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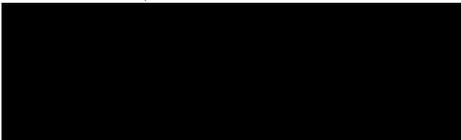


FILE: WAC 04 025 52544 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2005

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a dental clinic and seeks to employ the beneficiary as a dental research assistant. 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 denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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 petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 dental research assistant. Evidence of the beneficiary's duties includes the I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would: research general dental health issues as well as specific developments in various areas including oral examinations and x-ray technology, scaling and polishing, fluoride and other topical applications, and restoration, diagnosis and material options for inlays (35 per cent of the time); elicit detailed patient histories through interviews and examinations including discussing patient charts and files with dentists, interpreting laboratory tests and x-rays in order to collect information and data for analysis and assist dentists with diagnoses based upon patient age and medical conditions (20 per cent of the time); review medical literature including professional journals, online references, research periodicals and other records to identify new dental procedures or processes for application in the dental practice (20 per cent of the time); analyze statistical data to prepare reports and recommendations on improvement in the treatment of patients in order to devise procedures for improving office services and products (15 per cent of the time); and present research to dentists in formats such as abstracts, bibliographies, graphs, and presentations for inclusion in patient charts and records (10 per cent of the time). The petitioner requires a minimum of bachelor's degree in dentistry or a related area for entry into the proffered position.

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 beneficiary would: elicit patient histories by interviewing and examining the patient; discuss patient charts and files with dentists; interpret laboratory tests and x-rays in order to collect information and data for analysis and assist dentists with diagnoses based upon patient age and medical condition; and analyze statistical data to prepare reports and recommendations on improvement of patient care. 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.

As such, the beneficiary must satisfy governmental licensing requirements for dentists. 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 dentists with diagnoses.” The proffered position, does, therefore, encompass the practice of dentistry in the State of California which requires a license. The record does not reflect that the beneficiary possesses a license to practice dentistry. Accordingly, the beneficiary does not appear qualified to perform the duties of the offered position.

The director's decision shall accordingly be withdrawn, and this matter remanded to the director to determine whether the beneficiary is qualified to perform the duties of a licensed dentist. The director may obtain such additional information as he deems necessary in rendering his 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.

ORDER: The director's decision is withdrawn. This matter is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which if adverse to the petitioner shall be certified to the AAO for review.