



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 272 54303 Office: CALIFORNIA SERVICE CENTER Date: NOV 14 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 of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) rejected the appeal. The matter is once again before the AAO on motion to reconsider. The motion will be granted. The appeal will be dismissed. The petition will be denied.

The petitioner is a dental clinic with three employees. It seeks to employ the beneficiary as a dental specialist/researcher 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 he determined the proffered position did not meet the criteria required for classification as a specialty occupation.

To meet its burden of proof, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria 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 evidence; (3) counsel's response to the director's request; (3) the director's denial; (4) Form I-290B and supporting documentation; (5) the AAO's rejection of the appeal; and (6) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before reaching its decision.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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 undated 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, in part: administering and directing the activities of the dental office in accordance with accepted national standards, administrative policies and OSHA compliance guidelines; conducting the necessary research to determine the cause and/or effect of the disease that the patient is exhibiting; preparing a complete analysis of the patient's infection or disorder; conferring with the staff to formulate policies and recommend procedural changes to increase daily production; working with the dentist and analyzing the medical significance of infection or disease, providing a prognosis and advising on treatment based upon her research; utilizing the medical library to perform the research necessary to evaluate the cases that are given to her; utilizing medical journals, text books and medical research materials to analyze and evaluate the patients' conditions, particularly regarding AIDS and treatment of gingival diseases; hiring additional staff; evaluating the work of employees; overseeing the billing of the petitioner's patients and insurance companies; and coordinating with various dental laboratories that the petitioner utilizes to insure that orders are submitted and received in a timely manner. According to the petitioner, the position requires a degree in dental medicine.

The director determined that the proffered position was not a specialty occupation. On appeal, counsel states that the proposed position's duties resemble those of a health services manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and that the position is a specialty occupation. Counsel asserts that the duties of the position are specialized and complex, and cannot be performed by someone without a bachelor's degree.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

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To make its determination whether the employment described in relation to the proffered position qualifies as a specialty occupation, the AAO turns 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; and 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. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO's review of the proffered position has relied on the 2004-2005 edition of the DOL *Handbook*, which has provided discussion regarding the duties of a range of dental professions, as well as the occupation of medical and health services managers, the position the petitioner contends is most closely aligned to its proffered position. Turning first to the occupation of medical and health services managers, the AAO has taken note of the following discussion at pages 55-56:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

...

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information

...

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and

procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

In group medical practices, managers work closely with physicians. Whereas an office manager may handle business affairs in small medical groups

The AAO does not find the proffered position to be closely aligned to the employment just described. While the proffered position would require the beneficiary to perform administrative/managerial duties in a health care setting, the description of the duties provided by the petitioner does not establish it as a medical or health services manager responsible for directing the delivery of healthcare. Instead, the administrative duties of the proffered position described by the petitioner – the direction of its dental practice in accordance with national standards, administrative policies and OSHA guidelines, the hiring and evaluation of staff, the billing of patients and insurance companies, the collaboration with clinical professionals and staff to formulate policies and recommend procedural changes to increase daily production, and the coordinating with dental laboratories to ensure the timely processing of orders – appear more closely aligned to that of an administrative services or office manager.

As described at page 21 of the *Handbook*, administrative services managers:

[p]erform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services These workers manage the many services that allow organizations to operate efficiently

. . .

In small organizations, a single administrative services manager may oversee all support services As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities. For example, some administrative services managers work primarily as office managers

The petitioner indicated that the beneficiary would be reviewing patient records and developing dental reports based on those records, as well as conducting research on dental infection and disease. While the AAO has found no specific discussion of such duties in the dental occupations it has reviewed, such responsibilities appear to fall within those research activities routinely performed by dental clinics as part of patient treatment programs. As such, they do not constitute the type of analysis or original research that would place this work beyond the abilities of dental hygienists who work closely with dentists in the identification of dental problems and disease. In reaching this conclusion, the AAO has noted the description of the clinical training provided dental hygienists, discussed by the *Handbook* at page 316:

Schools offer laboratory, clinical, and classroom instruction in subjects such as anatomy, physiology, chemistry, microbiology, pharmacology, nutrition, radiography, histology (the study of tissue structure), periodontology (the study of gum diseases), pathology, dental materials, clinical dental hygiene and social and behavioral sciences.

Accordingly, the AAO concludes that the proffered position of dental specialist/researcher requires the combined skills and knowledge of an administrative services or office manager and a dental hygienist. It now turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent.

The *Handbook*, at page 22, states the following regarding the educational requirements for administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements

The educational requirements for dental hygienists are discussed at page 316:

Dental hygienists must be licensed by the State in which they practice. To qualify for licensure, a candidate must graduate from an accredited dental hygiene school and pass both a written and clinical examination

[M]ost dental hygiene programs grant an associate degree, although some also offer a certificate, a bachelor's degree, or a master's degree. A minimum of an associate degree or certificate in dental hygiene is required for practice in a private dental office

On appeal, counsel contends that the *Handbook* indicates that a degree is required for the position of health services manager. As noted, however, the proffered position has not been established to be a medical or health services manager. Accordingly, the *Handbook's* discussion of the degree requirement for this occupation is not relevant to this proceeding.

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove either that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. To establish the petitioner's degree requirement as an industry norm, counsel submits various Internet job listings for quality assurance coordinators, dentists, and medical researchers. Counsel states that the duties of these positions are similar to the duties of the proffered position, and that each of the advertised positions requires candidates to possess a bachelor's degree or higher. The submitted materials do not, however, satisfy the requirement of the criterion's first prong, which stipulates that the degree requirement be established in parallel positions among similar organizations. As a result, they do not establish that the positions for which they require a degree in dentistry are parallel to the proffered position.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. On appeal, counsel states that the position is newly created, but the petitioner's need to fill the position of dental specialist/researcher is critical to its expansion plans. Since the position is new, the AAO concludes that the proffered position cannot be established as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In assessing whether the petitioner has met its burden with regard to the fourth criterion – the nature of the specific duties is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree – the AAO has again reviewed the duties of the proffered position. This review has taken note of counsel's statements regarding the position's complex and degree-specific tasks. However, the AAO finds no evidence in the record to establish that the administrative responsibilities of the proffered position are particularly specialized or complex, or that they require greater knowledge or skill than that normally needed by administrative services managers. Further, it does not find the proffered position's research duties to require expertise beyond the capabilities of dental hygienists who are not required to have a baccalaureate or higher degree to practice their profession. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb his 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 appeal is dismissed. The petition is denied.