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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 02 179 51172 Office: CALIFORNIA SERVICE CENTER Date: MAR 29 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, 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 The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner is a dental office that seeks to employ the beneficiary as a dental specialist/researcher. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 a letter from a dentist of another dental clinic.

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 I-129 petition; the petitioner's May 1, 2002 letter in support of the petition;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: supporting the petitioner's expansion program by establishing operational systems and procedures to improve efficiency; administering and directing the activities of the dental office; conducting necessary research to determine the cause and/or effect of the disease that the patient is exhibiting or preparing a complete analysis of the patient's infection or disorder; conferring with clinical staff to formulate policies and recommend procedural changes to increase daily production; hiring, firing, and evaluating personnel; overseeing the billing of patients and insurance companies; and coordinating with various laboratories. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in dental medicine.

It is noted that, in a letter dated January 28, 2003, the petitioner's former counsel also describes the beneficiary's proposed duties as "suggesting to the clinic's dentist solutions as to patients' conditions" and "assisting the clinic's dentists to make proper determinations and prognosis." He states further: "Only a person who has been formally trained in dental medicine can analyze a dentist's work and make recommendations as to improvement in diagnosis or treatment."

The director found that, upon review of the description of a dentist's duties in the Department of Labor's *Occupational Outlook Handbook*, the petitioner's claim that the dentist needs a dental specialist/researcher to aid with the analysis of the patients' records is not convincing. The director further found that the petitioner had not established that the proffered position is primarily that of a health services manager. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director concluded that the petitioner did not establish that there was a bona fide position that can be considered a specialty occupation.

On appeal, counsel states, in part, that the proposed duties, which primarily entail studying patients' records and making recommendations for the final approval of the petitioner's dentist, as well as conducting research, are so complex that a degree in dental medicine is required. Counsel states further that the beneficiary's remaining administrative duties are similar to those of a health services manager, a position that also requires at least a bachelor's degree in a health-related field. Counsel also states that the record contains job advertisements that demonstrate that the degree requirement for positions such as the proffered position is industry wide.

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

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* reveals that the duties of the proffered position are performed by dentists because they diagnose, prevent, and treat problems with teeth or mouth tissue. The *Handbook* reports:

[D]entists who want to teach or conduct research usually spend an additional 2 to 5 years in advanced dental training, in programs operated by dental schools or hospitals.

The *Handbook* also reports that all 50 states and the District of Columbia require dentists to be licensed. The *Handbook* states:

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.

A review of the record in its entirety finds that the proffered position entails the practice of dentistry. Under the California Business and Professions Code Section 1625, a person practices dentistry in California when the person "performs, or offers to perform, an operation or diagnosis of any kind." As stated previously, the proposed duties were described, in part, in a January 28, 2003 letter from the petitioner's former counsel as "suggesting to the clinic's dentist solutions as to patients' conditions" and "assisting the clinic's dentists to make proper determinations and prognosis." He states further: "Only a person who has been formally trained in dental medicine can analyze a dentist's work and make recommendations as to improvement in diagnosis or treatment."

Because the passage plainly describes the beneficiary as performing diagnosis on patients, the proffered position entails the practice of dentistry, which is a specialty occupation and requires licensure.

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – a dentist. 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 18, 2003 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.