



U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 04 225 52466 Office: VERMONT SERVICE CENTER Date: MAR 22 2006

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, Director  
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 specialty physician practice group that seeks to employ the beneficiary as a medical research assistant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a letter from the employer, a credentials evaluation for the beneficiary, the beneficiary's resume, and abstracts of the beneficiary's published work.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a medical research assistant. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a medical field.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's Ph.D. in dentistry does not qualify him to perform the duties of a medical research assistant in a practice specializing solely in cardiac care. On appeal, the petitioner's president states that the beneficiary is qualified for the position because the basic science requirements for a medical degree and a dental degree are the same. He states further that the proffered position is an entry-level research position, which requires only a baccalaureate degree in a medical sciences field such as biology or biosciences.

In his July 21, 2004 letter, the petitioner's president describes the proposed duties as follows:

[The beneficiary] will be involved in reviewing major professional medical journals for health issues and developments that are particularly relevant to the Clinic's patients, eliciting detailed patient histories, discussing with the doctor the patients' charts and files, and researching medical literature to find research suggestion of modes of treatment for possible diagnosis. He will also suggest possible cure and treatment methods to the primary doctor by making reference to new alternatives cited in the medical journals.

Title 243 of the Code of Massachusetts Regulations (CMR) § 2.01(4) defines the practice of medicine as:

the following conduct, the purpose or reasonably foreseeable effect of which is to encourage the reliance of another person upon an individual's knowledge or skill in the maintenance of human health by the prevention, alleviation, cure of disease and involving or reasonably thought to involve an assumption of responsibility for the other person's physical or mental well being: diagnosis, treatment, use of instruments or other devices, or the prescription or administration of drugs for the relief of diseases or adverse physical or mental conditions. . . .

The AAO finds that the proposed duties, which entail suggesting possible cure and treatment methods of the petitioner's patients, fall within the above CMR definition of the practice of medicine. The petitioner, however, has failed to establish that the beneficiary is qualified to perform the occupation of physician, which requires four years of undergraduate school, four years of medical school, three to eight years of internship and residency, and State licensing. *See* the Department of Labor's *Occupational Outlook Handbook*, 2006-2007 edition. In this case, the beneficiary holds the U.S. equivalent of a Doctor of Dental Surgery (D.D.S.) degree, with a specialization in periodontics. As such, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.