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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 197 50844 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

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 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 fabricates prototype dental models for patient education purposes. It seeks to employ the beneficiary as a skilled dental laboratory technician. 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence including: a letter from the petitioner; dental catalogs, including excerpts from the petitioner's catalog; summaries of published articles related to bonding orthodontic brackets; a glossary of dental terms; letters from industry experts; and a model sample.

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.

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 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 skilled dental laboratory technician. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 2, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: fabricating prototype dental models for training, continuing education, demonstration, and sales application; acting as liaison between the dental customers and staff technicians; supervising up to seven staff technicians; performing quality control; and coordinating and monitoring the department's workflow. The petitioner indicated that a qualified candidate for the job would possess a Doctorate in Dental Medicine degree or a corresponding technical degree, or equivalent experience.

The director found that the proffered position, which is that of a dental laboratory technician, was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position, which entails performing liaison duties, fabrication of models, supervision, quality control, and coordination of workflow, is that of a skilled dental laboratory technician, and is not an ordinary dental laboratory technician, as described in the *Handbook*. Counsel states further that the director erroneously assumed that the petitioning entity was a dental laboratory and failed to recognize its true nature, which is that of a manufacturer of custom dental models used for patient education, demonstration, training, and sales aides. Counsel states further that CIS previously approved an H-1B petition for the same petitioner and same position (a different beneficiary).

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the Medical, Dental, and Ophthalmic Laboratory Technicians job description finds that the job duties parallel the responsibilities of a dental laboratory technician with supervisory duties. The training requirements described in the *Handbook*, 2006-2007 edition, do not indicate that a baccalaureate or higher degree, or its equivalent, is required for a dental laboratory technician job with supervisory duties. Further, contrary to counsel's assertion that the proffered position is not listed in the *Handbook*, a review of the Employment section of the Medical, Dental, and Ophthalmic Laboratory Technicians category finds that three out of five salaried medical, dental, and ophthalmic laboratory technicians jobs were in medical

equipment and supply manufacturing laboratories. In this case, the evidence of record indicates that the petitioner is a dental-supply manufacturing laboratory. As such, the DOL does address positions such as the proffered position under the category of Medical, Dental, and Ophthalmic Laboratory Technicians in the *Handbook*. It is further noted that although the director requested copies of the petitioner's quarterly wage reports for the last two quarters and its federal income tax return for 2003, the record contains quarterly wage reports and a federal income tax return for the following business and address: Centre City Dental Laboratory at 1215 S. Escondido Blvd., #B, Escondido, CA 92025. The petitioner's owner and president states on appeal that he is also the owner of a dental laboratory, and that the petitioner, [REDACTED] is not a dental laboratory but a manufacturer. The quarterly wage reports and federal tax return submitted by the petitioner, however, are for the dental laboratory mentioned above, and are not for [REDACTED] which the petitioner's owner and president suggests is a separate manufacturing entity. The petitioner has not submitted an explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record contains letters from the international general sales manager of the California company, Orthodontic Design and Production, and from a practicing dentist and consultant to a dental company, who both state, in part, that the proffered position requires a dentist with an orthodontic background/a degreed dental professional. The writers, however, do not provide any evidence in support of their assertions or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in a field related to dentistry. The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinions 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).

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. Counsel maintains that the proffered position is a "skilled dental laboratory technician," as opposed to an "ordinary dental laboratory technician" and, therefore, is sufficiently unique and complex that it can be performed only by a professional. Counsel, however, does not provide any evidence that the dental laboratory technician industry is comprised of "skilled" and "ordinary" positions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the director previously approved an H-1B petition for the same petitioner for “similar/parallel job title and duties.” The record of proceeding does not contain copies of the previously approved visa petition and supporting documentation. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). As the director properly reviewed the record before him, the AAO disagrees that CIS failed to follow its own standards and thus abused its discretion, as counsel suggests. Further, the record does not contain sufficient evidence of the petitioner’s past hiring practices and, therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. 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.