

identifying data **deleted to**  
prevent clearly **unwarranted**  
invasion of **personal privacy**



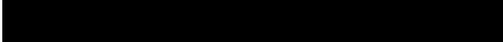
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



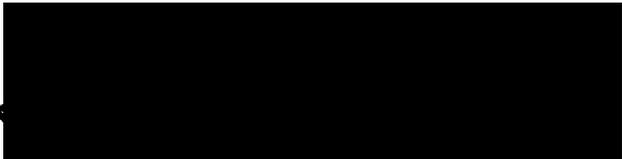
*Dz*

FILE: WAC 04 153 50662 Office: CALIFORNIA SERVICE CENTER Date: **JUN 12 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 laboratory that seeks to employ the beneficiary as a dental lab technologist. 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 lab technologist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 19, 2004 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 the following duties:

- [Manage] all aspects of the fabrication of oral prostheses, including job assignments, lab procedures, "personal" training, infection control, materials and equipment maintenance, quality control and customer relations;
- Read prescriptions or specifications, and examine models and impressions to determine the design of dental products to be constructed;
- Evaluate test results, develop and modify procedures, and establish and monitor programs to ensure the accuracy of tests; and
- Apply thorough knowledge of dental anatomy and oral structures to examine impressions and models of the teeth and use this information to make the dental restoration or appliance as prescribed by the dentist.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position, which is primarily that of a dental laboratory technician, was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate or higher degree. Citing to the Department of Labor's (DOL) *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 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 failed to consider the evidence. Counsel states further that the proffered position is not a "run-of-the-mill" dental technician, and that the director should not have relied solely on the *Handbook*, but should have considered other sources as well, such as the *Dictionary of Occupational Titles (DOT)* and college catalogs. Counsel also states that the record contains an expert opinion as evidence that the degree requirement is common to the industry in parallel positions among similar organizations.

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 similar to that of a dental technician with supervisory/managerial duties, is a specialty occupation.

The *Handbook*, 2006-2007 edition, under the category of Medical, Dental, and Ophthalmic Laboratory Technicians states, in part:

*Dental laboratory technicians* fill prescriptions from dentists for crowns, bridges, dentures, and other dental prosthetics. First, dentists send a specification of the item to be manufactured, along with an impression (mold) of the patient's mouth or teeth. Then, dental laboratory technicians, also called dental technicians, create a model of the patient's mouth by pouring plaster into the impression and allowing it to set. Next, they place the model on an apparatus that mimics the bite and movement of the patient's jaw. The model serves as the basis of the prosthetic device. Technicians examine the model, noting the size and shape of the adjacent teeth, as well as gaps within the gumline. Based upon these observations and the dentist's specifications, technicians build and shape a wax tooth or teeth model, using small hand instruments called wax spatulas and wax carvers. They use this wax model to cast the metal framework for the prosthetic device.

In large dental laboratories, technicians may become supervisors or managers. Experienced technicians may teach or may take jobs with dental suppliers in such areas as product development, marketing, and sales.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is normally required for a dental laboratory technician job. It is noted that the beneficiary in this case holds an associate's degree as a dental laboratory technician conferred by a South Korean technical college. Further, although counsel asserts that the proffered position is not a "run-of-the-mill" dental technician job, counsel does not demonstrate that the dental laboratory industry is comprised of "run-of-the-mill"-level technicians and professional-level technologist positions.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT* classification of occupations as "Professional, Technical, and Managerial" is not based upon the statutory and regulatory criteria for specialty occupations that govern this proceeding. Accordingly, the fact that the dental laboratory technician occupation is included within the aforesaid classification is not probative. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the record contains an opinion from a clinical associate professor at the Louisiana State University Health Sciences Center, who asserts, in part, that the proffered position requires a bachelor's degree in dental technology or its equivalent. The professor, however, does not provide any evidence in support of this assertion, such as industry surveys, authoritative studies, corroborative data, or other persuasive information. The *Handbook* is a compilation of results of nationwide

industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the occupation. The professor's assertion that he bases his opinion on the curriculum of the Bachelor of Science Program in Dental Laboratory Technology at Louisiana State University School of Dentistry, and on similar positions among comparable sized companies within the dental laboratory industry, is noted. The professor, however, provides no documentation in support of his assertion, such as a description of the content of each course of a related bachelor's degree program, as opposed to a related associate's degree program. Without complete course descriptions of both degree programs and a related explanation of why a baccalaureate degree is required, there is little evidence to support his opinion. He did not indicate that he reviewed the corporate profile, the equipment utilized, the client list or the procedures employed by the laboratory in the production of dental wear. Thus, the record does not contain a factual basis for his opinion that this degree requirement is common to the dental laboratory industry in comparable positions among similar companies. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record establishes that the proposed duties do not exceed the scope of a dental laboratory technician with supervisory duties as described in the *Handbook*. The AAO is not persuaded that the nature of the specific duties of the proffered position is more specialized and complex than that of a dental laboratory technician as described in the *Handbook*, or that the knowledge required to perform the proposed duties is usually associated with the attainment of a bachelor's degree in dental technology or its equivalent. The opinion of this professor is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

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 indicates that the record contains evidence that one of the petitioner's former employees holds a bachelor's degree. It is noted that the record contains a resume for an unnamed individual claiming to hold the equivalent of a U.S. bachelor's degree in dental science. The record, however, contains no evidence of this degree or that the individual was employed by the petitioner in the position of dental lab technologist. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Further, CIS must examine the ultimate employment of the alien and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or 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.<sup>1</sup> In this regard, the petitioner fails to

---

<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

establish that the proffered position entails the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or the equivalent, in a specific specialty.

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform a specialty occupation. The record contains a credentials evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the equivalent of a bachelor's degree in dental laboratory sciences awarded by a regionally accredited university in the United States. The evaluation, however, is based upon the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluator's conclusions about the equivalency of work experience carry no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For this additional reason, the petition may not be approved. 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.