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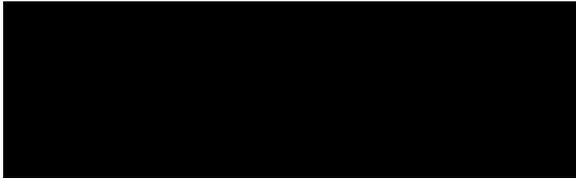
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 146 50352 Office: TEXAS SERVICE CENTER Date: JUN 15 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 and seeks to employ the beneficiary as a senior orthodontic technician. 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 does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal the petitioner submits a brief indicating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position 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 proceeding 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 counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a senior orthodontic technician. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: construct and repair full or partial dentures or dental appliances; fabricate dental appliances or apparatus, such as dentures, retainers, or metal bands; rebuild or replace linings, wire sections, and missing teeth to repair dentures; cast plastic, plaster, and metal framework and remove molds from frame; read prescriptions or specifications and examine models and impressions to determine design of dental products to be constructed, melt metals or mix plaster, porcelain, or acrylic paste, and pour material into molds or over framework to form dental apparatus or prosthesis; shape and solder wire and metal frames or bands for dental products, using soldering irons and hand tools; apply investments or mixtures, such as porcelain, paste or wax, over prosthesis framework or setup using brushes and spatula; remove excess mixture and investment and polish the surface of prosthesis or framework using a polishing machine; fill chipped or low spots in surfaces with acrylic resin; assemble, carve, grind, and polish metal and plastic appliances using pliers, spatula, grinders, and polishes; supervise and manage Level 1 dental technicians; provide business and technical acumen and leadership in product development, marketing, and sales; perform administrative and managerial duties and student training; monitor equipment selection skills; provide quality control analysis in conducting tests and inspections of orthodontic and prosthetic products, services, and processes; and possess specialized knowledge of orthodontic prosthetic technology design. The petitioner requires a minimum of a bachelor’s degree, or its equivalent, in dental technology for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. 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 essentially those noted for dental laboratory technicians. The *Handbook* notes that most dental laboratory technicians learn their craft on the job. Becoming a fully trained technician requires an average of three – four years, depending upon an individual’s aptitude and ambition. Training in dental laboratory technology also is available through community and junior colleges, vocational – technical institutes, and the U.S. Armed Forces. Accredited programs for dental laboratory

technology normally take two years to complete and lead to an associate degree. A few programs take approximately four years to complete and offer a bachelor's degree in the field. The record is clear, however, that a baccalaureate or higher degree in a specific specialty, is not normally the minimum requirement for entry into the proffered position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, and that it normally requires a degree or its equivalent for entry into the offered position. The petitioner did not, however, offer any evidence in support of either assertion. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties of the position appear to be routine for experienced dental technicians in the industry who obtain additional supervisory and/or quality control responsibilities. Experience and good performance can lead to management/quality control duties for these experienced technicians. The additional tasks are not, however, so specialized, complex, or unique that they require the attainment of a baccalaureate degree. They are regularly performed by individuals with less than a baccalaureate level education. The petitioner has, accordingly, failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The director also found that the beneficiary was not qualified to perform the duties of a specialty occupation. As set forth above, the proffered position is not a specialty occupation. Thus, there is no regulatory

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

requirement that the beneficiary possess any specific level of education in order to perform the duties of the position. The petitioner deems the beneficiary qualified based upon her education, training, and experience. That decision is within the petitioner's business judgment as the position is not subject to H-1B regulation.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.