



U.S. Citizenship
and Immigration
Services

02



FILE: WAC 03 068 51092 Office: CALIFORNIA SERVICE CENTER Date: SEP 07 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

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 is a dental clinic. It seeks to employ the beneficiary as a dental services director, and endeavors to classify her 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, the petitioner submits a brief stating that the proffered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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 services director. Evidence of the beneficiary's duties includes the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to evidence the beneficiary would: (30 percent of the time) administer the dental program and direct the operations and activities of the dental office in accordance with accepted standards of the Dental Board of California and the petitioner's administrative policies; (20 percent of the time) recommend dental office policies, practices, and procedures and necessary changes in existing ones, if any, and implement such policies/changes; (20 percent of the time) determine the need to hire and fire additional staff, evaluate the qualifications of any dental staff to be hired, prepare work schedules, evaluate the work of staff, and observe staff members to ensure safe and ethical practices; (15 percent of the time) ensure that the clinical skill levels of the dental office's associate dentists and dental staff are at par with current developments in dental medicine and technology, and propose, establish, and implement an internal training program for the office's associate dentists and staff; and (15 percent of the time) prepare and submit a budget to management to justify expenditures for dental equipment, supplies, and personnel. The petitioner requires a minimum of a bachelor's degree in dental medicine for entry into the proffered position.

The director found that: the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner submits a brief stating that the proffered position qualifies as a specialty occupation and meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis. For example, 50 percent of the beneficiary's duties involve "administering the dental program and directing the operations and activities of the dental office in accordance with accepted standards of the Dental Board of California;" and "recommend dental office policies, practices, and procedures and the necessary changes in the existing ones, if any, and implement such policies/changes." There is no indication as to what tasks the

beneficiary would perform, or even the nature of those tasks, in administering the dental program and directing the operations and activities of the dental office per the standards of the Dental Board of California. Nor can it be determined from the job description provided what tasks the beneficiary would perform, or the nature of the tasks, in recommending and implementing dental office policies, practices, and procedures with necessary changes. It is incumbent upon the petitioner to describe the duties of the proffered position in sufficient detail to permit an analysis of the position and to determine the nature and complexity of the duties to be performed. This, the petitioner failed to do. As such, at least with regard to 50 percent of the duties of the proffered position, it cannot be determined that: a baccalaureate or higher degree is normally the minimum requirement for entry into the position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or the position's duties are so specialized and complex that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), (2), and (4).

The petitioner does not assert that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The remaining 50 percent of the duties to be performed by the beneficiary involve general managerial skills with some quality assurance/training responsibilities. The performance of those duties does not require a minimum of a baccalaureate level education in a specific specialty. As noted in the *Handbook*, 2004-05 edition, the educational backgrounds of top executives and general or operations managers vary widely, with degrees in any number of disciplines being sufficient for these management positions. Indeed, many managers obtain their positions through job experience and on the job training alone, without a baccalaureate level education.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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 and the appeal shall accordingly be dismissed.

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