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FILE: WAC 03 008 54439 Office: CALIFORNIA SERVICE CENTER Date: **JAN 22 2007**

IN RE: Petitioner:
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:



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 Director, California Service Center, denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a dental office. It seeks to employ the beneficiary as a dental specialist/researcher. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 June 10, 2004. The petitioner filed an appeal and the AAO withdrew the director's decision and remanded the matter to the director for entry of a new decision. In the November 2, 2005 remand decision, the AAO determined that the duties detailed by the petitioner clearly indicated that the beneficiary would spend 40 percent of her time assisting dentists in making proper determinations and diagnosis of patients' medical/dental conditions, as well as working with dentists and analyzing the medical significance of infection or disease, providing prognoses and length of treatment patients would receive. The AAO found that the duties of the proffered position encompassed the practice of dentistry in the State of California, which requires a license. The AAO remanded the matter with the instruction to the director to determine whether the beneficiary is qualified to perform the duties of a licensed dentist and to obtain such additional information as he deems necessary in rendering his decision. The AAO also instructed the director to certify the matter to the AAO if his subsequent decision was adverse to the petitioner.

The record contains the director's August 1, 2006 request for further evidence (RFE) requesting that the petitioner provide the beneficiary's dental license or letters from the California regulatory agencies indicating that the position does not require a license. The RFE allowed the petitioner until October 24, 2006 to submit the evidence requested. On November 21, 2006, the director noted that the petitioner had not provided a response to the RFE. The director thus determined that the petitioner had failed to establish that the beneficiary possessed the required license or was exempted from the requirement of a license and denied the petition. The director certified the matter to the AAO for review.

Upon review of the record on certification, the petitioner has not provided evidence that the beneficiary is licensed to perform the duties of a dentist in the State of California. As such, the petitioner has not established that the beneficiary is eligible to perform the duties of the proffered position in California. Accordingly, the AAO will not disturb the director's November 21, 2006 denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 met that burden.

ORDER: The director's November 21, 2006 denial of the petition is affirmed and the petition is denied.