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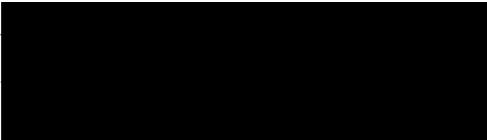
Dr

FILE: LIN 01 186 53933 Office: NEBRASKA SERVICE CENTER Date: DEC 23 2005

IN RE: Petitioner: [Redacted]
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:



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 Vermont Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The decision of the director shall be affirmed. The petition will be denied.

The petitioner is a dental clinic that seeks to employ the beneficiary as a dental researcher. The petitioner 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 on the basis that the proposed position fails to qualify as a specialty occupation. The petitioner submitted an appeal that the AAO dismissed. In dismissing the appeal, the AAO found that although the proposed position qualified as a specialty occupation - that of a dentist - the beneficiary lacked proper licensure to qualify for the position.

On motion, counsel asserts that the proposed position is that of a dental researcher and that the position does not involve patient care; the beneficiary will assist the dentist who will provide patient care. Counsel contends that researching, reviewing, and providing current information for diagnosis and treatment is different from performing the diagnosis, prevention, and treatment. A research assistant will provide the latest up-to-date information as it relates to the patient, counsel asserts, and the dentist will use this information in the patient's diagnosis, prevention and treatment. Nowhere in the job description, counsel states, does it say that a dental researcher makes decisions on patient care. According to counsel, a dentist possesses the ultimate responsibility for the diagnosis, prevention, and treatment of his or her patients; thus, a dentist requires licensure and a dental researcher does not. Counsel states that the proposed position is identical to a medical researcher, and refers to Fragomen and Bell's *H-1B Handbook* and the expert opinion of Dr. Ajit P.S. Sandhu, M.D. to substantiate this. Counsel further states that a medical researcher qualifies as a specialty occupation, and that since a medical researcher parallels a dental researcher, a dental researcher also qualifies as a specialty occupation. Counsel asserts that the AAO did not properly consider the submitted letters from experts Dr. Chan W. Han, Dr. Usha Mantena, Dr. Oshmi Dutta, Dr. Marvin Herman, and Dr. John Winings that prove that a dental researcher is a specialty occupation. On appeal, counsel submits a January 8, 2004 letter from the petitioner. This letter states that the beneficiary and the petitioner are interested in research and it also states the following:

The proposal of the research to be conducted was to compare the dental health of children and adolescents belonging to different socio economic [sic] status groups. The scope of the research project was to perform both short and long-term research. The short term research is intended to help the patients instantly by performing quick tests and drawing conclusions based on the data gathered from test results, patient histories, X-rays and patient dental charts. The long-term research will be an ongoing task on certain set pre-determined research topics. The primary objective of this research will be to provide [a] better understanding and more awareness of how to avoid and prevent certain dental related conditions within my staff of dentists as well as our patients. The data for long-term research will be drawn from statistical values gathered through day to day [sic] research over a period of time. Thus to do this kind

of research it is imperative that the research assistant has ready access to patients['] medical and dental histories, dental charts[,] and X-rays.

Referring to prior AAO decisions, counsel asserts that the AAO recognized that medical research assistants conduct medical research in order to assist the physician in deciding on new treatments or a possible diagnosis.

The AAO grants the motion to reopen or reconsider.

The January 8, 2004 letter from the petitioner is inconsistent with previously submitted evidence in the record. The January 8, 2004 letter indicates that the petitioner proposes long and short-term research to compare the dental health of children and adolescents of different socioeconomic groups. The previous letters from the petitioner and from counsel do not indicate this as a reason for research. The petitioner's May 22, 2001 letter states "the demands of the clinics upon the doctor[']s time dictate that he obtain research assistance so that he may allocate his time to performing clinical duties" and that the dental researcher will "help facilitate the job of the doctor and to help him keep abreast of new developments in the field of dentistry." The letter does not imply that the petitioner proposes long and short-term research to compare the dental health of children and adolescents of different socioeconomic groups. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO will not consider on motion the petitioner's submitted letter to the extent that it conflicts with previously submitted evidence.

In a May 22, 2001 letter the petitioner indicates that the beneficiary will:

[E]licit and trace back the history of patients with unusual symptoms, review dental charts and consider possible diagnosis for the cases. Based upon the findings of the research, the dental researcher will suggest possible tests or procedures to the doctor.

Based on this passage, the AAO finds that the beneficiary will be involved with patient care; thus, the proposed position entails the practice of dentistry. In reaching this conclusion, the AAO has referenced paragraph three of the Washington Administrative Code (WAC), Section 246-817-540, which states that:

No dentist shall allow an unlicensed person who is in his/her employ or is acting under his/her supervision or direction to perform . . . [a]ny diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure. . .

In the May 22, 2001 letter the petitioner describes the beneficiary as eliciting and tracing the history of patients, reviewing dental charts, and considering possible diagnosis for cases; and based on the findings of

the research, suggesting possible tests or procedures to the doctor. In the October 23, 2001 letter counsel states that the beneficiary “consolidates gathered data – considers possible diagnosis – consults the dentist and proposes tests to be conducted.” The duties in the May 22, 2001 and the October 23, 2001 letters that involve the diagnosis of patients constitutes the practice of dentistry under paragraph three of the WAC, Section 246-817-540.

The submitted expert opinion letters from Dr. Ajit P.S. Sandhu, Dr. Chan W. Han, Dr. Usha Mantena, Dr. Oshmi Dutta, Dr. Marvin Herman, and Dr. John Winings are not persuasive in establishing that the proposed position does not require licensure, as they do not overcome the statutory code that delineates the practice of dentistry in the state of Washington. The petitioner has not submitted evidence for the Washington state dental authority indicating that the proposed duties do not constitute the practice of dentistry. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).¹

The AAO’s conclusion is that the beneficiary is not qualified to perform the duties of the proposed position – that of a dentist – as the beneficiary is not licensed to practice dentistry in the state of Washington.

ORDER: The previous decision of the AAO, dated December 18, 2003, is affirmed. The petition is denied.

¹ The most persuasive evidence in establishing that the proposed position does not require a dental license would be a letter from the Washington State Department of Health, Health Professions Quality Assurance, Dental Quality Assurance Commission stating that the duties, as described in the petitioner’s letters, do not constitute the practice of dentistry in the state of Washington.