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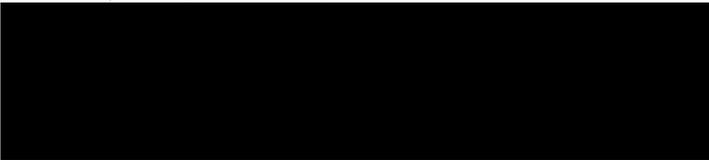
U.S. Department of Homeland Security
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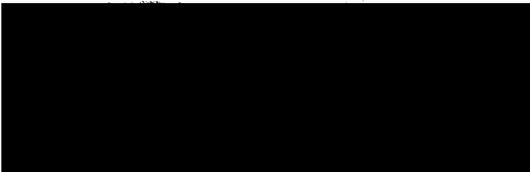


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAR 15 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 center that seeks to employ the beneficiary as a dental lab manager. 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 a letter from the petitioner.

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 notice of intent to deny; (3) the petitioner's response to the director's notice of intent to deny; (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 lab manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's intent to deny. According to this evidence, the beneficiary would perform duties that entail coordinating other dental lab technicians and assistants appropriately for caseload and schedule demands; setup of all equipment and materials required for laboratory and dental procedures; setup of all equipment and materials required for reconstructive dental procedures; responsibility and accountability for all laboratory and clinical production; cleanup and sterilization of all resources used; maintaining inventory of resources for all listed procedures; performing laboratory communications and tracking; performing patient services at the highest levels of customer service including alternate work hours as required; assisting any and all dentists employed by the employer relating to surgical procedures and dental assistant procedures; performing oral and written translations from English or Spanish into Portuguese as required; knowledge of and compliance with all applicable state and federal laws applicable to dental and laboratory practice; knowledge of and compliance with all office policies, procedural and employment issues concerned; other duties as required by the employer and/or the office manager. The petitioner stated that a candidate must possess a minimum of a bachelor's level equivalency in dentistry.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that a significant amount of the beneficiary's time would be spent performing many of the duties of a dental assistant, an occupation that does not require a bachelor's degree.

On appeal, counsel states that the proffered position, dental lab manager, is a specialty occupation. Counsel explains that "just because the beneficiary performs some duties that are common to both a dental lab manager and a dental assistant does not make the beneficiary a dental assistant." Counsel differentiates some of the proffered position's duties from that of a dental assistant. Counsel refers to the *Handbook's* listing of duties of Medical Services Manager or Clinical Manager and states that the beneficiary does perform some of the duties listed under this occupation. Counsel states that the director did not include all of the beneficiary's job duties, specifically, "responsibility and accountability for all laboratory and clinical production."

On appeal, the petitioner submits a letter which provides an additional description of the proffered position. The petitioner explains that the dental cases are very complex and "require intensive graduate-level dental knowledge in coordinating with the patient and caregivers, in-house and external laboratories, the actual chair side dental assistants, and administrative coordinators." The petitioner explains that neither the in-house laboratory technicians nor the dental assistants have the necessary graduate training and professional expertise to actualize step by step dental changes, modifications, and improvements as prescribed by the licensed dentist."

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 considers 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)).

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.

Turning to the *Handbook*, a review of it reveals that that the proffered position is a combination of dental assistant and dental laboratory technicians. The petitioner states that the laboratory manager directly supervises the design and fabrication of the provisional prosthesis, leaving the dentist and the chair-side assistant free to do the actual simultaneous preparation of the teeth and otherwise care for the patient. In the *Handbook*, dental assistants sterilize and disinfect instruments and equipment and prepare tray setups for dental procedures. Dental assistants with laboratory duties make casts of the teeth and mouth from impressions, clean and polish removable appliances, make temporary crowns, and order dental supplies and materials. The *Handbook* states that experienced dental laboratory technicians may become supervisors or managers. Additionally, the *Handbook* states experienced technicians may take jobs in such areas as product development.

Neither the position of dental assistant or dental laboratory technician requires a bachelor's degree in a specific occupation.

Thus, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

The petitioner submitted no evidence that would establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the particular position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. The *Handbook* describes the duties of the proffered position as analogous to those of a dental assistant and dental lab technician - positions that do not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 notes that the petitioner submitted an educational evaluation from Educational Credential Evaluators, Inc. which stated that the beneficiary has the United States equivalent of four years of study in a dentistry program. The beneficiary has not been found to have the equivalent of a bachelor's degree from an accredited U.S. university. Therefore, even if the proffered position were a specialty occupation, the beneficiary is not qualified to perform the duties of a specialty occupation. 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.