



U.S. Citizenship
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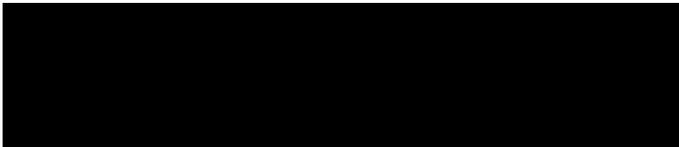


FILE: WAC 01 066 55052 Office: CALIFORNIA SERVICE CENTER Date: OCT 29 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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, with four employees and \$500,000 in gross annual income. It seeks to employ the beneficiary as a dental specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the petitioner had not established the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed December 15, 2000 with supporting documentation; (2) the director's March 27, 2001 request for further evidence (RFE); (3) counsel for the petitioner's May 9, 2001 response to the director's RFE; (4) the director's September 12, 2001 denial letter; and (5) the Form I-290B, with counsel's brief.¹ The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must first establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

¹ The record also includes evidence that Citizenship and Immigration Services (CIS) erroneously rejected the Form I-290B as untimely filed and subsequent motions to reopen and reconsider the decision as well as the director's decisions. On June 19, 2006, the director notified the petitioner and counsel that the appeal from the September 12, 2001 decision was being forwarded to the AAO for consideration. Neither the petitioner nor counsel has submitted further documentation in regard to the appeal. Thus, the AAO considers the record complete and now considers the initially filed appeal.

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 above criteria 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 seeks the beneficiary's services as a dental specialist. Evidence of the beneficiary's duties includes the petitioner's December 5, 2000 letter submitted in support of the petition. The petitioner stated:

My dental clinic is in need of a Dental Specialist who possesses the necessary skill and knowledge required to administer and direct the activities of the dental practice in accordance with accepted national standards, administrative policies and OSHA compliance guidelines. [The beneficiary] will administer a dental program in the clinic and direct activities in accordance with accepted national standards and administrative policies. [The beneficiary] will confer with clinical staff to formulate policies and recommend procedural changes. He will confer with the personnel regarding policies and recommend procedural changes to increase daily production. [The beneficiary] will as needed, hire additional staff, fire and evaluate their work. [The beneficiary] will oversee the billing of patients and insurance companies. He will coordinate with the various dental laboratories that we utilize to assure that orders are submitted and received in a timely manner. [The beneficiary] will set up a system to be used by the dental office and lab that will assure a smooth flow of work and improve efficiency.

In a May 9, 2001 response to the director's RFE, counsel for the petitioner repeated a portion of the above description and asserted that as the beneficiary would be performing these duties in a dental office, the beneficiary qualified as a health services manager. Counsel noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in the health services field but that a bachelor's degree is adequate for some entry level positions in smaller facilities. Counsel acknowledged that some of the beneficiary's duties could be learned without a baccalaureate degree but contended that the formulating of dental policies, standards, and

procedures required an individual with an education in dentistry. Counsel averred that the duties and responsibilities of the proffered position are more complex and specialized than those of other health services managers.

On September 12, 2001, the director denied the petition determining that the duties of the proffered position corresponded to the duties of a health services manager but that the *Handbook* did not report that a baccalaureate degree in a specialized area was necessary for employment as a health services manager and that "[s]ome learn from experience." The director concluded that baccalaureate training is not a normal requirement for entry into the occupation, that the petitioner had not submitted information that it normally required applicants for the position to possess baccalaureate or higher level degrees, and that the proposed duties and level of responsibility do not indicate complexity or authority which is beyond that normally encountered in the occupational field.

On appeal, counsel for the petitioner points out that the *Handbook* considers that the occupation of a health services manager normally requires a baccalaureate or higher degree as the minimum requirement for entry into the position. Counsel avers that the proffered position of dental specialist is unique and that formulating dental policies, standards, and procedures requires someone with an education in dentistry. Counsel contends that the petitioner has demonstrated the complexity of the position and has established that the specific duties require specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or its equivalent as a minimum. Counsel submits an approval notice for another individual employed by another petitioner and asserts that as this individual was approved for H-1B classification in the occupation of dental specialist, CIS should also approve the proposed position in this matter.

Counsel's assertions are not persuasive. To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor 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. The petitioner's description of the proffered position is too general to be considered a health services manager.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. In reaching its own conclusion regarding the degree requirements of the proffered position, the AAO has relied upon the *Handbook*, comparing the position's duties against those described for a range of professions. This review has found that the petitioner has not provided a meaningful description of the proffered position but rather has restated some of the duties outlined in the *Handbook's* report on health services managers and administrative or office managers.

In the *Handbook's* section on the occupation of medical and health services managers, the AAO takes note of the following discussion:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. Medical and health services managers, also referred to as *health care executives or health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system.

The structure and financing of health care are changing rapidly. Future medical and health services managers must be prepared to deal with evolving integrated health care delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work and an increased focus on preventive care. They will be called on to improve efficiency in health care facilities and the quality of health care provided. Increasingly, medical and health services managers will work in organizations in which they must optimize efficiency of a variety of related services - for example those ranging from inpatient care to outpatient followup care.

* * *

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

* * *

In group medical practices, managers work closely with physicians. Whereas an office manager may handle business affairs in small medical groups, leaving policy decisions to the physicians themselves, larger groups usually employ a full-time administrator to help formulate business strategies and coordinate day-to-day business.

The *Handbook* notes that a small group of 10 to 15 physicians may employ one administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays and patient flow, while a large practice of 40 to 50 physicians might have a chief administrator and several assistants to handle each area.

The *Handbook* discusses the duties of administrative services managers as follows:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services These workers manage the many services that allow organizations to operate efficiently.

* * *

In small organizations, a single administrative services manager may oversee all support services As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities. For example, some administrative services managers work primarily as office managers

In this matter, the petitioner indicates that it needs an individual: (1) to hire additional staff, fire and evaluate their work; (2) to oversee the billing of patients and insurance companies; (3) to coordinate with the various dental laboratories regarding orders; and (4) who will set up a system to be used by the dental office and lab that will assure a smooth flow of work and improve efficiency. These generally stated duties correspond to the *Handbook's* report that administrative services manager oversee support services, coordinate and direct support services, and manage the many services that allow organizations to operate efficiently. Although the duties are performed in a dental office, the petitioner has not provided evidence that the daily duties the beneficiary will perform are more complex, unique, or specialized than the routine duties of an office manager. 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)).

The petitioner's indication that the dental specialist in its office will administer and direct the activities of the dental practice in accordance with accepted national standards and administrative policies corresponds generally to the *Handbook's* indication that *health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. However, the petitioner does not provide detail or documentation disclosing the activities involved in directing the petitioner's clinic activities. In addition, the petitioner does not discuss or otherwise explain why its small office is comparable to the larger medical groups, groups that are discussed in the *Handbook* as the type of office/clinic that would usually employ a full-time health services administrator. The AAO acknowledges the *Handbook's* general statement that clinical managers, as discussed in the section on medical and health services managers, establish and implement policies, objectives, and procedures for their departments. While the petitioner indicates that the proffered position would require the beneficiary to confer with staff to formulate policies and recommend procedural changes to increase daily production, the petitioner does not further describe what those duties entail. The AAO does not find that the petitioner's general statements regarding the duties of the proffered position and its paraphrase of a portion of the *Handbook's* discussion of the occupation, sufficient to substantiate that the proffered position is that of a health services manager. Reciting portions of the *Handbook* to establish a position as a specialty occupation without providing the detail necessary to relate the duties to the petitioner's particular business is insufficient to establish the position as a specialty occupation. Again, 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. at 165.

The AAO further observes that the description of the proffered position's duties that includes responsibilities of administering and directing the activities of the dental office in accordance with accepted national standards, administrative policies and OSHA compliance guidelines suggests that the beneficiary may be practicing dentistry and thus would require a license in the State of California. The California Business and Professions Code Section 1625 provides that dentistry is the diagnosis or treatment of diseases and Section 1625(e) states that a person practices dentistry within the meaning of this chapter who "manages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed." Although the AAO finds that the

duties as described are too broadly stated to require a conclusion that the beneficiary is managing a place where dental operations are performed in the context of Section 1625(e) of the California Business and Professions Code, the AAO notes the possibility that the petitioner's expectations may require the beneficiary to obtain a dental license.

Upon review of the description of duties provided, the AAO finds that the petitioner has generally described aspects of an administrative services manager and a health services manager without providing a description of the specific duties included in the proffered position that are directly related to the petitioner's business. The record contains no more than general information about the occupation of an office manager and a health services manager and no language or documentary evidence connecting the nonspecific duties of those occupations to the petitioner's business. The description does not provide the specific requirements and expectations of this petitioner who has four employees and a gross annual income of approximately \$500,000 dollars.

The AAO declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.

The AAO does not find that the proffered position as described includes sufficient information to enable CIS to determine that the position requires the theoretical and practical application of a body of highly specialized knowledge attained by study at a bachelor's or higher degree level in a specific specialty. The AAO concludes that the evidence of record is insufficient to establish a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The petitioner has not established that the proffered position qualifies as a specialty occupation on the basis of a degree requirement under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), has qualified it under one of the three remaining criteria.

The petitioner in this matter has not submitted job announcements or industry letters to establish that a degree requirement is common to the industry in parallel positions among similar organizations. In addition, without a meaningful description of the job duties of a particular position, the record lacks the necessary information to compare the position's duties to other degreed positions within similar organizations in its industry. The AAO acknowledges counsel's assertion that the proffered position is complex and unique. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of

proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the petitioner does not offer any detail, documentation, or discussion of specific tasks that demonstrate the complexity of the position or distinguish the position from that of an office manager, an occupation that often relies on experience rather than formal academic education. The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

The petitioner has also failed to establish that it normally requires a degree or its equivalent for the position. The AAO often reviews a petitioner's past employment practices to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In this matter, however, the record does not indicate that the petitioner previously employed anyone in this position. Thus, the record is insufficient to establish this criterion. In addition, the AAO finds that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d at 384. The petitioner has not provided documentary evidence of other employees in the proffered position who have attained a baccalaureate degree or its equivalent. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Turning to the fourth criterion and whether the evidence submitted establishes that 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, the AAO finds that it does not. In assessing whether the petitioner has met its burden with regard to the fourth criterion, the AAO has again reviewed the duties of the proffered position to determine whether they reflect a higher degree of knowledge and skill than would normally be required of someone trained as an office manager or administrative services manager. While the AAO finds that the petitioner may rely on the beneficiary to a greater extent than normally expected, due to the beneficiary's foreign training as a dentist, the specific duties of the proffered position are not so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Having reviewed the duties of the proffered position as generally described, the AAO finds no evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that normally needed by an office or administrative services manager. The petitioner's reliance on the skill and education of this particular beneficiary does not elevate the described duties to that of a specialty occupation. The petitioner has not provided a definitive description of duties or other evidence that establishes that the position includes duties that are so specialized or complex that the position requires an individual with a baccalaureate or higher degree. The AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The AAO notes counsel's reference to a prior approval for H-1B classification for an individual in a position labeled a dental specialist. However, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The petitioner has not offered evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO also finds that if the approval in the separate matter was based on evidence similar to the evidence in this proceeding, CIS would have materially erred in approving that petition.

The AAO observes further that the petitioner initially did not submit a Labor Condition Application (LCA). Counsel specifically noted that a certified LCA was not being submitted with the petition as it had not been certified and returned. In response to the director's RFE, the petitioner provided a copy of an LCA certified June 12, 2001, approximately six months after filing the petition. The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B) requires that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner must obtain a certified LCA from the Department of Labor in the occupational specialty in which the H-1B worker will be employed. The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a labor certification application with the Department of Labor when submitting the Form I-129. The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus when the petition was filed the petitioner had also failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B). For this additional reason, the petition will be denied.

The petition will be denied and the appeal dismissed for the above stated reasons. As always, 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 met that burden.

ORDER: The appeal is dismissed. The petition is denied.