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Washington, DC 20536

U.S. Citizenship and Immigration Services

D2

[redacted]

APR 26 2004

FILE: WAC 02 071 53693 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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.

for Mari Johnson

Robert P. Wiemann, Director
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 clinic that seeks to employ the beneficiary as a health services supervisor. The petitioner 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 the petitioner's letter in support of the appeal and other documentation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 health services supervisor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 1, 2001 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 duties that entail participating in budget development and management, human resources management, office management, and dental quality control compliance. The petitioner requires candidates for the job to possess a bachelor's degree in an unspecified field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), the director likened the instant position to that of a dental assistant. 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, the petitioner states that the proffered position is that of a medical and health services manager, not a dental assistant position. 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 will examine the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(*1*), as this is the point brought up by the petitioner on appeal: a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Factors often considered by CIS when determining this criterion 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 is that of a medical and health services manager. None of the beneficiary's job duties entails the scope or level of responsibility of that occupation. The petitioner wrote in part 5 of Form I-129 under "non-technical description of job" that the beneficiary would be assigned as the dental office manager, exactly as pointed out by the director in his decision. Nowhere did the director state or imply that the proposed duties were "menial," as alleged by the petitioner, but the director determined that none of the stated duties individually or in combination required the attainment of a baccalaureate degree in a specific specialty.

Unfortunately, the duties are not described in detail, nor are any specific projects, examples, or day-to-day tasks enumerated. Thus, for example, it is not possible to determine why or how the beneficiary, allegedly not practicing dentistry, would accomplish quality assurance regarding services delivered, other than by providing patients with surveys or interviewing them. The latter would not require a dentistry degree. With the exception of quality assurance of dental services, none of the duties listed requires specific knowledge of dentistry. The majority of the duties pertain to the category of managers such as administrative services and human resources managers, positions which do not require a degree in a specific specialty, if any degree at all.

Of particular significance is the fact that the petitioner does not specify the type of degree required to fulfill the position's duties. It does not appear that a degree in dentistry would greatly further the objectives of an individual responsible for running an office, even if the office provides dental care. More important would be hands-on experience gained from working in the administrative areas, as pointed out by the *Handbook*. Based on the evidence on the record, the AAO cannot conclude that the instant position requires a degree in dentistry or in any

other specific specialty. The petitioner has, thus, not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The record contains no evidence to meet any of the other criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A). Thus, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.