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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 02 034 57808 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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 fifteen employees and a gross annual income of $1,069,000. It seeks to employ the beneficiary as a dental medical research assistant. The director denied the petition on the basis that that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel submits a brief and other evidence. Counsel asserts, in part, that the duties of the proffered position are so specialized and complex, that a degree in dentistry is required to perform them.

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:

> an 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 received by the California Service Center on October 24, 2001, the duties of the proffered position were described as follows in counsel's letter:

1. Reviewing professional medical journals, reference works and research publications related to providing diagnostic, therapeutic, and preventative dental healthcare;
2. Research specific developments in oral examination, X-ray technology, orthodontics, periodontics, restoration, filling technologies, fabrication of crowns, and drug interactions;
3. Prepare abstracts and statistical data for reports and recommendations for care;
4. Elicit detailed patient histories;
5. Review charts, files, x-rays for pertinent data to include in reports; and
6. Assist dentists in making diagnosis by highlighting relevant factors such as age and medical condition.

The petitioner also provided the following details:

> [The beneficiary] will also be required to elicit detailed patient histories through interviews and examinations. His duties will include discussing patient charts and files with dentists, and interpreting laboratory tests and x-rays. . . . [The beneficiary] **will not perform any dental care, diagnosis or prescribe any treatments.** (Emphasis in original.)

The original petition also included documentation showing that the beneficiary was awarded the degree of Doctor of Dental Medicine by a Filipino university.

On January 16, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In response, the petitioner submitted information

about the job duties similar to that which was already on the record. The response included a number of dental research abstracts and other technical literature.

On June 23, 2002, the director denied the petition, finding that the evidence did not establish that the proffered position qualified as a specialty occupation.

On appeal, counsel contends that, since the Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a complete education in dentistry requires eight years of post-secondary study, it follows that the proffered position requires an incumbent with education beyond a bachelor's degree. Counsel also asserts that the duties are specialized and complex in that they involve "specialized research in the field of dental medicine and devising methods to utilize the fruit of the research at the petitioner's clinic."

Citizenship and Immigration Services (CIS) often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. Although counsel refers to the H*andbook's* section on the educational requirements for dentists, counsel repeatedly states that the proffered position does not entail any actual patient diagnosis or hands-on treatment. It appears that counsel is attempting to differentiate this position from that of a dentist; otherwise, the beneficiary would be subject to government licensure requirements.

Although the job title suggests that the proffered position is akin to that of a medical researcher, a detailed examination of the *Handbook's* description of the medical researcher position reveals that it is different. A bachelor's degree would be the minimum requirement in order to enter into the field of medical research, per the *Handbook*. According to the 2002-2003 edition of the *Handbook* on page 219, it appears that the main focus of such researchers is on finding solutions to very specific problems, or answers to very specific questions. The solutions or answers which they seek, however, have a broad application rather than an individual scope. The goals of medical researchers are not necessarily the same as those of medical or dental practitioners, who diagnose individuals and seek solutions for those particular patients.

The duties of the proffered position appear to be focused on individual patient care. The research involved, consisting of speaking with patients and reading dental literature, is the type of research done by dentists and their staff in order to treat patients. This is not the type of research contemplated by the *Handbook* in reference to the researcher positions. The dental literature the beneficiary would read, in fact, publishes the work of the medical and dental scientists conducting studies in laboratories and clinical facilities. There is no information on

record to indicate that this is the type of work to be performed in the proffered position.

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)

As discussed above, the proffered job duties do not fit into the medical scientist/researcher category as described in the *Handbook*. As suggested by the director, the most accurate job category available would be that of a dental assistant. To the extent that the *Handbook* does not indicate that employers of dental assistants require a bachelor's degree in a specific specialty, 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 or assistants were discussed in the previous section, and shall not be repeated here. The petitioner has submitted no other evidence to establish industry standards in this regard. 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)

The petitioner has not hired anyone previously for the proffered position. 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 evidence on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to those of a dental assistant. Although the petition describes the position as a dental medical research assistant, no documentation as to any specialized or complex duties within this description has been placed on the record. The dental research abstracts on the record are not probative of this criterion. Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.