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U.S. Citizenship
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Services

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FILE: WAC 02 204 53328 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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:
[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded the subsequent appeal back to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a dental clinic that seeks to employ the beneficiary as a dental office consultant. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's June 13, 2002 request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's August 9, 2002 denial letter; (5) the Form I-290B and supporting documentation; (6) the AAO's remand of the Form I-129; (7) the director's March 24, 2004 RFE; (8) the petitioner's RFE response and supporting documentation; and (9) the director's July 6, 2004 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

The AAO remanded the case to the director on January 22, 2004 after having determined that the proposed position qualifies as a specialty occupation. The AAO had found that some of the primary functions of the proposed position were those of a dentist. However, the director had not addressed the issue of whether the position required licensure in the field of dentistry. The matter was, therefore, remanded to the director for his determination of the beneficiary's qualifications, with certification to the AAO should his decision be adverse to the petitioner. The director found the beneficiary to lack the qualifications necessary to perform the duties of the proposed position and certified his decision to the AAO for review.

As noted in the remand, the AAO agrees with the director that many of the beneficiary's duties are performed by dentists, as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource the AAO routinely consults for its information about the duties and educational requirements of particular occupations. This 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, at section 1625, explains 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 to consult with the clinic's staff members to make available the latest technological and surgical options to satisfy oral and facial treatment needs, training staff for emergency procedures, ensuring that doctors adequately review the medical histories of patients, and analyzing patients who are medically compromised, such as those who are diabetic, allergic to certain medications or anesthesia, are HIV positive, and those who have heart murmurs, hepatitis, high blood pressure, contagious diseases, and nervous conditions.

The *Handbook* states the following with regard to 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).

No evidence contained in the record of proceeding demonstrates that the beneficiary is qualified to perform the duties of the proposed position, which involves the practice of dentistry and therefore requires licensure. The director addressed this issue in his March 24, 2004 RFE, and the petitioner was unable to provide evidence of the requisite licensure. Therefore, the director's decision will be affirmed.

Therefore, for reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C). Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's July 6, 2005 decision is affirmed. The petition is denied.