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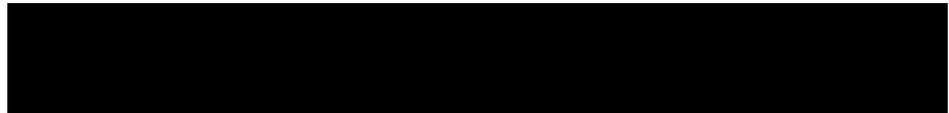
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FILE: WAC 01 048 50438 Office: CALIFORNIA SERVICE CENTER Date: JUL 20 2005

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 service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a dental clinic that seeks to employ the beneficiary as a dental services director. 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 on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings. On motion, counsel states that the proffered position is similar to that of a health services manager, a position that the AAO determined was a specialty occupation. Counsel asserts that the AAO's assessment that the position was most like a dental assistant combined with an office and administrative support supervisor and manager is incorrect, given the duties and responsibilities of the proffered position.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). The petitioner has met its burden, and the motion is accepted.

The AAO now turns to the merits of the reopened petition. Counsel states that the position of dental services director is similar to a health services manager, which the AAO found to be a specialty occupation. On review, the AAO finds that the proffered position is a specialty occupation based on the California Business and Professions Code, Section 1625(e), which states that a person is considered to be practicing dentistry if he or she "[m]anages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.¹ The duties of the proffered position include administering the dental program and directing the operations and activities of the clinic, clearly a managerial role. Since the duties of the proffered position fall under the definition of practicing dentistry, an occupation that requires both a dental degree and a license, the position is a specialty occupation.

The AAO's decision and the director's decision are withdrawn. The director did not address the issue of whether the beneficiary is qualified to perform the duties of a specialty occupation that requires licensure.

The director must afford the petitioner reasonable time to provide evidence related to the beneficiary's qualifications, as well as any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

¹ www.leginfo.ca.gov, accessed 7/11/05.

ORDER: The director's January 17, 2002 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.