

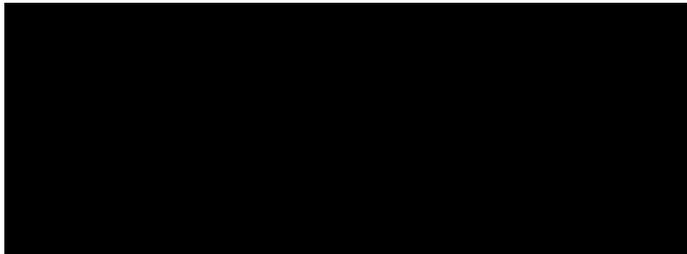
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U.S. Department of Homeland Security
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U.S. Citizenship
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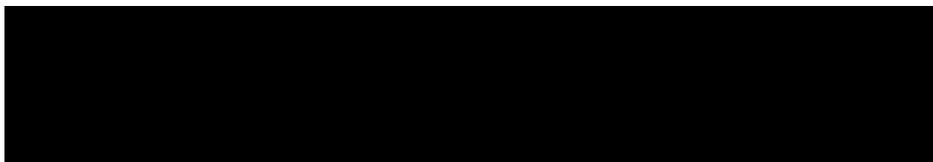


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FILE: WAC 04 139 50081 Office: CALIFORNIA SERVICE CENTER Date: **OCT 31 2005**

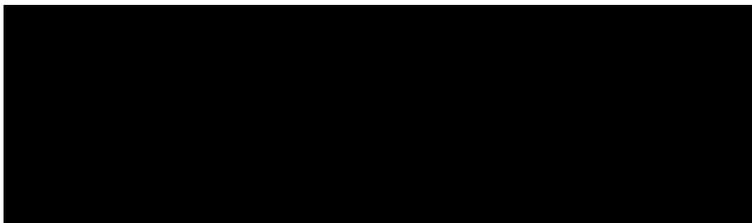
IN RE: Petitioner:

Beneficiary:



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. Upon consideration of the appeal, the director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a dental practice that seeks to employ the beneficiary as a dental 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 researcher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 establishing research data methodology for conducting and collecting research data; analyze collected data; reviewing and discussing patient's chart with the doctor; reviewing major professional dental and medical journals and related literature; responsible for analyzing collected data for possible new procedures and techniques in performing orthodontics and pediatric dentistry; assisting the doctors in research projects by organizing and conducting special and complex projects relating to orthodontics and pediatric cases; reviewing and discussing patients' charts and files with the doctor; suggesting possible treatments and procedures based on collected research data; constructing and repairing orthodontic appliances for straightening teeth; removing separators and selecting and fitting bands as well as preparing patients for direct bonding and performing emergency orthodontic adjustments.

The petitioner indicated that this position requires a minimum of a baccalaureate degree in dentistry and experience in dentistry research.

The director requested a more detailed job description and evidence that the proffered position is a specialty occupation as described by the above listed regulations. The director requested documentation to substantiate the information provided on the Form I-129. The director requested copies of the Form DE-6 quarterly wage reports and the petitioner's organization chart showing the petitioner's hierarchy and staffing levels.

Counsel for the petitioner responded to the director's request for evidence. Counsel asserted that several medical and related occupations have been previously addressed by the AAO and submitted several unpublished AAO decisions in support of his contention that the proffered position is a specialty occupation. The petitioner submitted copies of its Form DE-6 reports for the last four quarters which indicated approximately 16 employees. The petitioner submitted its organizational chart and three newspaper ads that it placed for a dental researcher. Counsel explained that the dentists in the practice conducted their own research in the past but due to their heavy patient schedule they now find it necessary to hire a part-time dental researcher.

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 found that the duties are similar to those of a dental assistant. The director determined that the information indicated that a baccalaureate level of training is not the normal industry wide minimum requirement for entry into the occupation. The director that the evidence fails to distinguish the difference between the duties to be performed by the beneficiary and those normally performed by dental assistants, and how the duties of the proffered position are more specialized and complex.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the proffered position is not that of a dental assistant. Counsel refers to the *Handbook* and asserts that the proffered position is a specialty occupation. Counsel again refers to several unpublished AAO decisions in support of his contention that the proffered position is a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Counsel submits articles from dental journal as samples of the articles the incumbent in the proffered position would be required to research. Additionally, counsel submits a letter from an assistant professor at the Loma Linda University, School of Dentistry. The author of this letter states “[t]his important task of analyzing demographic information and linking it to the particular needs of the doctor can again only be undertaken by a Dental researcher who at least holds a baccalaureate degree in dentistry and understands fully the intricacies and complexities that pertain to our unique field.” Additionally, counsel submits a job posting for the proffered position.

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 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 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, which include: “review and discuss patients’ charts and files with the doctor; suggesting possible treatments and procedures based on collected research data; constructing and repairing orthodontic appliances for straightening teeth; removing separators and selecting and fitting bands as well as preparing patients for direct bonding and performing emergency orthodontic adjustments.”

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.

As already discussed, the *Handbook* and the California Business and Professions Code reveal that some of the beneficiary's duties involve the practice of dentistry.

No evidence contained in the record 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. The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner the opportunity to provide evidence pertinent to the issue of whether the beneficiary is qualified for 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 remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 27, 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.