

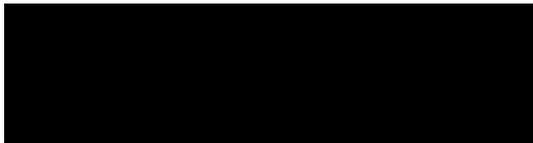
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



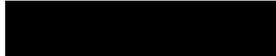
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

D2



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 01 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for *Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a dental practice specializing in oral and maxillofacial surgery. It seeks to employ the beneficiary as a dentist specialist/researcher and 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 on the ground that the record failed to establish that the proffered position is 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.

As provided in 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 notice of intent to deny; (3) the petitioner's response thereto; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a dental practice with six employees and gross annual income of \$500,000 that specializes in oral and maxillofacial surgery, reconstructive facial and jaw surgery, and oral implants. The petitioner states that its business is growing rapidly and needs the services of a dental specialist/researcher to enhance its operations and services. The duties of the proffered position are described as follows:

[The beneficiary] will administer and direct the activities of the dental surgeries in accordance with accepted national standards, administrative policies and OSHA [Occupational Safety and Health Administration] compliance guidelines. She will administer a program and direct activities in accordance with accepted national standards and administrative policies. She will be responsible for conducting the necessary research to determine the cause and or effect of the disease, disorder or condition that the patient is exhibiting and prepare a written analysis for the surgeon. This research is significant to the surgeon because it assists the surgeon in educating the patient about the procedure that will be performed, which is a critical element in providing quality care to our patients. Likewise, she will confer with the clinical staff to formulate policies and recommend procedural changes. She will confer with the personnel regarding policies and recommend procedural changes to increase daily production. She will, as needed, hire additional staff, fire and evaluate their work. Furthermore, she will provide this practice with improved methods and procedures for the sterilization of our surgical instruments and materials in order for our surgeons to conduct examinations in a safe and sanitary environment. Lastly, she will oversee the billing of patients and insurance companies. She will also coordinate with the various laboratories that we utilize to assure that orders are submitted and received in a timely manner to improve efficiency.

The petitioner asserted that the beneficiary was qualified for the job by virtue of her extensive background in dentistry, which includes a doctor of dental medicine degree from De Ocampo Memorial College in the Philippines, granted on October 15, 1983, and work experience as a licensed dentist in the Philippines.

In his decision the director determined that the duties of the proffered position, as described by the petitioner, appeared similar to those of a health services manager in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Based on the evidence of record, the director concluded that the proffered position did not involve as much dental research as it did daily management duties of the dental office. The director found that a baccalaureate degree in a specific specialty is not the normal, industry-wide minimum requirement for entry into the occupation. The record did not show that the petitioner normally requires applicants for the position to have a baccalaureate or higher degree in the field, the director declared, or that the duties of the position and its level of responsibility indicate complexity or authority beyond that normally encountered in the occupational field. In the director's view, the record failed to show that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of education. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2 (h)(4)(iii)(A).

On appeal counsel asserts that the director should have approved the petition because a health services manager requires a specialty degree, according to the *Handbook*, thus qualifying the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Performing the duties of the position

requires specialized knowledge associated with a dental degree, counsel contends, thus qualifying the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) as well. Counsel maintains that the proffered position meets three of the four criteria of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), though he does not identify the third criterion applicable to the instant petition. As explained in greater detail by counsel in the appeal brief, the dental specialist/researcher will oversee the work of the clinic's dental assistants, conduct research on patients' diseases, disorders, or conditions, purchase maxillofacial supplies such as micro-etching machines, conduct educational programs for patients and dental assistants on particular oral treatments, coordinate the implementation of treatment plans, conduct ongoing research on types of dental implants and their comparative quality, determine relevant facts and procedures in oral and maxillofacial surgery, and assist the dentist in analyzing patient records and making recommendations on improving diagnoses and treatments. The position does not involve any direct patient care.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. Unlike the director, the AAO does not view the described duties of the proffered position as those of a health services manager. As indicated in the DOL *Handbook*, which CIS routinely consults as an authoritative source of information about the duties and educational requirements of particular occupations, health services managers work in larger facilities, in terms of personnel, than the petitioner's one-dentist, six-employee dental practice. Furthermore, they do not generally conduct any research activities, which is a primary feature of the proffered position. See *Handbook*, 2004-05 edition, at 55-57. The AAO determines that many of the duties of the proffered position are performed by dentists, as that occupation is described in the *Handbook*, *id.*, at 281. The pertinent excerpts from the *Handbook* description read as follows:

Dentists diagnose, prevent, and treat problems with teeth or mouth tissue . . . . They provide instruction on diet, brushing, flossing, the use of fluorides, and other aspects of dental care . . . .

Dentists in private practice oversee a variety of administrative tasks, including bookkeeping and buying equipment and supplies. They may employ and supervise dental hygienists, dental assistants, dental laboratory technicians, and receptionists.

The *Handbook* description accords with the definition of a dentist under the California Business and Professions Code, Section 1625-1636.6, which explains under section 1625 that a person practices dentistry when the person "performs, or offers to perform, an operation or diagnosis of any kind." The types of duties described in the *Handbook* and California state law are amply reflected in the proffered position. Based on the duties of the proffered position described by the petitioner and discussed in this decision, the AAO concludes that the beneficiary would be performing the services of a dentist.

With respect to the training and educational requirements for dentists, the *Handbook* states the following:

All 50 States and the District of Columbia require dentists to be licensed. To qualify for a license in most States, a candidate must graduate from one of the 55 dental schools accredited by the ADA's Commission on Dental Accreditation in 2002 and also must pass written and practical examinations . . . .

Dental schools require a minimum of 2 years college-level pre dental education, regardless of the major chosen. However, most dental students have at least a bachelor's degree . . . .

Most dental schools award the degree of Doctor of Dental Surgery (DDS). The rest award an equivalent degree, Doctor of Dental Medicine (DMD).

*Handbook*, id., at 281-82. Thus, a degree in dentistry is the standard educational requirement for anyone seeking employment as a dentist. The proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), therefore, because a baccalaureate or higher degree, or its equivalent, is the normal minimum requirement for entry into a dental position.

The director's decision denying the petition on the ground that the proffered position is not a specialty occupation must be withdrawn. The petition cannot be approved, however, unless the petitioner can establish that the beneficiary is qualified to perform the services of the proffered position. Since the dental specialist/researcher position involves the practice of dentistry, it requires state licensure. There is no evidence currently in the file that the beneficiary has the requisite state license.

The matter will be remanded for entry of a new decision. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified for the proposed position, which involves the practice of dentistry. 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 proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision of March 15, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.