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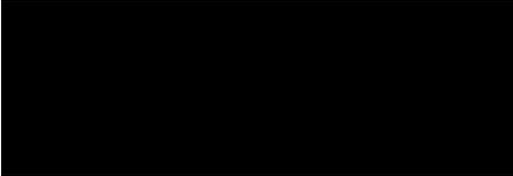


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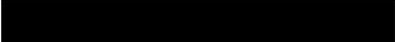
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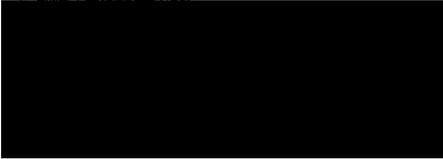


FILE: EAC 04 003 52631 Office: VERMONT SERVICE CENTER Date:

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 clinic specializing in cosmetic and restorative surgery. It seeks to employ the petitioner as a medical researcher/oral pathologist and to classify him 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 beneficiary was not qualified to perform the services of a specialty occupation. In particular, the director found that the beneficiary did not meet the licensure requirement for H-1B classification set forth in section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184 (i)(2)(A), which provides that an alien seeking such classification must have “full state licensure to practice in the occupation, if such licensure is required to practice in the occupation.” The licensure requirement for H-1B classification is further specified by regulation at 8 C.F.R. § 214.2(h)(4)(v), which reads as follows:

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure*
- C. *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

New York, the state of intended employment, requires dentists to be licensed. The record indicates that the beneficiary, a native of Turkey, earned a master of science in the field of dentistry from the University of Ege, in Turkey, on August 25, 1999. According to an education evaluation service in Wellesley, Massachusetts, the beneficiary’s degree is equivalent to a doctoral degree in dentistry from an accredited academic institution in the United States. There is no evidence in the record that the beneficiary was licensed to practice dentistry by the State of New York, or that he possessed a temporary license, at the time the instant H-1B petition was filed on October 3, 2003. In a letter accompanying the petition the petitioner listed the duties of the medical researcher/oral pathologist position as follows:

- Perform various medical tasks on oral tissue to ascertain nature of disease.
- Advise on appropriate course of treatment and medication to be prescribed.
- Determine whether disease is viral or bacterial and advise appropriate dental personnel of the finding.
- Consult with other pathologist and dental staff to reach appropriate resolution for a particular patient’s problem.

The petitioner stated that the position required a degree in dentistry, but not a state license. The petitioner's letter was accompanied by an excerpt from New York State's education law indicating that an unlicensed individual may provide supportive services to a dentist as long as they do not include any service which constitutes the practice of dentistry.

In a Form I-797 letter dated October 9, 2003, the service center advised the petitioner that the record failed to demonstrate that the proffered position did not involve the practice of dentistry. The petitioner was requested to submit the beneficiary's license to practice oral pathology in New York, or a letter from the licensing authority stating that licensure will be granted upon the beneficiary's arrival, or a letter from the licensing authority stating that licensure is not required for the proffered position. The petitioner responded by letter dated November 6, 2003, stating that the duties of the proffered position were not those of a dentist, but rather of an oral pathologist whose work was akin to that performed in dental or medical laboratories. The petitioner cited a section of New York State law which did not list oral pathology as a profession requiring a license. The proffered position does not require contact with patients, the petitioner explained, and therefore did not constitute the practice of dentistry.

In her decision, dated November 17, 2003, the director noted the petitioner's failure to submit any of the three alternative items of documentary evidence specifically requested on October 9, 2003 to show that the beneficiary had a license or was eligible to receive a license to practice oral pathology, or that no license was required for the proffered position. The evidence of record, therefore, did not establish that the beneficiary was not required to have a license to perform the services of the proffered position or that he was immediately eligible to perform the services of the proffered position. The director concluded that the petitioner failed to establish that the beneficiary was qualified to perform the services of a specialty occupation.

On appeal the counsel argues that the petitioner should not have to prove a negative – *i.e.*, that the State of New York does not require a license for the proffered position. Counsel asserts that an oral pathologist in the dental profession is akin to a medical technologist in the medical profession, an occupation that does not require a license. An extract from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* on medical technologists was submitted with the appeal.

The AAO determines that the record fails to establish the beneficiary's eligibility for H-1B classification. Though the petitioner asserts the proffered position does not require a license because it does not involve the practice of dentistry, the job duties described by the petitioner do not support that claim. The DOL *Handbook*, which Citizenship and Immigration Service (CIS) routinely consults as an authoritative source of information about the duties and educational requirements of particular occupations, describes the occupation of dentist as follows:

Dentists diagnose, prevent, and treat problems with teeth or mouth tissue. They remove decay, fill cavities, examine x-rays, place protective plastic sealants on children's teeth, straighten teeth, and repair fractured teeth. They also perform corrective surgery on gums and supporting bones to treat gum diseases. Dentists extract teeth and make models and measurements for dentures to replace missing teeth

Most dentists are general practitioners, handling a variety of dental needs. Other dentists practice in any of nine specialty areas . . . [including] *oral pathologists* (studying oral diseases)

Handbook, 2004-05 edition, at 281. Thus, the *Handbook* specifically lists oral pathologists as one of nine specialty areas in the field of dentistry, all of which require a state license to practice. The duties of the medical research/oral pathologist position at issue in this petition include such tasks as “perform[ing] various medical tasks on oral tissue to ascertain nature of disease” as well as “determin[ing] whether disease is viral or bacterial” and “adv[is]ing on] appropriate course of treatment and medication.” These duties reflect the *Handbook*’s broadly described duties of a dentist: “Dentists diagnose prevent, and treat problems with teeth or mouth tissue.” *Id.* The petitioner declares that the proffered position does not require contact with patients, but has not explained how the above duties can be performed – especially the one involving “medical tasks on oral tissue” – without patient contact. To clear up the issue of whether the position involves the practice of dentistry and thus requires a license, specific documentary evidence was requested from the petitioner. Though counsel characterizes that request as a “burden,” the AAO does not view it as onerous or difficult to fulfill. Moreover, the request was an entirely reasonable and logical step by the director to confirm the nature of the proffered position and whether the beneficiary is qualified to perform the services thereof. There is no indication that the petitioner made any attempt to comply with the director’s evidentiary request.

Simply going on record without supporting documentary evidence does not satisfy the petitioner’s burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). Nor do unsupported assertions by counsel satisfy the petitioner’s burden of proof. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the regulation at 8 C.F.R. § 103.2(b)(14) expressly provides that “[f]ailure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition.”

Based on the evidence of record, the AAO determines that the petitioner has failed to establish that the proffered position does not require a state license. Accordingly, the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation, and thereby eligible for H-1B classification under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.