PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

D2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: WAC 02 034 56626 Office: CALIFORNIA SERVICE CENTER Date: JAN 08 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 other documentation. Counsel asserts that the position is consistent with that of a medical research assistant and so is a specialty occupation.

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 follows:

> [The beneficiary] will assist a licensed dentist in maintaining the dental health program. She will review major professional medical journals, reference works, research publications, and statistical records to provide diagnostic, therapeutic, and preventive health care services. She will perform studies to identify new techniques and procedures for enhancement and continuing patient care. She will develop feedback programs on performance evaluation in clinical test [sic]. She will provide detailed analysis of setup procedures and special techniques on the use of dental equipment, diagnostic tools, x-ray machines, and other equipment and tools used in the dental laboratory.
>
> She will research general health issues as well as specific developments in dentistry and oral health care for application to patients. [The beneficiary] will elicit detailed patient histories through interview and examination. She will discuss patient charts and files with dentists and interpret laboratory tests and x-rays. [The beneficiary] will research medical literature to find research suggestions and assist dentists in making diagnoses based upon patient age and medical conditions. [The beneficiary] will analyze statistical data to prepare reports and recommendations. She will write reports or present research to dentists in formats such as abstracts, bibliographies, graphs, and presentations for inclusion in patient charts and records.

The director asked for further information with regard to whether the proffered position was a specialty occupation and regarding the nature of the relationship between the petitioner and the beneficiary. In response, the petitioner submitted a breakdown of the time spent on the various job duties, as well as documentation regarding the types of procedures performed by the petitioner. The

petitioner also included a number of articles on developments in dental medicine.

On June 27, 2002, the director denied the petition. The director concluded that the petitioner had not established that a bachelor's degree was a standard minimum requirement for the proffered position, which he likened to that of a dental assistant who also reviews dental journals to help the petitioner keep abreast of new dental technology. The director pointed out that the beneficiary would be working in a dental office, not a research laboratory.

On appeal, counsel states that the AAO has previously approved petitions for medical research assistants; thus, the instant petition should be approved. Counsel submits that the proffered position requires a bachelor's degree because the nature of the specific duties is specialized and complex.

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. Since counsel asserts that the classification of medical researcher, which would require a bachelor's degree, per the *Handbook,* corresponds to the proffered job duties, this job category will be examined in greater detail.

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. According to the *Handbook* on page 219, whatever the branch of science involved, and no matter what the setting for the research may be, 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 diagnosis and 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. It also appears that the proffered position is not that of a dentist, as the beneficiary would work only under the direct supervision of a dentist, and only in an auxiliary capacity.

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*. The offered position appears to be that of a dental hygienist, beyond entry-level, with research duties. To the extent that the *Handbook* does not indicate that employers of dental hygienists require a bachelor's degree, it does not appear that a bachelor's degree is the minimum requirement for entry into this field.

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 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)

The petitioner submitted no information regarding whether it has hired anyone previously for the proffered position. 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 information 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 hygienist with responsibilities for keeping the supervising dentist up-to-date on developments in the field. Although the petition describes the position as a medical research assistant, no documentation as to any specialized or complex duties within the description of this position has been placed on the record. 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.