



U.S. Citizenship
and Immigration
Services

02



FILE: WAC 02 245 50247 Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

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
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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 office that seeks to employ the beneficiary as a dental assistant. 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that the petitioner established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 January 29, 2003; (4) the petitioner's letter that responds to the director's request; (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 assistant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and the petitioner's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve basic supportive dental procedures that involve interactions with patients; specific dental procedures, such as taking impressions for diagnostic and opposing models, bleaching trays, temporary crowns and bridges and sports guards; the supervision and coordination of back office dental assistants, and the training of new assistants. In its response to the director's request for further evidence, the petitioner provided the following breakdown of the percentage of time that the beneficiary would spend in her work duties: interview patients and take medical history (ten percent); take and process x-rays (30 percent); prepare instruments and patients for treatment, and assist dentist with procedures (50 percent); and supervise other dental assistants, check and place orders for inventory (ten percent). The petitioner stated that he required candidates for the position to have completed a dental assistant program and to possess a high school diploma. He then stated that he preferred to hire candidates who have at least a baccalaureate degree, and that he found that foreign-trained dentists are ideal candidates for the proffered position.

The director found that the proffered position was not a specialty occupation and referred to the classification of dental assistant in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that a baccalaureate degree in a specific specialty was not required for entry into the position. The director found further that the petitioner failed to establish the first, second, or fourth criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that the employer normally requires a degree or its equivalent for the position. Counsel asserts that the petitioner demonstrated that his dental practice now requires an individual with the beneficiary's qualifications for the position of dental assistant, even though this standard is not necessarily reflective of industry-wide practice.

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. With regard to the proffered position, as the director correctly noted, the *Handbook* does not establish that the position of dental assistant requires a baccalaureate degree for entry into the

position. With regard to training for dental assistants, the 2004-2005 edition of the *Handbook* states: "Most assistants learn their skills on the job, although an increasing number are trained in dental-assisting programs offered by community and junior colleges, trade schools, technical institutes, or the Armed Forces." Thus, the *Handbook* does not establish that the minimum requirement for entry into the position is a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar dental offices, the petitioner submitted no further documentation. 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. The petitioner stated in its letter of support that it employs four dental assistants; however the petitioner does not indicate that all of these employees possess baccalaureate degrees in a field relevant to the duties of the job position. In its response to the director's request for further evidence, the petitioner stated that it hired two foreign-trained dentists [REDACTED] (from Mexico [REDACTED] [REDACTED] in 2002. Prior to these two hires, the petitioner stated that it had also hired Ublester Gomez (from Mexico) as a dental assistant in 1996. The petitioner did not provide any further documentary evidence to further substantiate these assertions, such as diplomas for the foreign-trained dental assistants and proof of their employment by the petitioner. In addition, the petitioner did not provide any documentation with regard to the academic credentials for the remaining dental assistants. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Notwithstanding the lack of documentary evidence to substantiate these statements, the hiring of these three individuals as dental assistants over the past six years does not meet the statutory criterion outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

In addition, in its response to the director's request for further evidence, the petitioner clearly stated that it requires a high school degree and dental assistant certification for the position, that it prefers to hire individuals with a baccalaureate degree for the position, and that it finds foreign-trained dentists to be ideal candidates for the position. Without more persuasive evidence, the petitioner has not established that it normally requires a degree or its equivalent for the position. Therefore, the petitioner has not met this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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 of the position appear routine to any dental assistant position. While the petitioner provided a thorough list of job duties, it provided no further details as to any specialized or complex duties that the beneficiary would perform as a dental assistant. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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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.