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FILE: WAC 04 092 50817 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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 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 sustained.

The petitioner is a dental services business that seeks to employ the beneficiary as a dentist. 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 beneficiary is not qualified to perform the duties of a specialty occupation. The director found further that the petitioner had not demonstrated that it is a bona fide employer. On appeal, counsel submits a brief and additional evidence.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

The director found that the petitioner had not submitted the requested documentation, such as copies of its corporate federal tax return and quarterly wage reports, to demonstrate that it is a bona fide employer.

On appeal, counsel submits evidence that the petitioner is a bona fide employer, including federal income tax returns for 2001 and 2002, quarterly wage reports for 2002 and 2003, a wage and tax statement, and a letter from the petitioner's CEO.

The record contains a letter from the petitioner's CEO, dated March 5, 2004, indicating that the petitioner is a privately owned company with 2,500 current employees, a headquarters office in Orange, California, and 155 dental offices located throughout California. The petitioner's tax returns reflect an Internal Revenue Services Tax identification number, approximately \$210 million in revenue for 2002, and approximately \$235 million in revenue for 2003. In view of the evidence of record, the petitioner has established that it is a bona fide employer. The petitioner, therefore, has overcome this portion of the director's objections.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 dentist. The petitioner indicated in its February 5, 2004 letter that it wished to hire the beneficiary because he had passed the California Dental Board examination and possessed a Doctor of Dental Medicine & Surgery degree from Egypt.

The director found that the beneficiary was not qualified for the proffered position because the petitioner had not demonstrated that the beneficiary's foreign degree is equivalent to a U.S. baccalaureate or higher degree. On appeal, counsel states, in part, that a company that specializes in evaluating academic credentials determined that the beneficiary's foreign studies are equivalent to a U.S. Doctor of Dental Medicine degree. Counsel states further that the Dental Board of California notified the beneficiary that he passed the Dental Licensure Examination, and that he is eligible to obtain a dental license upon providing a social security number.

In its *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the Department of Labor (DOL) states the following regarding the training of persons seeking employment as dentists:

All 50 States and the District of Columbia require dentists to be licensed. To qualify for a license in most States, a candidate must graduate from one of the 55 dental schools accredited by the ADA's Commission on Dental Accreditation in 2002 and also must pass written and practical examinations....

Dental schools require a minimum of 2 years college-level pre-dental education, regardless of the major chosen.... most dental students have at least a bachelor's degree....

Most dental schools award the degree of Doctor of Dental Surgery (DDS). The rest award an equivalent degree, Doctor of Dental Medicine (DMD).

Pursuant to the California Code of Regulations Title 16, Division 10 § 1000. Dental Practice Act, Chapter 2. Dentist, Article 4:

§1040. Application and Licensure Requirements.

- (a) A graduate of a foreign dental school who desires to take the licensure examination shall apply on a form prescribed by the board. Such application shall be accompanied by the required fees, credentials and documentation specified by the board and should be filed with the board not less than 90 days prior to the examination date requested. Applications may be accepted by the board, in its discretion, up to 45 days prior to such examination date. Nothing contained herein shall be construed to limit the board's authority to seek from an applicant such other information pertinent to the background, education and experience of the applicant as may be deemed necessary in order to pass upon the applicant's qualifications.
- (b) Credentials. The applicant shall furnish the following documentation satisfactory to the board: (1) A complete transcript of the academic and clinical dental school record of the applicant. Said transcript shall be accompanied by an affidavit showing to the satisfaction of the board that the applicant is the person named in each transcript he submits, that the transcript is a true recital of the full number of academic years of undergraduate courses required for graduation, that such courses of professional instruction in dentistry were accomplished in a resident course of instruction. (2) A legible, true copy of the dental diploma or dental degree conferred upon the applicant as evidence of the completion of the courses of dental instruction required for graduation. Such document shall be accompanied by an affidavit showing to the satisfaction of the board that the applicant is the person named in such diploma or degree, that he is the lawful holder, and that it was procured in the regular resident course of instruction and examination without fraud or misrepresentation. (3) The documentation required in paragraphs (1) and (2) hereof shall be authenticated by either the president, secretary, dean or registrar of the educational institution. (4) Credentials and documentation required by this section which are submitted in a foreign language shall be accompanied by a certified original translation by a qualified translator. (5) When, because of circumstances beyond his control, an applicant is unable to furnish any of the documents or authentication or certification required by this section, the board may in its discretion accept other documents which it deems satisfactory to establish the applicant's eligibility. . . .
- (c) Further Examination. An examinee who successfully completes the restorative technique examination is eligible to take the remaining examinations required by Section 1636(c) of the Code. All rules applicable to such examinations and the grading thereof contained in Article 3 of this subchapter shall apply to examinees who are foreign dental school graduates.

- (d) Passing Grades. A foreign dental school graduate shall be deemed to have passed the examination if he achieves a score of at least 75% on each section of the examination. Note: Authority cited: Section 1614, Business and Professions Code. Reference: Section 1636, Business and Professions Code. 1. Editorial correction of subsection (b) filed 7-17-85; effective thirtieth day thereafter. 2. Amendment of subsections (b)(3) filed 7-7-92; operative 8-6-92.

In a memorandum entitled "Social Security Cards and the Adjudication of H-1B Petitions," dated November 20, 2001, Citizenship and Immigration Services (CIS) states, in part, as follows:

An H-1B petition filed on behalf of an alien beneficiary who does not have a valid state license shall be approved for a period of 1-year provided that the only obstacle to obtaining the state licensure is the fact that the alien cannot obtain a social security card from the SSA. Petitions filed for these aliens must contain evidence from the state licensing board clearly stating that the only obstacle to the issuance of state licensure is the lack of a social security card. In addition, the petitioner must establish that all other regulatory and statutory requirements for the occupation have been met.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Report of Dental Licensure Examination Grades, issued by the Dental Board of California on November 14, 2003, addressed to the beneficiary (ID#1370), notifying him that he had passed the Dental Licensure Examination, and that it was prohibited from processing or issuing a license unless the beneficiary provides a social security number;
- Report of Supplemental Law & Ethics Written Test Results, dated November 13, 2002, addressed to the beneficiary [REDACTED] from the Dental Board of California, notifying him that he had passed the test;
- Report of Restorative Technique Examination Grades, dated November 20, 2002, addressed to the beneficiary (ID# [REDACTED]) from the Dental Board of California, notifying him that he had successfully completed the examination;
- Translations of degree, certificates, and transcripts indicating that a bachelor's degree in Oral and Dental Medicine & Surgery was conferred to the beneficiary by Cairo University in Egypt;
- Translation of the Registrar of Qualified Dentists of Egypt's Ministry of Health, reflecting that the beneficiary holds a medical license in Egypt;
- A credentials evaluation, dated October 20, 2000, from a company that specializes in evaluating academic credentials concluding that the beneficiary has completed the U.S. equivalent of five years of study in a dentistry program; and
- A Preliminary Report of Candidate Performance from the National Board of Dental Examinations of the Joint Commission on National Dental Examinations in Chicago, Illinois, dated January 19, 2001, reflecting the beneficiary's passing performance.

The proffered position is that of a dentist for the petitioning entity, a dental services business established in 1985, with 2,500 employees and a gross annual income in excess of \$235 million. As discussed above, a review of the *Handbook* finds that all 50 States and the District of Columbia require dentists to be licensed. Furthermore, the State of California requires that graduates of foreign dental schools who desire to take the licensure examination comply with the California Code of Regulations Title 16, Division 10 § 1000. Dental Practice Act, Chapter 2. Dentist, Article 4. In this case, the record contains a copy of the beneficiary's foreign bachelor's degree in Oral and Dental Medicine & Surgery, and an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary's foreign degree is the U.S. equivalent to five years of study in a dentistry program. The record also contains a Report of Dental Licensure Examination Grades, issued by the Dental Board of California on November 14, 2003, addressed to the beneficiary, notifying him that he had passed the Dental Licensure Examination, but that it was prohibited from processing or issuing a license unless the beneficiary provides a social security number. As such, the beneficiary meets the qualifications of the November 20, 2001 CIS memorandum entitled "Social Security Cards and the Adjudication of H-1B Petitions." The petitioner, therefore, has overcome this additional portion of the director's objections. In view of the foregoing, it is concluded that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation within the meaning of regulations.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved for one year.