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U.S. Citizenship
and Immigration
Services

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JUN 1 2005

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:

[Redacted]

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.

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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 The decision of the director is withdrawn. The petition is remanded for the entry of a new decision.

The petitioner is a dental health provider that seeks to employ the beneficiary as a prosthodontic dental service 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 submits a brief.

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 prosthodontic dental service 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 transferring face-bow measurements and mount casts on a fully or semi-adjustable dental articulator, and survey casts in preparation for the attending prosthodontist, who later will use such to determine the type of precision attachments and design of the metal framework to be used in the case; assisting the prosthodontist in case planning, from conventional crown and bridge to pre-prosthetic surgical treatment options, in restoring dental occlusions; communicating with prosthetic dental laboratory technicians the specifications outlined by the prosthodontist to ensure precision of work products; acting as an educational ambassador, assisting the prosthodontist in answering patients' questions and concerns in the treatment planning phase and instructing patients about the post-insertion phase on proper home care and oral hygiene and following up on such patients on a long-term basis; purchasing and maintaining prosthodontic supplies such as precision instruments, prosthetic hanau articulating devices, and necessary laboratory equipment, and supplies such as a micro-etching machines porcelain glazing oven, and dental soldering equipment. The petitioner stated that the beneficiary qualifies for the proposed position based on his doctoral degree in dental medicine, which is considered equivalent to a doctor of dental surgery degree awarded by an accredited school of dentistry in the United States.

The director determined that the proffered position is not a specialty occupation. The director stated that the duties of the proffered position are a combination of those performed by a dental assistant, dental technician, and a dental laboratory technician as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reports that these occupations do not require a baccalaureate degree.

On appeal, counsel states that the evidence establishes that the proposed position is a specialty occupation; that the position is not analogous to a dental assistant; and that the beneficiary will have no physical contact with patients. Referring to the *Handbook*, counsel states that the beneficiary's duties resemble those of a medical and health services manager, an occupation that requires a bachelor's degree in health services administration, health sciences, public health, or a related discipline for entry-level positions, or a master's degree in an appropriate field for a specialized medical practice. Counsel states that the petitioner had submitted a letter from another dental office which states that it requires a bachelor's degree for dental service managers. The beneficiary, counsel states, will assure that proper quality standards are followed. Counsel states that a degree in dental medicine is required in assisting the dentist in analyzing patients' records and making recommendations about improvements in diagnosis and treatment for the dentist's final review and approval. Counsel states that the job advertisements show that the proposed position is a specialty occupation. Counsel refers to *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980) and states that the requirement of showing that it is common in the industry to require a bachelor's degree for a position relates to establishing that a degree is a "minimum realistic prerequisite for entry into a profession"; it does not relate to the size of a company or its industry. Counsel refers to *Young China Daily vs. Chappell*,

742 F. Supp. 552 (N.D. Cal., 1989) and states that in the case the court determined that the size of the operation bears no rational relationship to the need for a professional. According to counsel, most of the beneficiary's duties are medical in nature, requiring analysis of a dentist's work, and that they include specialized research in dental medicine and devising methods to implement the research.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The petitioner is a dental clinic. As described by the petitioner, the beneficiary will perform duties as a prosthodontic dental service manager. In this role, the beneficiary will manage or conduct as a manager a place where dental operations are performed. According to Section 1625 of the California Business and Professions Code, which relates to the practice of dentistry, a person practices dentistry when he or she does one or more of the following:

- (a) By card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist;
- (b) Performs or offers to perform, an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structure, or corrects malposed positions thereof;
- (c) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structure, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance;
- (d) Makes or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures; and
- (e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise a place where dental operations are performed.

In the instant case, the beneficiary's duties fall under paragraph (e) of Section [REDACTED] of the California Business and Professions Code: he manages or conducts as manager a place where dental operations are performed. Thus, the petitioner satisfies 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, prosthodontic dental service manager, which involves practicing dentistry. Moreover, counsel states that "a degree in dental medicine is required in assisting the clinic's dentist in analyzing patient's [sic] records and making recommendations as to improvement [sic] in diagnosis and treatment for the licensed dentist's final review and approval." This duty entails practicing dentistry: the beneficiary will perform a diagnosis, which falls under paragraph (b) of Section [REDACTED] of the California Business and Professions Code.

Counsel states that the petitioner had submitted a letter from another dental office that states that it requires a bachelor's degree for dental service managers. This letter fails to establish the petitioner's educational requirement of a bachelor's degree in dental medicine or a doctor of dental surgery degree. The letter does not elaborate on the duties of its dental services director. Furthermore, as already discussed in this decision, the California Business and Professions Code indicates that a person who manages or conducts as a manager a place where dental operations are performed is considered a dentist, as a person who performs a diagnosis.

The petition may not be approved however, as no evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – a dentist, including licensure under the laws of California. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a dentist, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at 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 March 4, 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.