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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
BCIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

File: WAC 02 070 50916 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, 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 with three employees and a gross annual income of $215,272.59. It seeks to temporarily employ the beneficiary as a medical research assistant. The director determined that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel submits a brief and copies of documentation already on the record. Counsel asserts 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.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. Section 214(i)(l) of 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.

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

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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.

In the original petition, the petitioner described the duties of the proffered position as involving the analysis of the petitioner's operating procedures in order to develop efficient methods of accomplishing the work. The beneficiary would schedule meetings with the managing dentist to determine the need for new instruments and computer technology and to discuss new clinical procedures and treatments. The beneficiary would also be required to train dentists and assistants in emergency procedures, and to analyze the quality of x-rays and dental charts. The duties include advising dentists on how to delegate more clinical responsibilities to their assistants, and conducting surveys to gather data to be used in problem-solving. The proffered position also includes health and safety responsibilities. The petitioner stated that these duties require an individual with a doctor of dentistry degree.

The director asked for further information with regard to whether the proffered position was a specialty occupation. In response, the petitioner submitted, through counsel, an explanatory statement including a breakdown of the time spent on the various job duties, as well as the newspaper job announcement for this position.

On July 19, 2002, the director denied the petition. The director concluded that the petitioner had not established that there existed a position which could be classified as a specialty occupation. On appeal, counsel asserts that the proffered position requires a doctorate in dentistry, because the nature of the specific duties is highly specialized and complex.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. The petitioner has not established that the proffered position meets any of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1)

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The offered position appears to include duties similar to those of an experienced dental hygienist, as described in the *Handbook*. The *Handbook* does not indicate that employers of dental hygienists require a bachelor's degree.

The proposed duties also include elements of management analysis, a field which, according to the *Handbook*, an individual may enter with a bachelor's degree in a variety of fields. *Handbook* guidance indicates that management analysis does not require a degree in a specific specialty.

Thus, upon review of the evidence on record, it does not appear that a bachelor's degree in a specific specialty is the minimum requirement for entry into the proffered position.

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard 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." *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 *Handbook*'s conclusions about a degree requirement for dental hygienists and management analysts were discussed in the previous section, and shall not be repeated here. The petitioner has not submitted any evidence to establish the industry requirement for the proffered position.

In addition, the petitioner submitted no documentation that any professional association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that this position involves duties seen as either unique or complex so that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h)(4)(iii)(A)(3)

Although the petitioner has stated that it only hires degreed individuals for the instant position, the petitioner submitted no documentation to support this. Thus, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no documentation on the record with regard to the specialized and complex nature of the proffered position. The job description provided contains work duties that are similar to those of a dental hygienist with responsibilities for keeping the supervising dentist up-to-date on developments in the field. The description also contains management analysis duties, such as those relating to the exploration of streamlining procedures. The record, however, does not document why these tasks require an individual with a doctorate in dental medicine.

The record, for example, does not document the number of dentists employed or their level of experience. There is no explanation as to why the dentists require the type of supervision the petitioner described. The record contains no documentation regarding the nature of the patient population served; for example, whether the practice focuses on high-risk cases. There is no evidence to support the need for a designated management analyst in the practice. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met this criterion.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

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