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U.S. Citizenship  
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APR 25 2007

FILE: WAC 05 204 54213 Office: CALIFORNIA SERVICE CENTER Date:

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 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 clinic and seeks to employ the beneficiary as a medical scientist. 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 found that the proffered position is that of a dentist, but denied the petition because the beneficiary was not licensed to practice dentistry in California. On appeal, counsel submits a brief and additional information stating that the proffered position is a specialty occupation, but not one requiring a license to practice dentistry. The petitioner states that the beneficiary is qualified to perform the duties of the proffered position by virtue of her foreign education which has been determined by a credentials evaluation service to be equivalent to a doctor of dentistry degree from an accredited college or university in the United States.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of 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.

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 director’s notice of intent to deny (NOID); (4) the petitioner’s response to the director’s request for evidence; (5) The petitioner’s response to the director’s NOID; (6) the director’s denial letter; and (7) 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 medical scientist. Evidence of record indicates that the beneficiary would perform the following duties:

- Gather medical data from the petitioner’s existing patients;
- Elicit patient history and discuss medical charts with the dentist analyzing the collected data for the dentist;
- Review major professional dental journals that deal with issues involved with endodontics and dental surgery which may be relevant to the petitioner’s patients;
- Research professional journals as they are published and present an abstract of them that can benefit the petitioner’s practice;
- Assist the petitioner in research;
- Stay abreast of new developments in the field of endodontics and dental surgery by reviewing the medical/dental literature dealing with new surgical procedures that would be beneficial to the dental practice;
- Analyze new medical developments to consider all possible diagnosis and treatment procedures relevant to the petitioner’s practice;
- Provide the petitioner the latest information from professional literature; and

- Research and analyze new developments in endodontics and oral surgery for the purpose of benefiting the petitioner's patients and practice, and assist the petitioner in writing out findings for possible publication.

The petitioner requires a baccalaureate level education for entry into the proffered position, and finds the beneficiary qualified for the position by virtue of her foreign education which has been determined by a credentials evaluation service to be equivalent to a doctor of dentistry degree from an accredited college or university in the United States.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are similar to those noted for dentists. The *Handbook* notes that dentists diagnose, prevent, and treat teeth and tissue problems. The petitioner states on appeal that the beneficiary would have no patient contact or provide patient care. This statement is contrary to evidence of record. As indicated in the petitioner's response to the director's request for evidence dated September 5, 2005, the beneficiary would: gather medical data from the petitioner's patients; elicit patient history from patients; analyze patients' medical data and history, and discuss findings with the dentist; and analyze developments in the field in considering patient diagnosis and treatment procedures. The beneficiary would, therefore, exert considerable influence over the type and length of treatment patients receive. 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 licensed to work as a dentist in California. 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.

It is further noted that § 1625 – 1636.6 of the California Business and Professions Code explains under section 1625 that a person practices dentistry in California when that person "performs, or offers to perform, an operation or diagnosis of any kind." The duties detailed by the petitioner clearly indicate that the beneficiary will assist the dentist with making possible diagnoses and determining patient treatment procedures. The proffered position, does, therefore, encompass the practice of dentistry in the State of California which requires a license. As the petitioner does not possess a license to practice dentistry, she is not qualified to perform the duties of the offered position. The director's decision shall 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.