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U.S. Citizenship
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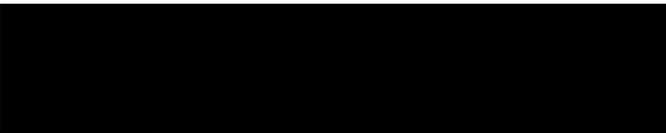


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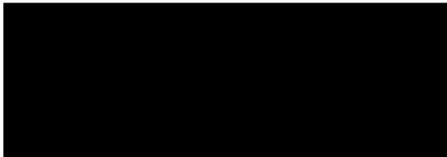
FILE: WAC 04 025 52544 Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition by decision dated December 30, 2003. The matter was then appealed to the Administrative Appeals Office (AAO). By decision dated April 21, 2005, the AAO withdrew the director's decision and remanded the matter to the director for entry of a new decision. Pursuant to the AAO's determination, the director requested additional evidence from the petitioner. The petitioner did not respond to the director's request. The director then denied the Form I-129 petition and certified the matter to the AAO for review. 8 C.F.R. § 103.2(b)(13). The director's decision will be affirmed. The petition will be denied.

By decision dated April 21, 2005, the AAO determined that the duties of the proffered position consisted of duties normally performed by dentists in California. Section 1625 – 1636.6 of the California Business and Professions Code explains under section 1625 that a person practices dentistry in California when that person "performs, or offers to perform, an operation or diagnosis of any kind." The duties detailed by the petitioner clearly indicate that the beneficiary will "assist dentists with diagnoses." The proffered position, does, therefore, encompass the practice of dentistry in the State of California which requires a license.

On certification from the director, the petitioner submitted an opinion letter from [REDACTED] President of Alien Prevailing Wage Determination, Inc. [REDACTED] business reviews and analyzes job positions for the purpose of providing prevailing wage assessments. He states that he has worked with dental researchers on recent projects and is, therefore, familiar with the dental researcher position. [REDACTED] states that the proffered position is most similar to the classification of dentist under the Department of Labor's *Dictionary of Occupational Titles* and the *O*Net*, but that the position is strictly a research position which does not require licensure. That statement is contrary to the duties detailed by the petitioner for the position. The petitioner states that the beneficiary will indeed have patient contact¹ and assist dentists with diagnoses. The position is not purely a research position, and the opinion letter of [REDACTED] will be afforded little evidentiary weight. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Moreover, California law requires all dentists involved in the diagnosis to be licensed.

The petitioner did not provide evidence that the beneficiary is licensed to practice dentistry in California, or a statement from California licensing authorities stating that the beneficiary is exempt from licensing requirements. The petitioner has not overcome the basis for the director's denial. The director's determination will, accordingly, not be disturbed.

ORDER: The director's May 22, 2006 decision is affirmed. The petition is denied.

¹ The beneficiary will "elicit detailed patient histories through interviews and examinations."