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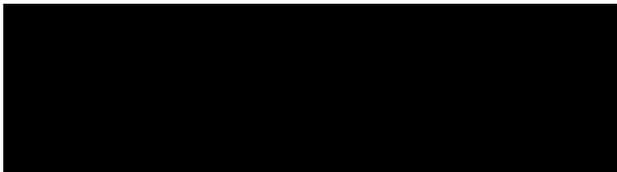
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FILE: WAC 02 186 52053 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

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:



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.

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

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a dental practice that seeks to employ the beneficiary as a dental specialist/researcher. The director denied the petition on the basis that the proffered position is not a specialty occupation.

On motion to reconsider, counsel states that because the beneficiary will not provide direct patient care, the proffered position is dissimilar from a dentist. Counsel refers to the description of a dentist in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and states that it reveals that dentists provide direct patient care by operating on patients. Counsel states that dentists not only diagnose the particular problem facing the patient, but they also provide the actual treatment such as removing decay and filling cavities. Counsel maintains that the beneficiary will provide indirect patient care, but will "assist the dentists with analysis of patients' records by making a diagnosis of the problem and recommending a particular treatment plan." Counsel states that the beneficiary will review patient files, though she will not engage in patient care. According to counsel, the beneficiary will not operate on patients, but will advise the dentists in the clinic. Ultimately, counsel asserts, the responsibility of treating and operating on the patient is left to the dentist. Counsel states that the beneficiary, after making her diagnosis and recommendations on the treatment plan, will compose dental reports for the ultimate approval of the clinic's dentists. Counsel reports that the beneficiary will spend a substantial amount of her time performing research on new developments in the medical and dental care industries. Counsel states that the relationship of a law clerk to an attorney is similar to the relationship of the proffered position to a dentist. The *Handbook* describes, counsel claims, the duties of a dentist in order to show that patient care is narrowly defined such as operating on patients' teeth and gums. Counsel states that dental hygienists, dental assistants, and dental laboratory technicians are not dentists, yet they are involved in the care of patients' teeth. Further, counsel states that the proffered position is a specialty occupation, and is dissimilar from a dentist; thus, it does not require licensure.

The AAO grants the motion to reconsider.

Counsel's statement that the proffered position is dissimilar from a dentist is not persuasive. In the appeal brief, counsel states that the beneficiary will "diagnose patients and make recommendations." These services will be performed in California, the location of the petitioning entity. Section 1625 of the California Business and Professions Code, which relates to the practice of dentistry, states that a person practices dentistry when the person "performs, or offers to perform, an operation or diagnosis of any kind." Because counsel describes the beneficiary as diagnosing patients, the proffered position entails the practice of dentistry, which is a specialty occupation that requires licensure. The *Handbook* relays that all 50 states and the District of Columbia require dentists to be licensed.

In the decision dated December 17, 2003, the AAO found that the evidentiary record did not contain evidence to establish that the beneficiary possesses a license to practice dentistry. On motion, counsel had an opportunity to provide documentary evidence to establish that the beneficiary possesses a license to practice

dentistry. No such evidence was submitted. Accordingly, the beneficiary is not qualified to perform the duties of the proffered position.

ORDER: The decision of the AAO is affirmed. The petition is denied.