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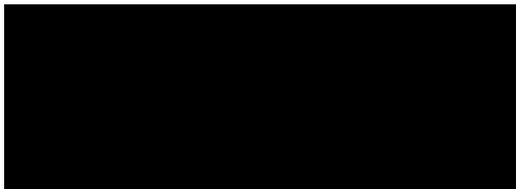
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

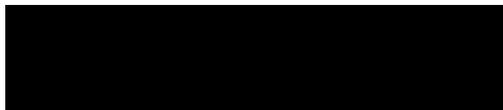
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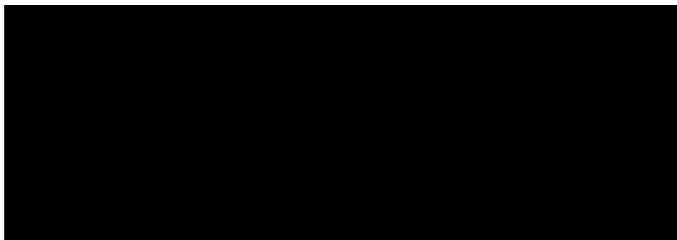
FILE: WAC 02 201 50820 Office: CALIFORNIA SERVICE CENTER Date: **JUL 07 2005**

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 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 director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion is granted, and the prior decision of the AAO is withdrawn. Upon consideration of the appeal, the director's decision will be withdrawn.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 practice that seeks to employ the beneficiary as a dental specialist/researcher. 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 submits a brief and additional 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 specialist/researcher. 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 maintaining complete dental reports and related documentation of the patients' records; examining patient's records to compose complete dental reports for the ultimate approval of the dentist; keeping up-to-date on the latest dental research results and utilizing the dental library to perform the duties; coordinating dental care evaluation and developing criteria and methods for such evaluation/reports; conferring with personnel regarding operational policies and recommending procedural changes; setting up a system of operations and activities to be implemented in the dental office and laboratory that will assure a smooth flow of work, and improve overall efficiency of the business. The petitioner stated that the position does not require a state license as the "position does not involve any direct care and the [b]eneficiary will not engage in any direct patient care activities." The petitioner indicated that this position requires a very strong dental background and this type of knowledge may only be obtained by attending a dental school.

The director requested a more detailed job description and evidence that the proffered position is a specialty occupation as described by the above listed regulations.

Counsel for the petitioner responded to the director's request for evidence. Counsel stated that the administrative duties would take 30% of the beneficiary's time. The duties relating to the analysis of patients' records and assisting the clinic's dentists in preparing patients' files for determinations and diagnosis will occupy about 40%. The medical and dental research and composition of reports based on such research is 30%. Counsel indicated that the beneficiary would not directly supervise the clinic's staff but will analyze and determine the quality of their work, and employees' compliance with established procedures and standards. Counsel stated that 70% of the duties require formal training in dental medicine. Counsel indicated that the remaining 30% of the duties will involve the creation and administration of the procedures and policies at the dental clinic and that such duties resemble the duties of a health services manager. Furthermore, counsel stated that even the position's administrative duties require the beneficiary's expertise in the field of medicine. The petitioner submitted a letter stating that the beneficiary would focus on the effectiveness of fluoride treatments and sealant treatments to reduce tooth decay. The petitioner stated that the beneficiary would conduct extensive research by collecting data and experiments to compare the effectiveness of fluoride through water fluoridation. The petitioner stated that it does "this studies [sic] for our commitment to our patients, and provide them best and quality care, and to contribute a special study in the world of dentistry."

The director determined that the proffered position was not a specialty occupation. The director found that some of the duties are similar to that of a dentist and noted the beneficiary does not have a license to practice dentistry. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that some of the duties are similar to those of a dental assistant and an office manager. The director found that an experienced dental assistant could perform the duties that the petitioner claims require an individual who has completed a professional degree in dentistry. The director determined that the

information indicated that a baccalaureate level of training is not the normal industry wide minimum requirement for entry into the occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that a baccalaureate level training or higher is required for a dental specialist/researcher. Counsel contends that the proffered position resembles the position of a medical health services manager. Counsel notes that the *Handbook* indicates that a bachelor's degree is adequate for some entry-level positions in smaller operations. Counsel concludes that as the instant position of dental specialist/researcher resembles that of a medical and health services manager, it follows that the instant position requires as a minimum a four-year degree in a related field such as dentistry. Furthermore, counsel indicates that the proffered position requires more ability and training than that of health services manager. Counsel refers to submitted internet postings in support of the petitioner's contention that there is a degree requirement common in the industry. Additionally, counsel contends that the position is so complex and unique that it can only be performed by an individual with a degree.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO finds that many of the beneficiary's duties are performed by dentists, as that occupation is described in the *Handbook*, which is a resource that the AAO routinely consults for information about the duties and educational requirements of particular occupations. The AAO's finding is also substantiated by the definition of a dentist under the California Business and Professions Code. The *Handbook* states that dentists diagnose, prevent, and treat problems with teeth or mouth tissue; the California Business and Professions Code Section 1625-1636.6 explains under section 1625 that a person practices dentistry when the person "performs, or offers to perform, an operation or diagnosis of any kind."

These descriptions of a dentist are encompassed within the beneficiary's duties, which include: "examining patients records to compose complete dental reports for the ultimate approval of the dentist", "analysis of patients' records and assisting the clinic's dentist's in preparing patients' files for determination and diagnosis." Additionally, the petitioner indicated that 70% of the duties require formal training in dental medicine.

The *Handbook* states the following regarding the training of persons seeking employment as dentists:

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.... 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).

As a degree in dentistry is the standard educational requirement for anyone seeking employment as a dentist, the AAO concludes the petitioner's proffered position, which is that of a dentist, meets the requirements under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. Accordingly, the proffered position is a specialty occupation.

Counsel's statement, that the submitted evidence about licensing requirements for dentists, registered hygienists, and registered dental assistants shows that the proposed position does not require a license, is not persuasive. This document, entitled "Dental Board of California," explains the licensing requirements for dentists, registered hygienists, and registered dental assistants; it does not discuss the proposed position. The petitioner's statement, that the "position does not involve any direct care and the [b]eneficiary will not engage in any direct patient care activities," does not establish that the proposed position will not require licensure. Furthermore, counsel noted "[t]he duties of the position in question are of a type that require expertise of a dental doctor, and such requirement does not vary depending on the size of the business." As already discussed, the *Handbook* and the California Business and Professions Code reveal that some of the beneficiary's duties involve the practice of dentistry.

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the proposed position, dental specialist/researcher, which involves the practice of dentistry and therefore requires licensure. The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner the opportunity 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 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 3, 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.