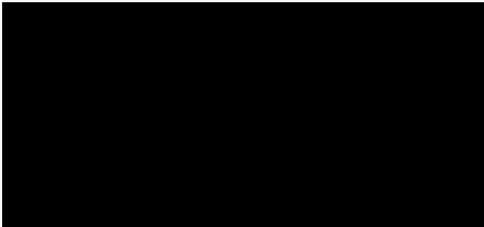


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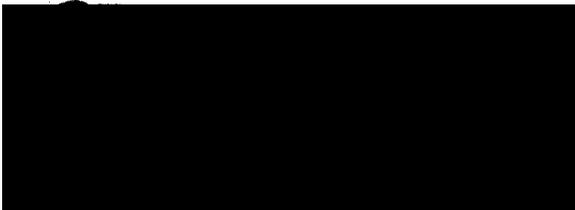
D2

FILE: WAC 03 021 51134 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 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.

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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a dental office that seeks to employ the beneficiary as a dental specialist/researcher. 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 director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 petitioner is seeking the beneficiary's services as a dental specialist/researcher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail maintaining complete dental records for the ultimate approval of the dentist; keeping up-to-date on dental research results and utilizing dental library to perform the duties; coordinating dental care evaluation and developing criteria and methods for such evaluation/reports; conferring with personnel regarding operational policies and recommending procedural changes; setting up a system of operations and activities to be implemented in the office and laboratory managing the clinic's affairs; analyzing the clinic's practices and procedures and conferring with the dentist to formulate policies and recommend procedural changes; performing dental research regarding new developments and devising methods to implement the findings of the research; hiring staff and evaluating the work of employees; overseeing billing; coordinating with dental laboratories to ensure orders are correct; assisting dentists with analysis of patient records; examining patient records to compose dental reports for the ultimate approval of clinic dentists; utilizing a medical background to provide a complete analysis of patients' oral and maxillo-facial conditions based on the dentist's findings, reports, medical history, and laboratory results; examining and measuring diagnostic aides as well as examining periapical x-rays for pathological conditions of teeth and surrounding tissue and recording these conditions for diagnosis and future treatment by the dentist; consulting with the dentist regarding dental treatment solutions as they relate to patients' conditions; maintaining complete dental reports and related documentation for each patient; coordinating dental care evaluations and developing criteria and methods for each evaluation/report; and utilizing medical and dental journals, textbooks, and research materials to analyze and evaluate patients' records regarding AIDS and the treatment of gingival diseases. The petitioner stated that the beneficiary will not "provide any patient care and will not have any contact with patients." According to the petitioner, the position requires a strong dental background that is obtained by attending a dental school. Counsel stated that the position resembles the position of a health services manager.

In response to the director's request for evidence, counsel indicated that the administrative duties relating to assurance and quality of work and compliance with the national standards will take about 30% of her time; the duties relating to analysis of patients' records and assisting the clinic's dentists to make proper determinations and diagnosis will occupy 40% of her time; and medical and dental research and the composition of reports based on such research will take 30% of her time.

The director determined that the proffered position was not a specialty occupation. The director stated that the duties of the proposed position are that of a medical records and health information technician as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* reveals that this occupation does not require baccalaureate-level education. The director noted that the petitioner claimed that the proffered position resembles a health services manager. The director noted that the *Handbook* states, in pertinent part, "Medical and health services managers must be familiar with management principles and practices." The director determined that the evidence does not reflect that the beneficiary has the required education or experience that would qualify her to perform the duties of a health services manager. The director noted that the beneficiary has a degree in dental medicine and experience limited to basic direct patient care without progressive responsibilities. The director

concluded that the proffered position was not a specialty occupation and that the beneficiary was not qualified.

On appeal, counsel contends that the proposed position's duties resemble those of a health services manager as that occupation is described in the *Handbook*. The *Handbook* indicates, counsel notes, that a bachelor's degree is adequate for some entry-level positions as a health services manager, which requires at least a bachelor's degree in health services administration, health sciences, public health, or a related discipline for entry-level positions. The proposed position, counsel states, may require a degree in health sciences as opposed to business administration. Counsel discusses the beneficiary's duties as they relate to ensuring that the dental practice runs smoothly, and states that the beneficiary will administer a dental program and formulate dental policies, standards and procedural changes and that she will be responsible for increasing production, hiring, evaluating and firing staff members. Counsel notes that the beneficiary will oversee the billing of patients and insurance companies. Counsel asserts that the proffered position clearly requires the minimum of a baccalaureate degree.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

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 finds that many of the beneficiary's duties are performed by dentists, as that occupation is described in the *Handbook*, which is a resource that the AAO routinely consults for information about the duties and educational requirements of particular occupations. The AAO's 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 explains under section 1625 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 duty to provide a "complete analysis of patients' oral and maxillo-facial conditions based upon the dentist's findings, reports, medical history[,] and laboratory results"; "examine and measure diagnostic aides as well as examine periapical x-rays for pathological conditions of teeth and surrounding tissues" and "record these conditions for diagnosis and future treatment by the dentist"; and "[consult] with dentists regarding dental treatment solutions as they relate to patients' conditions."

The *Handbook* states the following regarding 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).

As a degree in dentistry is the standard educational requirement for anyone seeking employment as a dentist, the AAO concludes the petitioner's proffered position, which is that of a dentist, meets the requirements under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. Accordingly, the proffered position is a specialty occupation.

The petition may not be approved however, as it does not appear that the beneficiary is qualified for the position, as the record does not reflect that she is licensed as a dentist. The petitioner's statement, that the beneficiary will not "provide any patient care and will not have any contact with patients," does not establish that the proposed position will not require licensure. As already discussed, the *Handbook* and the California Business and Professions Code reveal that some of the beneficiary's duties involve the practice of dentistry.

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the proposed position, dental specialist/researcher, which involves the practice of dentistry and therefore requires licensure. The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified for the proposed position, which involves the practice of dentistry. The director shall then render a new decision based on the evidence of record as 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 June 18, 2004 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.