

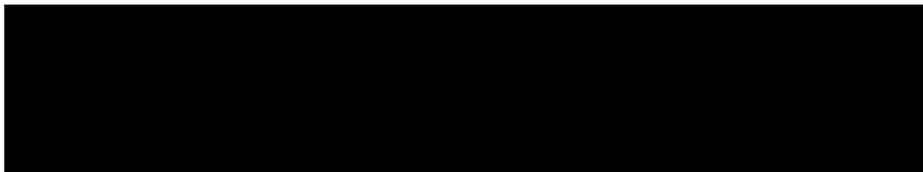
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

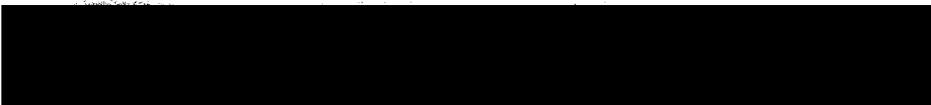
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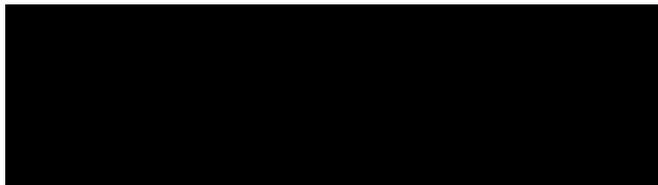
FILE: WAC 02 228 52590 Office: CALIFORNIA SERVICE CENTER Date: NOV 18 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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. The petitioner's president indicated in his June 21, 2002 letter that the beneficiary is qualified for the proffered position because she holds a doctor's degree in dental medicine.

The director found that the beneficiary was not qualified for the proffered position because she does not hold a dental license from the State of California. On appeal, counsel states, in part, that the proposed duties, which entail assisting the dentist with the analysis of patients' records, diagnosing the problem, and recommending a particular treatment plan, do not require a license because the beneficiary will work under the supervision of a licensed specialist.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations.

The *Handbook*, 2004-2005 edition, 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.

Counsel's statement that the duties of the proffered position do not entail the practice of dentistry is not convincing. Counsel references Section 1625 of the California Business and Professions Code as allowing certain dental procedures to be performed under the supervision of a licensed dentist. Section 1625 of the California Business and Professions Code states that a person practices dentistry when he or she does any one or more of the following:

- (a) By card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist;
- (b) Performs or offers to perform, an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structure, or corrects malposed positions thereof;
- (c) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structure, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance;
- (d) Makes or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures; and
- (e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise a place where dental operations are performed.

A review of the above regulations finds that a person practices dentistry in California when the person “performs, or offers to perform, an operation or diagnosis of any kind.” As such, the petitioner’s June 21, 2002 letter indicated that the beneficiary will practice dentistry. The letter stated:

[The beneficiary] will be conducting the necessary research to determine the cause and or effect of the various diseases or conditions that the patient is exhibiting. She will then prepare a complete analysis of the patient’s infection or disorder for review and advise appropriate treatment. Based on all of the information supplied, [the beneficiary] will keep up to date on the latest dental research results and utilize the medical library to perform the research necessary to make diagnoses of the cases that are given to her.

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. A review of the record finds no evidence to establish that the beneficiary has been awarded a license to practice dentistry by the State of California. Further, counsel’s statements on appeal asserting that the beneficiary does not require a license also lead the AAO to conclude that she does not have the appropriate credentials to practice dentistry in the United States. With no evidence to establish that the beneficiary has a license to work as a dentist, the AAO must conclude that the beneficiary is unqualified to perform the duties of the proffered position.

It is further noted that, although the beneficiary in this case holds a Doctor of Dental Medicine degree conferred by a Filipino institution, the record does not contain an evaluation of the beneficiary’s credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The petitioner, therefore, has not established that the beneficiary has the equivalent of a U.S. doctor of dental medicine degree. For this additional reason, the petition may not be approved.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation per 8 C.F.R. § 214.2(h)(4)(iii)(C). Accordingly, the AAO shall not disturb the director’s denial.

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.