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U.S. Citizenship and Immigration Services

[redacted]

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FEB 06 2004

FILE: WAC 01 250 50167 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 office that seeks to employ the beneficiary as a dental services director. 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.

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.

response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: administering the dental program and directing the clinic's operations and activities; recommending and implementing policies, practices, and procedures; handling personnel matters; developing and implementing staff training; and preparing budgets. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in dental medicine and related experience.

The director found that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that it is common knowledge that a bachelor's degree is not required to perform the duties of managers or dental managers and directors or coordinators and assistants. The director concluded that the proffered position has general managerial duties that would not require professional skills.

On appeal, counsel states that the director errs in concluding that the proffered position is not a specialty occupation under the first, second, and fourth criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Factors often considered by CIS when determining these criteria 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)).

Counsel claims that the petitioner established the first criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the submitted evidence - a detailed description of the proffered position and job announcements from other companies for similar positions - substantiates that a baccalaureate degree is a normal requirement for entry into a dental services director position. Counsel further states that the complexity of the position's duties, not the size of the petitioner's business, determines a degree requirement. Counsel asserts that, according to the Department of Labor's (DOL) 2000-2001 edition of the *Career Guide to Industries,* the proffered position is similar to the specialty occupation of health services manager. The 2002-2003 edition of the DOL's *Occupational Outlook Handbook* (the *Handbook*), counsel claims, discloses that employment in the field of medical and health services management requires a master's degree for most generalist positions, and a bachelor's degree for some entry-level positions in small facilities.

When determining whether a particular job qualifies as a specialty occupation, the AAO does not simply rely on a position's title. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* provides a 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. Both the *Career Guide to Industries* and the *Handbook* provide the same information regarding health services

managers. A review of the *Handbook* discloses that counsel correctly concludes that the duties of the proffered position resemble those of a health services manager. However, given the nature of the petitioner's business - a dental office with only three employees - the duties of the dental services director would not require a baccalaureate or higher degree or its equivalent as the normal minimum for entry into the particular position. The *Handbook* states that a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices and some other facilities may substitute on-the-job experience for formal education. Thus, based on the *Handbook's* information, the proffered position would not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A) (1) because the petitioner's business is akin to that of a physician's office, a facility that substitutes practical experience for formal education.

Counsel states that the submitted advertisements and job announcements from similar organizations establish an industry-wide bachelor's degree requirement as found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel's claim is baseless. Three Internet job postings are insufficient, in themselves, to establish that a bachelor's degree is the industry standard for parallel positions among similar organizations. Moreover, the postings are deficient. With the posting from Personnel Company of Colorado, it impossible to determine whether the petitioner's organization is similar in size, scope, and nature to the organization represented by Personnel Company of Colorado. Likewise, the petitioner's organization clearly differs from Delta Dental Plan of California, a dental health carrier covering 13.7 million people. Finally, the duties of the proffered position differ dramatically from those of Alternative Technology Resources, Inc.'s position.

No evidence is in the record that establishes that the proffered position is unique.

Counsel claims that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). According to counsel, a candidate must have a bachelor's degree in dental medicine because of the proffered position's duties, such as interpreting and implementing a dentist's instructions and satisfying standards of the California Dental Board. Counsel's claim fails to elevate the duties of the proffered position beyond those expected in an ordinary dental office. Likewise, the submitted office brochures do not indicate that the petitioner's services differ from those of an ordinary dental office. Last, to the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As related in the discussion above, 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.