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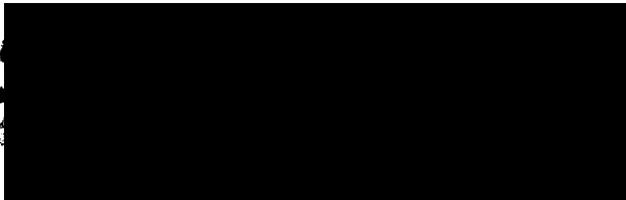


FILE: WAC 02 222 51270 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 2005**

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, 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 The director's decision will be withdrawn.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 the entry of a new decision.

The petitioner is a dental clinic and seeks to employ the beneficiary as a dental specialist/researcher. 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 specialist/researcher. 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:

- Manage the clinic's affairs in accordance with proper government standards;
- Analyze the clinic's practices and procedures and compare them with established national standards and administrative policies;
- Hire additional staff as needed, and evaluate the work of both existing and newly hired employees;
- Oversee the billing of the petitioner's patients and insurance companies;
- Coordinate with various dental laboratories to insure that orders are submitted and received in a timely manner;
- Develop a system to be used by the dental office in conjunction with laboratories that will improve overall efficiency;
- Assist dentists with analysis of patient records;
- Examine patient records to compose dental reports for the ultimate approval of clinic dentists;
- Utilize her medical background to provide complete analysis of patients' oral and maxillo-facial conditions based upon the dentist's findings, reports, medical history and laboratory results;
- Record conditions for diagnosis and future treatment by the dentist;
- Consult with dentists regarding dental treatment solutions as they relate to patients' conditions;

- Maintain complete dental reports and related documentation for each patient;
- Coordinate dental care evaluation and develop criteria and methods for evaluation/reports; and
- Utilize medical and dental journals, textbooks and research materials to analyze and evaluate patient records regarding AIDS and treatment of gingival diseases.

The administrative duties relating to assurance of the quality of work and compliance with national standards will comprise approximately 30 per cent of the beneficiary's time. The duties relating to analysis of patient records and assisting dentists in making proper determinations and diagnosis will occupy approximately 40 per cent of the beneficiary's time. Thirty per cent of the beneficiary's time will be spent with medical and dental research and composition of reports based on the research. The petitioner requires a minimum of a bachelor's degree in dental medicine 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. As indicated in the petitioner's response to the director's request for evidence, the beneficiary would spend approximately 40 per cent of her time in assisting dentists in making proper determinations and diagnosis of patients' medical/dental conditions. 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 it does not appear that the beneficiary is qualified to perform the duties of the occupation. 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 analyze patient records and assist dentists in making proper determinations and diagnosis, and recommend medical solutions for patients' conditions. 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.