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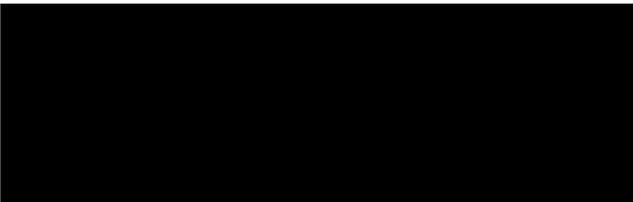


FILE: WAC 03 062 54985 Office: CALIFORNIA SERVICE CENTER Date: NOV 21 2005

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.

Handwritten signature of Robert P. Wiemann in cursive.

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 medicine 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.

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 medicine researcher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 11, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to information on the

beneficiary's "job description" document, the "specific job duties" the beneficiary would perform are as follows: providing consistent message to help employees understand procedural responsibilities; monitoring the dental office; preparing reports and reviewing cases; creating a management framework; reporting plans for the management of specific challenges; providing continuous and effective communication with the employer and staff; monitoring patients' medical and dental records; and monitoring the scheduling of patients. According to this job description, the beneficiary's "level of responsibilities" would also include duties such as researching and reporting the effects of x-ray exposure to patients and staff, and researching and reporting the efficacy of whitening toothpastes and over-the-counter bleaching products. The petitioner indicated that a qualified candidate for the job would possess a doctor of dental medicine degree.

The director found that the proffered position was not a specialty occupation because the job is not a dental medicine researcher position; it is an office manager position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director also found that the proposed research duties appear to involve keeping track of current dental research being performed by bona fide medical scientists, and researching current "best practices" in dental care and patient treatment. 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).

On appeal, counsel states, in part, that the director erred in its denial of the petition. According to counsel, the petitioner has satisfied all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the proffered position resembles that of a medical scientist, a position that requires, at a minimum, a master's degree from a school of public health, a Ph.D., or a medical degree. Counsel states further that the proposed duties, which include, in part, researching and reporting the effects of x-ray exposure to patients, dental practitioners, and staff, and providing updated research materials on workplace safety and health protection, are the specialized and complex duties of a dental medicine researcher. Counsel also states that the petitioner normally requires a degree for the proffered position and that the record contains job postings that demonstrate that the degree requirement is common to the industry.

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.

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.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position, which is entitled "dental medicine researcher," is a specialty occupation. Counsel's statement that the proffered position

resembles that of a medical scientist is noted. According to the *Handbook*, 2004-2005 edition, medical scientists work in research and development. Basic medical research provides the building blocks necessary to develop solutions to human health problems. Whatever the branch of science involved, and no matter what the setting for the research may be, it appears that the main focus of such researchers is on finding solutions to very specific problems, or answers to very specific questions. The solutions or answers they seek, however, have a broad application rather than an individual scope. The goals of medical researchers are not necessarily the same as those of medical or dental practitioners, who diagnose individuals and seek solutions for those particular patients. Likewise, the goals of science and medical writers also have a broad application rather than an individual scope. They prepare formal documentation presenting detailed information on the physical or medical sciences. They also organize information for advertising or public-relations purposes or prepare written interpretations for general readership.

In this case, the specific nature of and the scope of the proposed research have not been defined. The petitioner is a dental office with five employees and a gross annual income of \$566,585.00. The petitioner has not addressed the concerns presented by the director in his decision, such as the proposed research not involving the development of treatments for health problems, or being clinical or theoretical in nature, or that the proposed research duties appear to involve keeping track of current dental research being performed by bona fide medical scientists. The director correctly concludes that the record lacks a reliable evidentiary basis to determine that a specialty occupation exists for the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A review of the proposed duties, which include, in part, monitoring patients' medical and dental records and the scheduling of patients, confirms the accuracy of the director's assessment to the effect that, the nature of the proffered position appears to be focused primarily on office supervision. Such duties are not contemplated by the *Handbook* in reference to medical researcher positions. Furthermore, the proffered position is not that of a medical doctor, as the beneficiary would not be involved with direct patient care.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for medical researchers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. All of the advertisements are for medical researchers in the pharmaceuticals industry. In addition to the proffered position not being as complex as the positions described in the advertisements, the petitioner's industry is not in pharmaceuticals. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that, because the petitioner is simultaneously hiring a second dental medicine researcher with the same degree requirement, the petitioner has demonstrated that it normally requires such a degree for the proffered position. As the record indicates that the proffered position is a new position, however, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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 appeal is dismissed. The petition is denied.