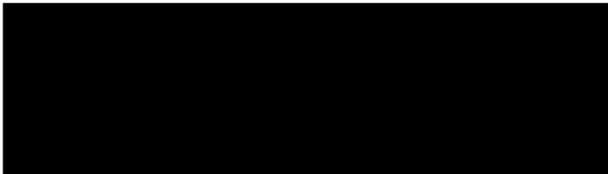




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



02

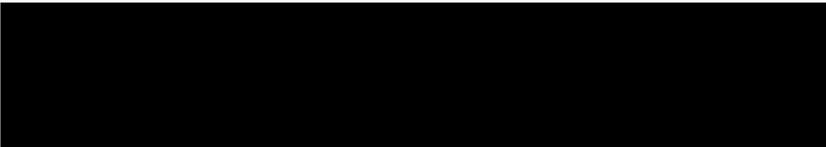
FEB 26 2007

FILE: EAC 05 069 52773 Office: VERMONT SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition 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 office and seeks to employ the beneficiary as a dentist/office manager. 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 because the proffered position is not a specialty occupation. The director stated that some of the duties appeared to be those of a dentist. The director further stated that the petitioner does not require licensure, and thus concluded that the petitioner had not intended to employ the beneficiary as a dentist. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation, but does not require licensure.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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 fields 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record of proceedings before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a dentist/office manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would:

- Perform oral health care assessments that include reviewing patients' health history, dental cancer screening, and taking and recording blood pressure;
- Expose, process, and interpret dental x-rays;
- Remove plaque and calculus (tartar) – soft and hard deposits – from above and below the gum;
- Apply cavity preventive agents such as fluorides and sealants to the teeth;

- Teach patients proper oral hygiene techniques to maintain healthy teeth and gums;
- Counsel patients about plaque control and developing individualized at-home oral hygiene;
- Counsel patients on the importance of good nutrition for maintaining optimal oral health;
- Oversee a variety of administrative tasks, including buying equipment and supplies;
- Supervise dental assistant, receptionist, and hygienist to properly delegate tasks to them based on their capabilities;
- Coordinate and communicate with the insurance representative if dental terms need clarification for billing purposes; and
- Perform research and introduce new dental instruments, materials or equipment necessary to keep up with the latest technology.

The petitioner requires a minimum of a bachelor's degree in dentistry for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. As reflected in the *Handbook*, and stated by the petitioner, the duties of the proffered position are those performed by dentists, with some additional administrative duties that would be performed by an office manager in a dental office. The *Handbook* notes that dentists diagnose, prevent, and treat teeth and tissue problems. The practice of dentistry is defined at New Jersey N.J.S.A. 45 : 6 – 19 and includes such duties as those to be performed by the beneficiary. As indicated by the petitioner, the beneficiary would provide patient care assessing patients' dental/medical condition and performing treatment based upon those assessments. The beneficiary will interpret x-rays and perform oral health assessments. It is, therefore, concluded that the proffered position is a specialty occupation as the position requires the beneficiary to perform duties normally performed by licensed dentists.

The petition may not be approved, however, as the beneficiary is not qualified to perform the duties of the occupation. The beneficiary must satisfy governmental licensing requirements for dentists. As noted in the *Handbook*, all 50 States and the District of Columbia require dentists to be licensed. In most states, candidates must graduate from a dental school accredited by the American Dental Association's Commission on Dental Accreditation, and pass written and practical examinations to qualify for a license.

The petitioner contends that the beneficiary may perform the duties of the proffered position without a license, and in support of that contention references section 6610 of the New York State Education Law indicating under what circumstances a dentist may practice without a license. The law section provided by the petitioner indicates that a dental licensing requirement will not prevent a dentist or a dental hygienist that is licensed in some other state or country from making a teaching clinical demonstration before a regularly organized dental or medical society or group, or from meeting licensed dentists for consultation, provided

such activities are limited to demonstration or consultation. This law has no bearing in this case. First, the record indicates that the beneficiary will be working as a dentist/office manager in New Jersey, not New York. The petitioner's dental office is in New Jersey, and the Labor Condition Application (LCA) submitted with the Form I-129 petition indicates that the beneficiary's work location would be in Jersey City, NJ. New York law has no bearing on licensing requirements for dentists in New Jersey. Second, the beneficiary's duties, as stated in the record, do not include making teaching clinical demonstrations before dental or medical societies or groups, or consulting with other dentists for the purpose of making demonstrations or consultations. As stated by the petitioner, a portion of the beneficiary's duties include providing patient care as a dentist. N.J.S.A. 45 : 6 – 13 provides that no person shall practice dentistry in the State of New Jersey without a license.

The record does not reflect that the beneficiary possesses a license to practice dentistry. Accordingly, the beneficiary is not qualified to perform the duties of the offered position.

Finally, the petitioner references CIS approval of cases which the petitioner contends are similar to the present position offered to the beneficiary in which individuals were employed as dentists without having a license to practice dentistry. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. 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, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a dentist/office manager. For the reasons discussed above, the proffered position is a specialty occupation and requires a license to practice dentistry. Approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has established that the position is a specialty occupation, but has not established that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, the director's decision will not be disturbed.

As always, 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.

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