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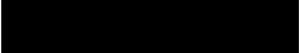
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 06 2005

IN RE:

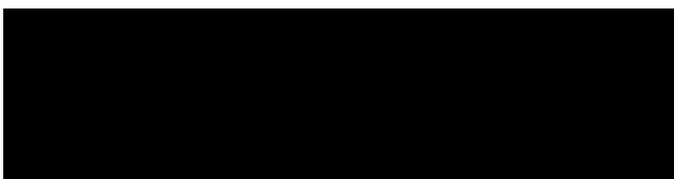
Petitioner:

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 appeal will be dismissed. The petition will be denied.

The petitioner is a dental laboratory that seeks to employ the beneficiary as a dental laboratory supervisor. 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 memorandum and copies of previously submitted evidence, including the Bachelor of Science Degree Program Curriculum for the University of Texas Health Science Center at San Antonio, a publication from the laboratory "Glidewell," and an opinion from the general manager of BEGO USA, a world-wide company that manufactures raw materials for dental technology and offers training programs for dental technicians. Counsel also submits new evidence, including copies of the following: a publication entitled *Bonded Porcelain Restoration*; an article on "Adhesive Cementation"; and the website of the beneficiary's current employer in Germany.

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 dental laboratory supervisor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 24, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's October 24, 2003 letter, the beneficiary would perform duties that entail: supervising and coordinating the activities of ceramists; recommending measures to improve methods, performance, quality of products, and facilitating changes in working conditions to increase efficiency; and recruiting, hiring, training, evaluating, and promoting employees. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in dental laboratory sciences or an equivalent thereof.

In his December 17, 2003 response to the director's request for further evidence, counsel expanded the beneficiary's duties, adding items such as: providing continuing education programs for dentists in Rhode Island that use the petitioner's laboratory services. Counsel stated further that the petitioner is in the process of constructing a new facility that will have the only continuing education program for dental technology in Rhode Island. In sum, the initial description appeared to have the beneficiary supervising and training dental technicians, while the second iteration of the job has the beneficiary additionally training dentists.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)* and *DOT*, 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 field of dental laboratory sciences is evolving at a very rapid pace, and the petitioner has submitted evidence that there are bachelor-degree programs in dental laboratory sciences applicable to the proffered position. Counsel states further that the proposed duties are so complex as to require a related bachelor's degree. Counsel also states that the proffered position entails research and development duties, which require knowledge of physiology, physics, and chemistry, and that the beneficiary will be involved in the case design and diagnosis of patients. Counsel submits supporting evidence such as a letter from BEGO, USA and information related to Glidewell Laboratories.

Counsel's expanded job duties for the proffered position, including research and development, as well as case design and diagnosis of patients, are noted. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a dental laboratory supervisor. *See the Handbook*, 2004-2005 ed. at 603. Counsel's statement that the petitioner submitted evidence that there are bachelor-level programs in dental laboratory sciences applicable to the proffered position is noted. The AAO cannot assume, however, that the additional training that the baccalaureate program provides is solely related to the alleged complexity of the proffered position. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The publication from Glidewell Laboratories in California is also noted. Counsel observes that the beneficiary's professional counterparts in Glidewell Laboratories, [REDACTED] and [REDACTED] hold related baccalaureate degrees. Information at the [REDACTED] website at <http://www.glidewell-lab.com/> finds that Glidewell Laboratories is the world's largest dental laboratory with over 1800 employees, six locations in California, Arizona, Costa Rica, and Mexico, and a research and development department. There is no evidence to show that Glidewell Laboratories is similar to the petitioner, or that the positions of [REDACTED] as Glidewell's Chief Technology Officer, and [REDACTED] as one of Glidewell's general managers, are parallel to the proffered position. In the instant case, information on the petition indicates that the petitioner is a dental laboratory with 40 employees and a gross annual income of \$3 million. Information in the record further indicates that the beneficiary would be supervising 12 ceramists, the majority of whom hold high-school level education, as opposed to the duties of [REDACTED] and [REDACTED] which include overseeing education and research and development, and managing 133

technicians and the "BioTemps" Dental Laboratory. Furthermore, although counsel states that the research and development activities performed at Glidewell Laboratories and at the beneficiary's current employer in Germany are equivalent to the research and development activities entailed in the proffered position, the record contains no evidence that the petitioner is engaged in research and development activities.

The letter from the general manager of BEGO USA, a worldwide company that manufactures raw materials for dental technology and offers training programs for dental technicians, is also noted. The writer asserts that positions such as the proffered position require a related bachelor's degree. The writer asserts further that the proffered position is similar to the chief technology officer and general manager positions at Glidewell Laboratories. The writer, however, provides no evidence in support of his assertions. 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)).

The publication entitled *Bonded Porcelain Restorations in the Anterior Dentition, A Biomimetic Approach* and the article entitled *Adhesive Cementation* are also noted. Counsel states that a review of this information reveals the highly complex and theoretical nature of these topics and that a bachelor's degree is needed to teach this information to dentists. As discussed above, providing continuing education programs to dentists was not included in the job description submitted with the initial petition and, therefore, this issue will not be considered in the analysis of this decision.

The record 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. As counsel does not address this issue on appeal, it will not be discussed further.

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.

Beyond the decision of the director, the AAO does not find that the beneficiary is qualified to perform the duties of a specialty occupation because the credentials evaluation service based its findings on the beneficiary's education and work experience. A credentials evaluation service, however, may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R.

§ 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For this additional reason, the petition may not be approved.

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.