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20 Massachusetts Ave. NW, Rm. A3042
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U.S. Citizenship
and Immigration
Services



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FILE: WAC 03 185 54578 Office: CALIFORNIA SERVICE CENTER Date: 11/17/2008

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a dental clinic. It seeks to employ the beneficiary as a clinical research coordinator and to classify him 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 ground that the proffered position is not 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.

As provided in 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.

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.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and counsel's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a dental clinic with two employees and gross annual income of \$650,000. The petitioner indicated that it needed the services of a full-time clinical research coordinator to “coordinate research activity for dental filling materials.” In response to the RFE the petitioner submitted an organizational chart clarifying that the clinic was a partnership of two licensed dentists with five additional employees, including three dental assistants, an office manager, and a receptionist. The petitioner also submitted a letter from one of the partners identifying his practice as “general dentistry or cosmetic dentistry” and describing the proffered position in greater detail:

Over the recent two years . . . different manufacturers of dental materials have developed and brought to market a broad range of dental materials As our research into these materials continues, we are in need of a competent professional trained in the use and application of these dental materials to coordinate this research and data collection [The beneficiary] will work under our general supervision and is responsible for performing basic activities involved in the conduct of a clinical research study, while ensuring regulatory adherence. In so doing, he will perform a variety of duties involved in the collection, compilation, documentation, support and analysis of clinical research data. He will monitor all aspects of clinical trials from initiation to close-out according to established clinical regulations and guidelines. He will conduct pre-study consultations; manage administrative activities; maintain study documentation; collect and review regulatory documentation; conduct study initiations; conduct interim monitoring consultation; ensure retrieval of completed and signed case report forms; ensure adequacy of study supplies and test articles; participate in serious adverse experience reporting; track enrollment; conduct study closeout consultations; and ensure test article reconciliation. He will assist with protocol development. He will also draft and/or review Informed Consent Forms. He will work with data management to process case report forms; resolve data queries; verify program checks; review data listings; and draft the data release memo.

The petitioner asserted that the minimum educational requirement for the position of clinical research coordinator is a bachelor’s degree in dental surgery. The beneficiary earned a bachelor of dental surgery degree from the University of Lagos, in Nigeria, on December 31, 1998.

The director determined that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). In the director’s view, the petitioner failed to demonstrate that a dental clinic of its nature required the services of a full-time clinical research coordinator, or that the position actually required the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor’s degree in the specific specialty.

On appeal counsel reiterated the petitioner’s contention that it needed the services of a clinical research coordinator. As explained by counsel:

Petitioner is a dental clinic where dental materials are used on a daily basis. The longevity, durability, and application of various dental materials are a concern for the dentists and the patients [T]here is an increasing demand by third-party payors for dental services to document the use of dental materials [The beneficiary], having

worked with these materials, could track and document the factors to justify the use of a particular dental material for a particular procedure or particular patient.

The AAO agrees with the director that the record fails to establish that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree in the field of dentistry or a related specialty field. The position does not involve any primary research in a laboratory. As described by the petitioner, the job appears to involve reading dental literature on the latest developments in dental materials, conveying the data to the licensed dentists, and monitoring clinical trials of the dental materials on the petitioner's patients. The duties of the position are described in such general terms that it is difficult to discern how demanding the research and clinical work would be. For example, the duties do not convey any information about what specific dental literature will be consulted and what specific dental materials are likely to be the subject of clinical trials. Despite the petitioner's assertion that the proffered position requires a bachelor's degree in the field of dentistry, it is not clear from petitioner's description of the job that it could not be performed by an experienced dental assistant without a baccalaureate degree in the field.¹ The AAO notes that the petitioner was requested in the RFE to provide a more detailed company profile – through such documentation as brochures, pamphlets, an internet website, or other company publication – outlining its products and services. Such evidence could help to demonstrate the business context in which the beneficiary would be performing the services of a specialty occupation. The petitioner did not submit any such documentation in response to the RFE, however, or in support of the instant appeal. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). The AAO concludes that the record fails to establish that a baccalaureate or higher degree is the normal minimum requirement for entry into the proffered position, as required to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, the petitioner has not submitted any evidence that a degree requirement is common to the dental industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the position is so complex or unique that it can only be performed by an individual with a specialty degree, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proffered position does not meet the third alternative criterion of a "specialty occupation" set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – "the employer normally requires a degree or its equivalent for the position" – because the subject position did not previously exist and the petitioner has no hiring history for it.

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties are so specialized

¹ As indicated in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which CIS routinely consults as an authoritative source of information about the duties and educational requirements of particular occupations, a bachelor's degree in a specific specialty is not required to enter into the occupation of dental assistant. See *Handbook*, 2004-05, at 339-40.

and complex that they require a depth of knowledge associated with the attainment of a baccalaureate degree in a specific specialty related to the field of dentistry.

Thus, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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