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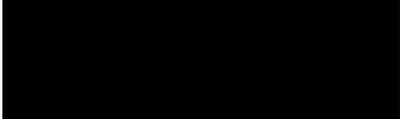


**U.S. Citizenship
and Immigration
Services**



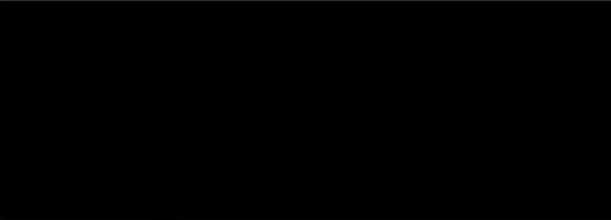
DR

FILE: EAC 02 285 53176 Office: VERMONT SERVICE CENTER Date: **SEP 02 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

 Robert P. Wiemann, Director
Administrative Appeals Office

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 lab technician. 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 based on the unique, specialized, and complex nature of the duties of the position.

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 November 27, 2002; (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 laboratory technician. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. According to the petitioner, the beneficiary's duties would involve the performance of specific dental processes such as performing vitality tests, taking impressions for study models, applying topical fluoride, placing or removing a rubber dam, and preparing, fitting, or removing temporary crowns. The beneficiary would also be involved in the development of ceramic and ceramic and porcelain crowns and bridges with metal and porcelain attachments. The petitioner appears to indicate that the duties of the position would require a candidate to have a baccalaureate degree. The petitioner in its letter of support also indicated that the possession of a doctor of dentistry and a dental assistant certificate exceeded the minimum requirements of its job offer.

The director found that the proffered position was not a specialty occupation and referred to the classifications of dental assistant and dental laboratory technician in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information on training requirements for these two classifications, 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 any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is unique, and also that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel states that the petitioner provides state of the art professional dental prosthetics for use by dentists and dental clinics, specializing in the design of dental implants, as well as the analysis of application to certain prosthetic devices and creating ceramic and veneer restorations which are vital to proper treatment. Counsel provides a precise description of the development of crowns and other dental prosthetics, and states that the beneficiary performs all stages of the prosthetic development work, whereas in other work sites, each dental laboratory technician only performs a few stages of the work. In addition, counsel states that a high degree of manual dexterity, good vision, and the ability to recognize very fine color shadings and variations in shape are necessary. Counsel also states that the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* has a specific vocational preparation (SVP) level of seven for the position. Counsel submits no further documentation.

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, the petitioner described the position as both a dental assistant and as a dental laboratory technician. As the director correctly noted, the *Handbook* does not establish that the positions of dental assistant or dental laboratory technician require a baccalaureate degree for entry into the position. 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 stated in its response to the director's request for further evidence that many dentists require a baccalaureate degree in dentistry as a minimum requirement for the position; however, the petitioner provides no further documentary evidence to substantiate this assertion. 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. With regard to counsel's statement, on appeal, that the position is unique, the record also contains no documentary evidence to further substantiate counsel's assertion. 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). 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 response to the director's request for further evidence that it had no other employees currently employed in the proffered position. The petitioner stated that due to the increase in its business, it was presently seeking to hire a dental laboratory technician. Without more persuasive evidence, the petitioner cannot meet 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 are routine duties for any dental laboratory technician position. The skills outlined by counsel, while determinant of the quality of the dental prosthetics, are not necessarily viewed as specialized or complex. While the petitioner provided a precise description of the design and manufacture of dental products, this description does not necessarily establish that the skills and duties of the position require the specialized knowledge usually obtained through a baccalaureate degree in a specific specialty. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel refers to the SVP level of the proffered position, as described in the *DOT*. The AAO does not regard the *DOT* as a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

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.

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