

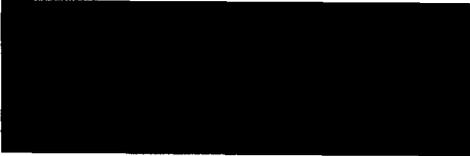
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 229 53364 Office: CALIFORNIA SERVICE CENTER Date: *AVG 03 05*

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

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 The director's decision will be withdrawn.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

The petitioner is a dental office that seeks to employ the beneficiary as a dental scientific research associate. 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 evidence does not establish a bona fide position. On appeal, counsel submits a brief.

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.

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 petitioner is seeking the beneficiary's services as a dental scientific research associate. 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 studying and analyzing data provided by past research as well as from medical and dental journalism textbooks and medical research materials and other resources to create a methodology for the development of biological materials science protocols as it applies to the investigation of fluoride interfaces; planning and directing studies to investigate oral disease, preventative methods and treatments; performing analysis of data, applying statistical techniques and scientific knowledge, preparation of reports and presentation of finding; investigating the cause, progress, parasites or micro organisms on the physiological process of oral disease; plan methodological design of research study and arrange for data collection; consulting with and advising associates; conferring with health department, industry personnel, dentists, and others to develop health safety standards and programs to improve oral health. The petitioner indicated that the duties of the position require the application of a general body of knowledge normally obtained in an academically recognized course of study leading to an advanced degree in the United States. The petitioner noted that the beneficiary would not provide patient care.

The director noted that the petitioner indicated in his initial letter of support that he is a professor at UCLA and that the research project the beneficiary is to work on is part of his responsibilities as a professor. The petitioner noted that he would be employing the beneficiary through his practice to conduct research for an entity named U.S. Water. The director issued a request for evidence requesting information about the petitioner and its relationship with U.S. Water. The petitioner submitted a letter from UCLA which noted that the petitioner is part-time faculty with the position of lecturer. The director noted that the petitioner is not a professor.

Additionally, the petitioner submitted printouts of a web site for U.S. Water and Health Quench by U.S. Water as well as patent information regarding the petitioner's products. The director found the petitioner failed to provide contracts with U.S. Waters. The director found that because there were no contracts between the petitioner and U.S. Water and that the petitioner was a lecturer and not a professor at UCLA and the evidence does not establish that there will be a bona fide position.

On appeal, counsel notes that the petitioner had submitted documents from its website for US Water.tv, the company used by the petitioner to develop, test and market fluoride absorption products. Counsel notes that these documents outline in detail the research conducted by the petitioner. Counsel contends that the documents explained the history of the invention and the health benefits of the proposed products. The petitioner had submitted a research paper that he had co-authored on a fluoridated product as well as an abstract for a U.S. Patent, which is co-owned by the petitioner. The petitioner indicates that it has another patent pending for a product called "Health Quench," a bottled drink that increases fluoride consumption. Counsel contends that the petitioner explained that the beneficiary's duties would include researching the potential health benefits of Health Quench.

On appeal, counsel notes that the petitioner explained that it is using its dental offices as the petitioning entity because it has an existing payroll. Counsel explains that U.S. Water is not yet incorporated and is searching

for investors. Counsel contends that the owner of the petitioner holds the patent on a fluoridated product. With reference to the difference between the title of lecturer and professor at UCLA, counsel explains that Dr. [REDACTED] is a faculty member at UCLA as indicated in the letter from the university.

The petitioner provided information from the website of [www.\[REDACTED\]](http://www.[REDACTED]) that identified the owner of the petitioner as a contact person for the research division, as well as [REDACTED] PhD. The website information noted that Dr. [REDACTED] and Dr. [REDACTED] published a paper on their investigation of glass ionomer cement in the International and American Dental Research Meeting [http://www.\[REDACTED\]](http://www.[REDACTED]) in 1987. The website explained that Health Quench is a product. The petitioner submitted a patent abstract for chewing gum composition with fluoride and citric acid, patent [REDACTED]. The owner of the petitioner and [REDACTED] are listed as the inventors on the patent. The petitioner also submitted examples of test results from recent in-vitro trials to gauge fluoride, lysine and pH levels. The petitioner indicated that the trials are necessary to evaluate how to achieve maximum fluoride and calcium absorption. The petitioner asserted that the beneficiary's services are needed to evaluate and summarize test data.

Upon review of the record, the AAO finds that the petitioner satisfactorily explained that he is a part-time faculty member of UCLA and the owner of a dental practice. The petitioner has explained the relationship between itself and U.S. Water as well as the product Health Quench.

Upon review of the record, there is insufficient evidence in the record to determine whether the petitioner has established that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii).

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's February 19, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.