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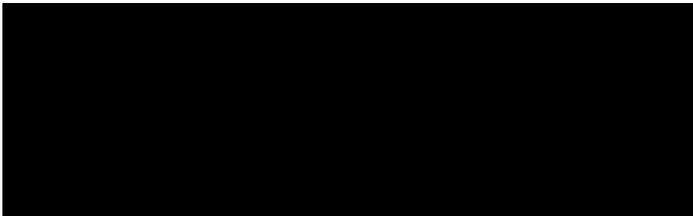
DZ

FILE: WAC 02 214 53345 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 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, 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 The director's decision shall be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a dental clinic that seeks to employ the beneficiary as a dental specialist researcher. 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 additional evidence.

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 specialist/researcher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail administering and directing the activities of the dental practice; maintaining dental reports; examining patients' records to compose complete dental reports for the ultimate approval of the dentist; keeping current on dental research results and using the dental library to perform the duties; coordinating dental care evaluations and developing criteria and methods for such evaluation/reports; conferring with personnel regarding operational policies and recommending procedural changes; and establishing a system of operation and activities to improve the dental office and laboratory to improve workflow. An April 22, 2003 response to the request for evidence discussed the proposed duties. The petitioner stated that the beneficiary qualifies for the proffered position: she holds a doctor of dental medicine from an institution in the Philippine Islands, and has over six years of experience in dental medicine.

The director disagreed with counsel's assertion that the proposed position resembles a health services manager. According to the director, the proposed duties are a combination of those of an office manager and dental assistant, as those occupations are depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); and that the *Handbook* reports that those occupations do not require a bachelor's degree.

On appeal, counsel asserts that the proposed position is similar to a health services manager as that occupation is described in the *Handbook* and the *Occupational Information Network Online (O*Net Online)*; and that Professor John Winings of the University of Southern Illinois states that the proposed position requires a bachelor's degree in dentistry or a related field. Counsel states that the petitioner already employs three dental assistants, an office manager, and a receptionist. According to counsel, the beneficiary will perform some administrative duties, but the proposed position is a dental specialist/researcher, which qualifies as a specialty occupation. Referencing submitted work samples, counsel states that the beneficiary will review, examine, and analyze patient records, dental charts, x-rays, technical documents, surgical procedures, and reports to make detailed reports based on the information collected from dentists and dental assistants. Counsel states that the beneficiary's research duties require her to understand dentistry documents and to compile detailed reports based upon findings and the dentist's remarks. The beneficiary must be able to "understand and review the anatomy and existing oral health condition of a patient, enumerate the use of radiographs, study models and dental chart of the patient, design a physiologically correct and aesthetically customized restoration," counsel states. According to counsel, the beneficiary will research medical and dental journals, and textbooks about gingivitis and contagious diseases. Counsel states that this is a newly created position, and that the petitioner requires that a person with a bachelor's degree occupy its professional positions.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO finds the description of the proffered position includes duties of a dentist; and the AAO disagrees with the petitioner's assertion in a June 13, 2002 letter that the proposed duties do not entail the practice of dentistry since the position does not involve direct patient care. In reaching this conclusion, the AAO referenced the California Business and Professions Code related to the practice of dentistry. Section 1625 of these regulations states that a person practices dentistry when he or she does any one or more of the following:

- (a) By card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist;
- (b) Performs or offers to perform, an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structure, or corrects malposed positions thereof;
- (c) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structure, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance;
- (d) Makes or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures; and
- (e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise a place where dental operations are performed.

Counsel's April 22, 2003 letter indicated that the beneficiary would practice dentistry as the letter stated:

[The beneficiary] will 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. [The beneficiary] will record these conditions for diagnosis and future treatment by the dentist. [The beneficiary's] expertise in the area of dental

medicine will be utilized in consulting with dentists regarding dental treatment solutions as they relate to patients' conditions.

The passage in counsel's letter described the beneficiary as consulting with dentists about dental treatment solutions as they relate to patients' conditions; this is similar to performing a diagnosis, as described under paragraph 3 of section 1625 of the California Business and Professions Code. As such, the proposed position entails the practice of dentistry, which is a specialty occupation requiring graduation from an accredited dental school and licensure. The AAO notes that the evaluation prepared by Professor Winings stated that the beneficiary will "[a]nalyze patients' oral maxillofacial conditions based upon dental finding, reports, medical history, and laboratory results" and "[c]onsult with dentists regarding dental treatment." Again, these duties involve the practice of dentistry under the California regulations.

The petition may not be approved, however, as no evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – a dentist, including licensure under the laws of California. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a dentist, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at 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.

ORDER: The director's May 11, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.