



U.S. Citizenship
and Immigration
Services

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FILE: SRC 01 074 51098 Office: TEXAS SERVICE CENTER Date: 11/14/14

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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

Administrative Appeals Office
Texas Service Center
11/14/14

DISCUSSION: The director of the service center 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 laboratory seeks to employ the beneficiary as a dental lab manager. 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 the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation and submits previously submitted evidence.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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 lab manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail handling the petitioner's technical, management, financial, and business development activities; fabricating and repairing dental and orthodontic appliances; and planning and directing work activities. The petitioner's May 2, 2001 letter stated that a candidate for the proffered position must possess "at least a baccalaureate degree (or equivalent)."

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the duties of the proffered position are performed by a dental laboratory technician, a position that does not require a bachelor's degree. According to the director, managerial positions generally are not considered specialty occupations unless the field or industry requires a baccalaureate degree. The director found the submitted approval notices unpersuasive in establishing that the petitioner consistently required that a candidate for the proffered position hold a baccalaureate degree. The director mentioned that approval of the beneficiary's prior H-1B petition did not mean that the beneficiary held a baccalaureate degree, and stated that the issue to be decided was whether the proffered position actually required a baccalaureate degree. None of the petitioner's evidence, the director stated, demonstrated this bachelor's degree requirement. The director mentioned that the H-1B approval for the beneficiary as well as another employee was granted based on equivalence under 8 C.F.R. § 214.2(h)(4)(D), and noted that the beneficiary possesses the equivalent to an associate's degree. Finally, the director stated that the approval notices were inadequate to support the petitioner's assertion that the equivalent of a bachelor's degree was the normal requirement for a dental laboratory manager position.

On appeal, counsel states that the proffered position qualifies as a specialty occupation because CIS has already approved similar H-1B petitions. Counsel furthermore states that the beneficiary's experience and education qualify him to perform the duties of the position.

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.

Counsel states that CIS has already determined that the proffered position is a specialty occupation since CIS has approved H-1B petitions filed by the petitioner on behalf of the beneficiary and another person based on the same position. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Texas Service Center in the prior cases. In the absence of all of the corroborating evidence contained in the record of proceedings in the two cases, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original H-1B petitions were approved in error.

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, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approvals were granted in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The AAO next considers 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)).

As previously mentioned, 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. In the May 2, 2001 letter, the petitioner repeatedly stated that its job requirement for the position was a "baccalaureate degree" or a "baccalaureate degree (or equivalent)." The evidentiary record reveals that the petitioner does not state that a candidate is required to possess a bachelor's degree in a *specific specialty* for entry into the proffered position. Consequently, based on the evidentiary record, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the evidentiary record reveals that the petitioner simply requires a bachelor's or higher degree, without indicating a specific specialty. Accordingly, the petitioner cannot establish that it requires a baccalaureate or higher degree in a specific specialty that is common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The petitioner, therefore, fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the employer establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. As discussed, because the evidentiary

record discloses that the petitioner merely requires a bachelor's degree, without indicating a specific specialty, it fails to establish the third criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it show 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 in a specific specialty. Again, although the petitioner requires that a candidate possess a bachelor's degree, it failed to indicate that the degree must be in a specific specialty. Accordingly, the petitioner cannot establish 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 in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO notes that the director properly determined that the *Handbook* reveals that the duties of the proffered position are performed by a dental laboratory technician, a position that does not require a bachelor's degree. The *Handbook* also mentions that technicians may advance to become supervisors or managers; consequently, a supervisory or managerial position would not require a bachelor's degree.

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.