; promote the services of the dental clinic; assist in planning, directing, and coordinating dental services; and administer office budget allocations. The petitioner requires a minimum of a bachelor's degree in dentistry for employment in the offered position.

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. Since counsel asserts that the classification of medical researcher, which would require a bachelor's degree, per the *Handbook*, corresponds to the proffered job duties, this job category will be examined in greater detail.

Although the job title suggests that the proffered position is akin to that of a medical researcher, a detailed examination of the *Handbook's* description of the medical researcher position reveals that it is different. 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 researchers 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 speaking with patients and reading dental literature, 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.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. The petitioner has not established that the proffered position meets any of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position – 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I)

As discussed above, the proffered job duties do not fit into the medical scientist/researcher category as described in the *Handbook*. Although varied, the duties of the proffered position appear to be those of a dental hygienist, beyond entry-level, with research duties and some additional administrative responsibilities. To the extent that the *Handbook* does not indicate that employers of dental hygienists require a bachelor's degree, it does not appear that a bachelor's degree is the minimum requirement for entry into this field.

II. 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 – 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard 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." *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 *Handbook's* conclusions about a degree requirement for dental hygienists were discussed in the previous section, and shall not be repeated here. In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." The petitioner did submit copies of three job advertisements in support of this proposition, however. Those advertisements are of little evidentiary value, however, as they are not from organizations similar in nature to that of the petitioning entity. One advertisement is for a research assistant in a laboratory setting at a children's hospital. One is for a research assistant in a health research center at a university. The third is for a research documentation specialist with a major pharmaceutical company. The positions advertised are clearly not from organizations similar to the petitioner. Accordingly the petitioner has

not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that this position involves duties seen as either unique or complex so that only an individual with a degree in a specific specialty could perform them. The research duties to be performed would be routinely performed in dental offices by office personnel in the treatment of dental patients.

III. The employer normally requires a degree or its equivalent for the position – 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

The petitioner does not assert that it normally requires a degree or its equivalent in a specific specialty for the proffered position, and offers no evidence in this regard.

IV. 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 – 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to those of a dental hygienist with responsibilities for keeping the supervising dentist up-to-date on developments in the field. Although the petition describes the position as a medical research assistant, no documentation as to any specialized or complex duties within the description of this position has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met this criterion.

The petitioner also asserts that previous agency decisions have classified the offered position as a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a dental researcher. For the reasons discussed above, the

proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is 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 not sustained that burden. Accordingly, the appeal will be dismissed.

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