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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: EAC 02 137 53764 Office: VERMONT 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, Vermont 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 West Virginia dental laboratory. It has 46 employees and a gross annual income of $3,000,000. It seeks to temporarily employ the beneficiary as dental laboratory supervisor. The director determined that the proffered position was not a specialty occupation.

On appeal, counsel asserts that the proffered position meets all four of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits copies of documentation already on the record.

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.

The term "specialty occupation" is further 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.

The issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition, the petitioner stated that the duties of the proffered position would include supervising the partials department of a dental laboratory, maintaining quality control, and liaising with dentists.

On March 27, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. The director requested a detailed statement of the beneficiary's proposed duties and responsibilities.

In response, the petitioner submitted the following description of the duties of the proffered position:

> It is the Supervisor's responsibility to analyze the orders received from the dentists and then explain the requirements of the orders to the technicians, under his guidance, within the department and supervising the manufacture of prosthetics. The Supervisor is required to consult with the dentists regarding any queries he may have regarding the order and to advise the dentists, when consulting on complicated issues in designing and manufacturing the customized prosthetic. As a result of the on-going supervision of the technicians, the supervisor is providing the technicians with continuing education on a daily basis. The Supervisor is charged with establishing, implementing, and maintaining quality standards within the department.

The petitioner added that a bachelor's degree in dental technology is a minimum requirement to perform the functions of a supervisor efficiently.

Counsel also submitted a letter from the executive director of the National Association of Dental Laboratories, a letter from the Dental Manufacturers of America, Inc., a letter from one of the beneficiary's competitors, letters from three dentists, and a letter from the chairperson of the Dental Laboratory Technical Department of New York City Technical College. Counsel also stated that of the four supervisors currently employed by the beneficiary, one of them held the equivalent of a bachelor's

degree in dental technology, while the other three did not have degrees but had many years of experience in the specialty.

On June 28, 2002, the director denied the petition. The director found that the petitioner had not established any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director noted that, according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, most dental laboratory technicians learn their craft on the job, and that the fact that the proffered position includes supervision does not make it a specialty occupation.

On appeal, counsel re-submits copies of the documentation already on the record. In addition to referring to and highlighting information already on the record, counsel asserts that Citizenship and Immigration Services (CIS) has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Service Centers in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

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, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied,* 485 U.S. 1008 (1988).

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

**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)**

The Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, examines the educational and training requirements for dental laboratory technicians on page 549. According to the *Handbook*, many employers will train an individual in dental laboratory technology without any classroom experience, although others hire persons who have learned the basics of the craft through educational programs. Training in dental laboratory technology is available at community colleges, vocational schools, and in the Armed Forces. The *Handbook* notes that in large dental laboratories, technicians may become supervisors or managers. There is no indication in the *Handbook* that a bachelor's degree is the minimum requirement to become a supervisor.

To the extent that a baccalaureate or higher degree or its equivalent is not required for entry into the dental laboratory technology field, the proffered position is not a specialty occupation, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

**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 Citizenship and Immigration Services (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 supervisory dental laboratory technician position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner provided a letter from Drake Precision Dental Laboratory, stating that many of Drake's supervisors hold at least a bachelor's degree in dental technology. No further documentation, such as the names of these employees, their duties and titles, and copies of their baccalaureate degrees was provided. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the petitioner submitted no documentation that any professional dental laboratory technology association has made a bachelor's degree a requirement for entry into the field.

Although, as previously stated, the petitioner did provide a letter from a firm in the industry, this letter did not provide sufficient detail to establish 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. Upon review of the petitioner's description of the duties, the position appears quite similar to the position outlined in the *Handbook* for dental laboratory technicians, with the inclusion of supervisory responsibilities. Without more persuasive testimony, the petitioner did not establish the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

**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 stated that it had become the petitioner's policy to require a bachelor's degree in dental technology or its equivalent for departmental supervisory positions. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.[1] To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

The petitioner explained that three of its current laboratory supervisors have many years of experience but no degree, while a fourth holds the equivalent of a bachelor's degree in dental technology. The record does not contain any evidence supporting these stated qualifications. This information, in any case, does not establish that the petitioner normally requires a degree or its equivalent for entry into the position of supervisory dental technician, and so, does not establish the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

**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)**

In support of this criterion, counsel refers to letters from the National Association of Dental Laboratories, the Dental Manufacturers of America, and the three private dentists, and *The Golden Quarter Century*, a Dental Laboratory Industry Report. The letters reflect general personal opinions rather than specific, probative documentation. The report contains general information about industry trends. Without more persuasive evidence as to the specialized or complex nature of the proffered 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.