



U.S. Citizenship
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[Redacted]

FILE: WAC 03 221 53633 Office: CALIFORNIA SERVICE CENTER Date: JUN 29 2006

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 service center denied the nonimmigrant visa. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal on July 21, 2004. On September 12, 2005, the AAO reopened this proceeding on its own motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for purposes of entering a new decision. The director's decision will be withdrawn.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 manager, clinical dental health services. 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 petitioner’s letter of support; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail: planning, developing, managing, and administering the dental health information system for the entire dental facility; ensuring that standards of accreditation and government regulations and requirements are met and complied with, and that facility operations are in compliance with state, federal and county regulations and statutes; assisting the chief dentist in ensuring that dental facility operations are in compliance with regulations; developing reports to state and county government offices in compliance with the reporting procedures; maintaining computerized records of patients, drug requirements, x-rays, therapies, etc.; developing and implementing policies and procedures for documenting, storing and retrieving information, including, but not limited to, all patients’ dental histories, diagnoses, prognoses and future dental treatments; monitoring and coordinating medical reports and records of patients; preparing and analyzing dental documents of patients, including, but not limited to, updates and progress of their dental status; coordinating dental care evaluation with dental staff, including, but not limited to, the chief dentist, x-ray technician, anesthesiologist, and other dental staff and developing guidelines and procedures for dissemination of evaluations to the support staff; analyzing preventive dental care for patients; planning dental treatment; recommending and analyzing dental procedures including root canal and operative procedures regarding complex dental problems; establishing and implementing policies, objectives and procedures; evaluating dentists’ work product; developing dental reports; coordinating activities with chief dentist; responsible for patient flow, analyzing dental photos, recommending bridges, dentures and appliances; counseling patients and discussing with them and their family regarding the growth and development of their dental hygiene and resolving their dental problems; and recommending the replacement of missing teeth and acquired deformities of teeth through prosthetic appliances. According to the petitioner, the position requires a bachelor’s degree in a health profession or in the field of dental science or a related field.

The director determined that the proffered position was not a specialty occupation. The director stated that the duties of the proposed position are a combination of those of a dental assistant and an office manager as those occupations are described in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* reveals that these occupations do not require baccalaureate-level education.

On appeal, counsel states that the proposed position’s duties resemble those of a health services manager as that occupation is described in the *Handbook*, and that the position is a specialty occupation. Counsel states that the individual previously in the proffered position held a doctor’s degree in dental medicine, the same degree as the beneficiary.

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 duties to analyze preventive dental care for patients; plan dental treatment; recommend and analyze dental procedures, including root canal and operative procedures regarding complex dental problems; evaluate dentists' work product; and recommend the replacement of missing teeth and acquired deformities of teeth through prosthetic appliances. In addition, the AAO notes that the petitioner's organizational chart indicates that the beneficiary would supervise three dentists, as well as several dental assistants.

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.

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the proposed position, manager, clinical dental health services, 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 September 18, 2003 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.