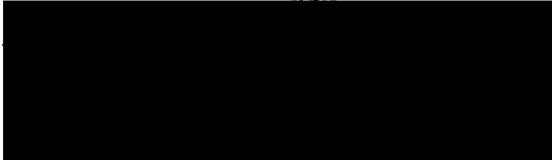


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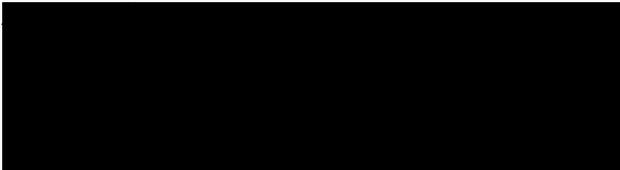
*D2*

FILE: WAC 02 186 53349 Office: CALIFORNIA SERVICE CENTER Date: NOV 14 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 California 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 clinic, with 12 employees. It seeks to employ the beneficiary as a dental specialist/researcher 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 he determined the proffered position did not meet the criteria required for classification as a specialty occupation, and the beneficiary is not qualified to perform the duties of a specialty occupation.

The AAO will first address the director's conclusion that the position is not a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 above criteria 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 evidence; (3) counsel's responses to the director's request; (3) the director's denial; and (4) a Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner is seeking the beneficiary's services as a dental specialist/researcher. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 26, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's letter of support, the beneficiary would perform duties that entail, in part: conducting the necessary research to determine the cause and/or effect of the various diseases or conditions that the patient is exhibiting; preparing a complete analysis of the patient's infection or disorder for review and advising on appropriate treatment; utilizing the medical library to perform the research necessary to make a diagnosis of the cases that are given to the beneficiary; utilizing dental journals, text books and medical research materials to obtain analysis and evaluation of the patient's condition; researching updated information regarding diseases in the dental field; and researching the correlation between various bacteria and resulting gum disease, the impact of diabetes on gum disorders, the effect of various antibiotics and their effectiveness, and other dental issues. In response to the director's request for evidence, the petitioner stated that the beneficiary's duties would include: managing the clinic's affairs in accordance with proper government standards; analyzing the clinic's practices and procedures and comparing them with established national standards and administrative policies; conferring with the staff dentist to formulate policies and recommending procedural changes; hiring additional staff as needed; evaluating the work of both existing and newly hired employees; overseeing the billing of the petitioner's patients and insurance companies; coordinating with various dental laboratories that the petitioner utilizes to insure that orders are submitted and received in a timely manner; developing a system to be used by the petitioner in conjunction with laboratories that will improve overall efficiency; assisting dentists with the analysis of patient records; examining patient records to compose dental reports for the ultimate approval of clinic dentists; utilizing his 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; recording

these conditions for diagnosis and future treatment by the dentist; consulting with dentists regarding dental treatment solutions; maintaining complete dental reports and related documentation for each patient; coordinating dental care evaluation and developing criteria and methods for such evaluation/reports; utilizing medical and dental journals, textbooks and research materials to analyze and evaluate the patient records regarding AIDS and treatment of gingival diseases; performing extensive research regarding new developments in the medical and dental care industries; and devising methods to implement the findings of his research at the petitioner's clinic. According to the petitioner, the position requires a degree in dental medicine.

The director determined that the proffered position was not a specialty occupation. The director stated that the duties of the proposed position are a combination of those of a dental assistant and an office manager as those occupations are described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director stated that the *Handbook* reveals that these occupations do not require baccalaureate-level education.

On appeal, counsel states that the proposed position's duties resemble those of a health services manager as that occupation is described in the *Handbook*, and that the position is a specialty occupation. Counsel also states that the research duties of the proffered position require an individual with a degree in dental medicine. Counsel asserts that the duties of the position are very specialized and complex, and they require a degree higher than a bachelor's degree.

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

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 finds that many of the duties of the proffered position are performed by dentists, as that occupation is described in the *Handbook*, which is a resource that the AAO routinely consults for information about the duties and educational requirements of particular occupations. The AAO's 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 explains under section 1625 that a person practices dentistry when the person "performs, or offers to perform, an operation or diagnosis of any kind."

These descriptions of a dentist are encompassed within the beneficiary's duties to advise on appropriate treatment and perform the research necessary to make a diagnosis of the cases.

The *Handbook* 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).

As a degree in dentistry is the standard educational requirement for anyone seeking employment as a dentist, the AAO concludes the petitioner's proffered 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 or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. Accordingly, the proffered position is a specialty occupation.

The director also found that the beneficiary would not be qualified to perform the duties of a dentist. Counsel asserts that there is no direct patient contact and that all analysis would have to be approved by the dentist, and, therefore the duties do not rise to the level of responsibility of a licensed dentist. Counsel provides licensing information from the Dental Board of California, and states that the proffered position is not listed among those requiring licensure. As noted, however, the AAO finds that the proffered position meets the definition of practicing dentistry under the California Business and Professions Code. Although counsel states that all diagnosis and analysis would have to be reviewed by a dentist, the petitioner clearly stated in its letter of support that the beneficiary would be advising the dentist on treatment options and providing diagnoses as a result of his research. In response to the director's request for evidence and on appeal, the petitioner indicated that this duty would occupy 40 percent of the beneficiary's time. The petitioner has not provided a letter from the Dental Board of California stating that the beneficiary's performing diagnoses would not be encompassed within the practice of dentistry as defined by California Business and Professions Code Section 1625.

The record contains evidence that the beneficiary has the equivalent to a doctor of dental medicine degree from a U.S. university, but there is no evidence that the beneficiary is licensed to practice dentistry in the State of California.

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.