



U.S. Citizenship
and Immigration
Services

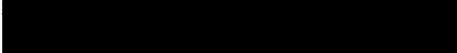
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FILE: WAC 02 205 53282 Office: CALIFORNIA SERVICE CENTER Date: **APR 20 2005**

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 facility that seeks to employ the beneficiary as an administrator, dental care facility. The petitioner, therefore, 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 previously submitted evidence.

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 an administrator, dental care facility. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will direct administration of the facilities; administer fiscal operations such as budgetary planning, accounting, and establish rates for dental care services; direct training; hire personnel; negotiate improvements to the facilities; add state-of-the-art dental equipment; direct and coordinate the administrative staff and dental personnel; develop policies and procedures for business activities; provide cost analysis and implementation; maintain the material system; and handle human resource matters. The petitioner stated that a candidate must possess a bachelor's degree in public administration, health administration services, dentistry, a life or social science discipline, or a related field.

Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director found the proposed position combined the duties of a dental assistant and an office manager, which are not specialty occupations. The overall responsibility of the job, the director stated, lies with the licensed dentist. The director found that baccalaureate-level training is not a normal industry-wide requirement for entry into the position; that the evidence did not establish that the position is so complex or unique that it can be performed only by a person with a degree; or that the nature of the duties is so specialized and complex that the knowledge required to perform them is associated with the attainment of a baccalaureate or higher degree.

On appeal, counsel states that the proposed position's duties do not resemble those of a dental assistant. Counsel states that the submitted letters from companies substantiate that the proposed position requires a bachelor's degree. Counsel emphasizes that the job duties are complex, and refers to the *Handbook's* description about the educational requirements of medical health and services managers. Counsel contends that the *Handbook* states that a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within health care organizations, and maintains that this applies to the immediate petition.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner describes the some of the proposed duties in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. The petitioner stated that beneficiary will “direct training,” “direct and coordinate the activities of administrative staff, dental personnel and services,” negotiate improvements to the facilities, and maintain the material system. No details are given about the type of training that will be provided, what is involved in directing and coordinating activities and services, the nature of the improvements to be negotiated, and what is involved in the “implementation and maintenance of material systems.” This deficiency is not cured by any of the documents that the petitioner has submitted into the record. Accordingly, the petitioner has not substantiated that the beneficiary would actually perform the services of a position which requires baccalaureate-level knowledge.

Counsel asserts that the *Handbook* reports that a bachelor’s degree is adequate for some entry-level medical and health services manager positions in smaller facilities and at the departmental level within health care organizations. This is correct; however, counsel ignores the *Handbook’s* statement that “Physicians’ offices and some other facilities may substitute on-the-job experience for formal education.” With the instant petition, the proposed duties are described in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. We therefore cannot determine whether the proposed position requires simply on-the-job experience or baccalaureate-level knowledge in a specific specialty.

Because the evidence does not establish that the proffered position is one for which the minimal entry-level requirement is normally a bachelor’s degree or its equivalent in specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations. The record reflects that letters from Vic A. Derbailian, D.D.S; Gary K. Kevorkian, D.D.S.; Meher Babian; Arto J. Boyajian, D.M.D.; and Nishan Odabashian, DMD, MS, and president of the Armenian Dental Society of California all indicate that it is customary to require a bachelor’s degree for the proposed position.

The letters uniformly emphasize that the proposed position requires a bachelor’s degree, but none of the letters state that the bachelor’s degree must be *in a specific specialty*. As previously discussed, 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 which is *in a specific specialty* that is directly related to the proffered position. Given this

deficiency in the letters, the petitioner fails to show that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the proposed duties are described in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner show that it normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed, the proposed duties are described in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. Thus, the petitioner fails to establish 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 on the ground that the proffered position is not a specialty occupation.

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.