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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 225 50316 Office: CALIFORNIA SERVICE CENTER Date: FEB 04 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision.

The petitioner is a dental clinic that seeks to employ the beneficiary as a researcher of periodontal diseases. 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 a brief and previously submitted evidence.

The AAO will address the director's conclusion that the position is not a specialty occupation.

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 evidence; (3) the petitioner's response to the request; (4) the director's denial letter; and

(5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a researcher. Evidence of the beneficiary's duties includes: the Form I-129, the letter accompanying the Form I-129, and the response to the request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: studying periodontal disease and its relationship to certain causes and hereditary factors; collecting data and samples from patients for clinical characterizations and to send to an outside laboratory; and analyzing factors such as antibodies. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that based on the evidence, the petitioning entity does not engage in dental research and did not demonstrate an intention to establish a dental research department. The director, therefore, concluded that the beneficiary's duties are not realistic given the nature of the petitioner's business. Finally, the director noted that the beneficiary's job description is vague.

On appeal, counsel contends that the proffered position qualifies as a specialty occupation. Counsel maintains that the petitioner had expressed its intention to expand and develop its practice in periodontal care. Moreover, counsel states that the beneficiary's duties are not vague. Citing the Department of Labor's (DOL) *Dictionary of Occupational Titles* (DOT), counsel states that a research associate must possess a graduate degree. Furthermore, counsel states that according to the DOL's *Occupational Outlook Handbook* (the *Handbook*), the proffered position resembles a medical scientist performing independent research – a position that requires a bachelor's degree or higher. Counsel states that the beneficiary will work under the supervision of person holding a doctor of dental surgery. Last, counsel maintains that the DOL and the AAO had previously determined that the proffered position qualifies as a specialty occupation in another petitions.

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.

Counsel claims that the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) is satisfied because the DOT and *Handbook* state that a bachelor's degree is required for the proffered position. The AAO does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. With respect to the *DOT*, the DOL has replaced the *DOT* with the *Occupational Information Network* (*O*Net*). Both the *DOT and O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into an occupation and advance within that occupation.

A review of the *Handbook* reveals that the duties of the proffered position are more closely related to those performed by dentists, specifically periodontists, than to medical scientists. Counsel's submitted documentary evidence from the American Academy of Periodontology (AAP), an organization composed of dentists practicing in periodontics, buttresses the AAO's finding that the proffered position's duties relate to a periodontist because the document states that dentists perform research regarding periodontal disease. According to the DOL, to practice as a dentist a person must graduate from an accredited dental school, and all 50 States and the District of Columbia require dentists to be licensed. To perform research, dentists spend an additional two to five years in advanced dental training.

Another of counsel's assertions is that the DOL and the AAO had previously determined in other similar cases that the proffered position qualifies as a specialty occupation. Counsel refers to a case that he finds similar to the instant petition. In the case, the AAO allegedly found that the petitioner's duties reflected those of a physician assistant, a specialty occupation. Counsel's assertion has little value. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Service (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

As discussed above, the AAO finds that the proffered position is similar to a dentist. Thus, the petitioner's degree requirement would not be common to the industry in parallel positions among similar organizations. As previously related, the proffered position is so complex or unique that it can be performed only by an person graduating from an accredited dental school and holding proper licensure, and the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is associated with the completion of dental school and licensure.

No evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – a dentist. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a dentist, and any other evidence the director may deem necessary. 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 August 14, 2002 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.