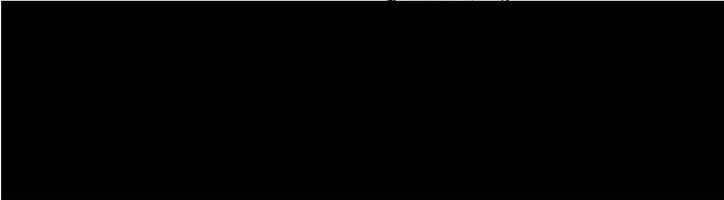


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invasion of personal privacy



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FILE: WAC 03 232 52721 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:  
[Redacted]

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 denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is an orthodontics office 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director found the duties of the proposed position similar to those of medical and health services managers, as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and thus did not address the issue of whether the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). While the AAO agrees with the director that the proposed position qualifies for classification as a specialty occupation, it does not agree that the duties of the position are akin to those of medical and health services managers.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

The petitioner's July 29, 2003 letter of support set forth a detailed description of the duties of the proposed position. According to this letter, the beneficiary will spend twenty percent of her time planning, organizing, and maintaining the petitioner's miscellaneous dental programs; fifteen percent of her time conferring with the dentist and staff formulating new policies, improving existing policies, and recommending procedural changes; fifteen percent of her time developing and implementing a system to be used by the dental office, clinic, and laboratory that will assure a smooth flow of work and improve efficiency; ten percent of her time formulating personnel hiring, promotion, and termination procedures, and coordinating the assigned tasks and work schedules of staff; ten percent of her time evaluating staff members' performances and ensuring that all safety measures are followed; ten percent of her time solving workers' procedural problems and demonstrating proper dental techniques; five percent of her time coordinating with various dental laboratories that the clinic utilizes to assure that all work orders are submitted and received correctly and timely; five percent of her time reviewing major professional dental journals for dental health issues and development particularly relevant to the dentists' practice, and provide the dentists with the latest information; five percent of her time researching literature to find and research suggestions of modes of treatment for possible diagnoses, eliciting detailed patients' histories, and discussing the patients' charts and records with the dentists; and five percent of her time supervising the billing of patients and insurance companies financially accountable for the services rendered.

On appeal, counsel notes that the beneficiary worked as a dentist for Task Force SMILE in the Philippines between January 1993 and December 1994, and that on July 27, 1993, she opened her own dental clinic, serving as its lead dentist until 2001. Counsel notes that during this time, the beneficiary performed many of the duties of the position proposed in this petition.

Upon review of the record, the AAO finds that the petitioner has established that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the position.

In determining whether a proposed 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 finds that many of the beneficiary's duties are performed by dentists, as that occupation is described in the *Handbook*, which is a resource that the AAO routinely consults for its information about the duties and educational requirements of particular occupations. This finding is also substantiated by the definition of a dentist under the California Business and Professions Code. The *Handbook* states that dentists diagnose, prevent, and treat problems with teeth or mouth tissue; the California Business and

Professions Code Section 1625-1636.6, at section 1625, explains that a person practices dentistry when the person "performs, or offers to perform, an operation or diagnosis of any kind." The same section also states that a person practices dentistry when he or she "manages or conducts as manager . . . a place where dental operations are performed."

These descriptions of a dentist are encompassed within the beneficiary's duty to demonstrate proper dental techniques to staff members, review professional dental journals for dental health issues and developments so as to provide the dentists with the latest information, and to research literature to find and research treatment options and possible diagnoses for patients. The beneficiary will also be planning, organizing, and maintaining the petitioner's dental programs and formulating new policies.

The *Handbook* states the following with regard to 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).

As a degree in dentistry is the standard educational requirement for anyone seeking employment as a dentist, the AAO concludes that the petitioner's proposed position, which is that of a dentist, meets the requirements under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate degree, or its equivalent, is normally the minimum requirement for entry into the particular position. Accordingly, the proposed position is a specialty occupation.

No evidence contained in the record of proceeding demonstrates that the beneficiary is qualified to perform the duties of the proposed position, dental specialist/researcher, which involves the practice of dentistry and therefore requires licensure. Although the director did find the beneficiary unqualified to perform the duties of a medical and health services manager, the AAO finds that the position is actually that of a dentist. The practice of dentistry requires licensure, but the director did not address this issue. Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the proposed position, which involves the practice of dentistry. 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 rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's June 21, 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.