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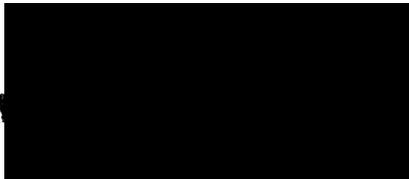


FILE: WAC 04 240 50767 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 appeal will be dismissed. The petition will be denied.

The petitioner is a dental laboratory that seeks to employ the beneficiary as a dental laboratory technical manager and 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 proposed 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 laboratory technical manager. 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:

1. Directing the performance of the petitioner's lab tests to prescribed standards to maintain quality control for all ceramic dental prostheses and to determine conformity to dental prescriptions and manufacturing specifications.
2. Testing, adjustment, trouble-shooting and calibration of lab equipment, e.g., ceramic pressing equipment, and CAD/CAM programs and specialized articulators, used in the fabrication of metal-less dental prostheses, including equipment utilized to fabricate porcelain veneers, full mouth reconstructions and full balance occlusions.
3. Performing physical tests on dental prostheses and samples of materials to control quality results during the fabrication process, testing in-process and finished prostheses to verify conformity to manufacturing requirements and recommendations, and recording detailed results of all tests and quality control procedures.
4. Interviewing all job applicants for dental ceramist positions, making hiring, promotion, salary and termination recommendations for all dental ceramists and laboratory quality control staff members, and conducting periodic job performance reviews and evaluations of the positions.
5. Providing technical assistance and professional support to dentists and other licensed health care professionals to analyze the conditions of the mouth, gums, and teeth and make recommendations for appropriate all-ceramic prostheses and components based upon a knowledge of the latest fabrication procedures, materials, and casting systems.
6. Directing research into new and updated technologies and procedures for all-ceramic manufacturing technologies and making recommendations for the purchase of new equipment and the replacement of obsolete equipment and manufacturing systems in the ceramics laboratory.

The director concluded that the position was that of a dental technician with supervisory or managerial responsibilities and that the occupation of dental technician is not a specialty occupation. The director further concluded that even though the position entails supervisory or managerial duties, this does not make the position a specialty occupation.

On appeal, counsel states that the proposed position is more analogous to that of a medical laboratory technologist. Referring to an opinion letter from Roy T. Yanase, D.D.S., counsel contends that the proposed position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proposed position is more like a medical laboratory technologist and less like a technician-turned manager. A review of the dental lab technician job description in the *Handbook*, confirms the director's assessment that the job duties parallel those responsibilities of a technician with supervisory or managerial responsibilities. Counsel asserts that the proposed position is different than that of a technician-turned manager but does not provide any documentary evidence to substantiate this. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO first turns to the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) - a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. To determine whether or not this criterion has been established, the AAO turns to the *Handbook's* discussion of the educational requirements for dental lab technicians. No evidence in the *Handbook* indicates that a bachelor's or higher degree, or its equivalent, is required for a job as a dental lab technician or a related supervisory or managerial job. The *Handbook* does not indicate that employers normally impose a specific degree requirement on dental lab technician job applicants. Instead, it appears that individuals with proven dental lab skills may be hired solely on the basis of training or experience. The *Handbook* also indicates that, in large labs, dental lab technicians may become managers and teach in such areas as product development, marketing, and sales. As a result, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The six job announcements from Monster.com provided by the petitioner do not support counsel's contention that the dental lab industry requires that managers of their lab technicians hold bachelor's degrees in dentistry or management. First, four of the announcements were not for jobs in the medical or dental industries, but in a variety of unrelated industries including the banking industry, the microelectronics industry, and the food processing industry. The two announcements for jobs in the medical field were not for businesses related to dentistry - a blood testing lab and a comprehensive medical lab. Second, while the announcements for some of the technologist positions reflected that they might be specialty occupations, they do not support counsel's assertion that the petitioner is proffering a technologist position. None of these announcements support the contention that dental labs, similar in size and scope to the petitioner's, require a bachelor's degree in dentistry or management for their dental lab manager positions. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the proposed position, the petitioner failed to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position – the second alternative prong of the second criterion and the fourth criterion. Counsel asserts that the “extremely sophisticated die casting equipment” that the petitioner uses was not previously used in dental labs and, as a result, the simple promotion of a dental technician, who does not hold a degree in dentistry or management, is not acceptable for the proposed position. Counsel further asserts that the proposed position is distinguishable from dental technician or supervisory dental technician positions because the proposed position will require the beneficiary to provide technical support and assistance to dental professionals to analyze the condition of the mouth and the need for particular prostheses and components. These duties appear no different than those of a dental lab technician with supervisory or managerial responsibilities. The *Handbook* indicates that dental lab technicians routinely learn dental materials science, oral anatomy, and fabrication procedures in classroom instruction leading to a two-year degree in dental laboratory technology. Becoming a fully trained technician through on-the-job training requires an average of 3 to 4 years, but it may take a few years more to become an accomplished technician.

The opinion letter from Dr. Roy Yanase does not support counsel’s assertions. Dr. Yanase contends that the proposed position and the nature of its duties is unique and so complex that an individual with a bachelor’s degree in dental laboratory science is needed in order to perform these duties. He does not, however, provide sufficient detail and analysis to establish this complexity. In his letter, Dr. Yanase does not explain how the proposed duties are distinguishable from the duties of other dental technicians with supervisory or managerial responsibilities. Nor does he explain why these duties are so complex that they can only be performed by a person with a bachelor’s degree in dental laboratory science as opposed to a person who obtained the knowledge from practical experience, on-the-job training, or an associate’s degree as indicated in the *Handbook*. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Dr. Yanase’s letter is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As always, 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.