



U.S. Citizenship
and Immigration
Services

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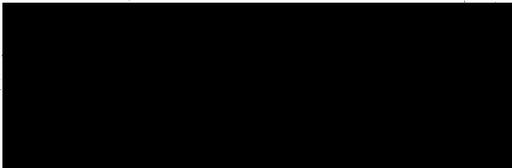


FILE: WAC 02 227 52916 Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

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:



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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a dental clinic and seeks to employ the beneficiary as a dental laboratory technologist. 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 stating that the proffered position qualifies as a specialty occupation.

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 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 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 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 laboratory technologist. 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: perform a variety of testing and perform any or all of the following – tooth and gum sensitivity testing, enzyme reaction tests, chemistry procedures, oral organism identification/typing and microscopic use; ensure the instruments being used are working to procedure standards, clean and calibrate instruments as needed, and document as required; ensure that quality control for testing is within established standards for tests, document as necessary to ensure accuracy of testing, and ensure all steps of the testing process are performed correctly; analyze laboratory results, write laboratory reports and make recommendations to the physician as to possible remedies available to patients based on testing results; ensure that results verified are accurate and meet standards for repeat testing; perform physical, dental, and psychological assessment of patients, including pertinent medical and dental history and physical; perform microscopic examination of gum tissue specimen using various types of microscopes to detect the presence of gum diseases such as fungal infection, malignant jaw tumors, and salivary gland diseases; consult with dentists regarding procedures as necessary, and notify the periodontist immediately of any severely abnormal findings; perform cell cultures and associated methodology to detect squamous cell carcinomas, giant cell tumors, and other oral osseous lesions; and properly inform patients of the risks and benefits of the procedure and answer any questions or concerns they may have. The petitioner requires a minimum of a bachelor's degree in dentistry for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner contends that the proffered position is essentially that of a clinical laboratory technologist. These individuals perform complex chemical, biological, hematological, immunologic, microscopic, and bacteriological tests, and generally work in hospital or independent laboratories. The duties of the proffered position, however, are similar to those noted for dentists. The *Handbook* notes that dentists diagnose, prevent, and treat teeth and tissue problems. The beneficiary would analyze laboratory results, write reports, and make recommendations to the dentist for possible patient treatment. He would also perform physical, dental, and psychological assessments of patients, giving consideration to patients' medical and dental histories, and then consult with the dentist regarding treatment/procedures. The beneficiary would exert considerable influence over the type

and length of treatment patients receive. 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 shall accordingly be withdrawn, and this matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of a licensed dentist. The director may obtain such additional information as he deems necessary in rendering his decision.

ORDER: The director's decision is withdrawn. This matter is remanded to the director for entry of a new decision commensurate with the directives of this opinion.