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FILE: WAC 03 146 50096 Office: CALIFORNIA SERVICE CENTER Date: JAN 30 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.

for *Michael T. Kelly*
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 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 director denied the petition because the beneficiary is not qualified to perform the duties of the specialty occupation. On appeal, counsel submits a brief.

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.

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 petitioner is seeking the beneficiary's services as a dental specialist/researcher. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company

support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail enhancing major operations and services; performing a variety of patient care and office duties; administering and directing the activities of the dental practice in accordance with accepted national standards, administrative policies and OSHA compliance guidelines; administering a dental program in the clinic and directing activities in accordance with accepted national standards and administrative policies; conducting the necessary research to determine the cause and/or effect of the disease that the patient is exhibiting; preparing complete analysis of the patient's disease or disorder; utilizing medical journals, text books and medical research materials to obtain analysis and evaluation of the patient's condition and researching updated information regarding contagious diseases in regards to dental field; conferring with clinical staff to formulate policies and recommending procedural changes; conferring with personnel regarding polices and recommending procedural changes to increase daily production; hiring additional staff, firing staff and evaluating their work; providing improved procedures and methods to sterilize the instruments and materials and conducting an examination in a safe and sanitary method; overseeing billing of patients and insurance companies; and coordinating with various dental laboratories to assure that orders are submitted and received in the dental office and laboratory to assure a smooth flow of work and improving efficiency. The petitioner indicated that the beneficiary is uniquely qualified for the position because he has a degree of doctor of dental medicine.

The petitioner asserted that the proffered position meets all of the above listed criteria to be considered a specialty occupation and is similar to that of a health service manager as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*).

The director issued a request for evidence to establish that the proffered position is a specialty occupation. The director requested a more detailed description of the work to be done including specific job duties and the percentage of time to be spent on each duty. Additionally, the director requested evidence to establish that the beneficiary is qualified to perform in the specialty occupation. The director found that the beneficiary will not be performing theoretical research and will be analyzing individual patient conditions and advising treatment. The director requested a copy of the beneficiary's license to practice dentistry.

In response, counsel noted that it is difficult to assess the exact percentage of time to be spent on each duty because the duties will be performed on an as needed basis. Counsel stated that the petitioner estimates the following breakdown of time to be spent performing the duties listed above:

- 40% of time - administration/direction of dental practice;
- 20% of time - administration of dental program;
- 15% of time - coordination with laboratories;
- 10% of time - overseeing billing of patients and insurance companies;
- 10% of time - conferring with clinical staff regarding policies and procedures;
- 5% of time - hiring/firing staff and evaluating work of other staff.

Counsel noted that the beneficiary will be working 28 hours per week and will not supervise any employees. Counsel explained that the worked to be performed by the beneficiary requires knowledge in dentistry. Counsel stated that the position of dental specialist resembles the position of a health services manager. Counsel stated that the duties of a health service manager resemble the duties that the instant position encompasses. Counsel referred to the *Handbook* and noted that a bachelor's degree is adequate for some

entry-level positions in smaller operations. Counsel asserted that the degree requirement is common to the industry and the instant position is so complex and unique that it can only be performed by an individual with a degree. Counsel asserted that the duties of the dental specialist are more complex and specialized than those of other health services managers. Counsel notes that this is a new position. Counsel stated that the position does not require a license because the job duties do not include patient contact.

The director determined that the petitioner has not demonstrated that the beneficiary possesses the appropriate licensure as required by the proffered position, and has not established an exemption or exception from said requirement. The director noted that counsel asserted that the proffered position was similar to that of a medical and health services manager. Upon review of the duties of the proffered position, the director noted that nothing submitted as evidence or included in the *Handbook* indicates that medical and health service managers diagnose patient illness and/or injury (or dental conditions in the instant case), research medical journals, plan courses of treatment, or recommend medical/dental procedures. The director noted that medical and health service managers limit their work to the business side of the healthcare industry.

The director found that the proffered position deals with patient care and the duties to be performed by the beneficiary are typically performed by dentists. As detailed in the director's decision, the director refers to the California Code of Regulations Dental Practice Act and the Business and Professions Code Section 1625-1636.6. The director found that diagnosis and treatment planning are central duties of the proffered position. The director determined that the proffered position was that of a dentist and was a specialty occupation. The director found that a significant amount of the beneficiary's time would be spent on activities that have a direct impact on the care the patients would receive. The director determined that the petitioner failed to establish that the beneficiary is qualified to perform the duties of the proffered position since he does not possess a valid license.

Additionally, the director considered the administrative tasks to be performed. The director referred to counsel's percentage breakdown of duties and noted that it did not appear consistent with the detailed duties previously described. The director found that the remaining duties appeared to be similar to those normally performed by dental assistants and office managers. The director referred to the descriptions of the two occupations found in the *Handbook*. The *Handbook* reveals that dental assistants with office duties schedule and confirm appointments, receive patients, keep treatment records, send bills, receive payments, and order dental supplies and materials. The *Handbook* notes the following about training and education of dental assistants, in part, as:

Most assistants learn their skills on the job, although an increasing number are trained in dental-assisting programs offered by community and junior colleges, trade schools, technical institutes, or the Armed Forces. Assistants must be a second pair of hands for a dentist; therefore, dentists look for people who are reliable, work well with others, and have good manual dexterity. High school students interested in a career as a dental assistant should take courses in biology, chemistry, health, and office practices.

The director also referred to the *Handbook's* section on office and administrative support worker supervisors and managers which indicates that although specific functions of office and administrative support supervisors and managers vary significantly, they share many common duties. For example, supervisors perform administrative tasks to ensure that their staffs can work efficiently. The *Handbook* also notes that

after allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meeting established quality standards. The *Handbook* describes the training and other qualifications for office and administrative support worker supervisors and managers, in part, as follows:

Most firms fill office and administrative support supervisory and managerial positions by promoting office or administrative support workers from within their organizations. To become eligible for promotion to a supervisory position, administrative support workers must prove they are capable of handling additional responsibilities. When evaluating candidates, supervisors look for strong teamwork, problem-solving, leadership, and communication skills, as well as determination, loyalty, poise, and confidence.

Although the director analyzed the remaining duties of the proffered position and found they could easily be performed by an experienced dental assistant, which is not a specialty occupation, the director concluded that the proffered position was that of a dentist and was a specialty occupation and that the beneficiary was not qualified.

On appeal, counsel argues that the duties to be performed by the beneficiary do not require licensure. Counsel asserts that although the beneficiary will review patient files to perform the initial analysis, he will not engage in any patient care. Counsel contends that the beneficiary will analyze and not diagnose the patient's condition. Counsel asserts that the difference is that the dentist will be making the final determination of the condition of the patient. Counsel contends the beneficiary does not need a license to perform the duties.

Additionally, counsel asserts that the remaining duties of the proffered position are not those of a dental assistant or an office manager. Counsel restates the listed job duties and asserts that the proffered position is one of a medical and health services manager as defined in the *Handbook*. The *Handbook* indicates, counsel notes, that a bachelor's degree is adequate for some entry-level positions as a health services manager, which requires at least a bachelor's degree in health services administration, health sciences, public health, or a related discipline for entry-level positions. The proposed position, counsel states, may require a degree in health sciences as opposed to business administration. Counsel discusses the beneficiary's duties as they relate to ensuring that the dental practice runs smoothly, and states that the beneficiary will administer a dental program and formulate dental policies, standards and procedural changes and that he will be responsible for increasing production, hiring, evaluating and firing staff members. Counsel notes that the beneficiary will oversee the billing of patients and insurance companies. Counsel asserts that the proffered position clearly requires the minimum of a baccalaureate 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 agrees with the director and 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, also noted by the director. 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."

Additionally, as noted by the director, the California Code of Regulations, Dental Practice Act § 1085 indicates "(a) Unless specifically so provided by regulation, a dental assistant may not perform the following functions or any other activity which represents the practice of dentistry or requires the knowledge, skill and training of a licensed dentist: (1) Diagnosis and treatment planning"

The AAO notes that the Business and Professions Code of California Section 1625(e) states dentistry "is the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation. Without limiting the foregoing, a person practices dentistry within the meaning of this chapter who does any one or more of the following: . . . (e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed."

These descriptions of a dentist are encompassed within the beneficiary's duties, including "performing a variety of patient care and office duties; responsible for administering and directing the activities of the dental practice in accordance with accepted national standards, administrative policies and OSHA compliance guidelines; administering a dental program in the clinic and direct activities in accordance with accepted national standards and administrative policies"; "conducting the necessary research to determine the cause and or effect of the disease that the patient is exhibiting; preparing complete analysis of the patient's disease or disorder"; and "conferring with clinical staff to formulate policies and recommending procedural changes; conferring with the personnel regarding polices and recommend procedural changes to increase daily production." The AAO notes that counsel asserts that the beneficiary does not engage in any patient care. Counsel states that the beneficiary "facilitates the treatment process by performing the initial assessment of patients. Based on the [beneficiary's] assessment, the dentist will have a preliminary understanding of each patient's condition, prior to even seeing the patient." Counsel notes "[t]he time that the dentist saves on diagnosing patients can now be utilized for patient interaction or preventative oral care." This phrase indicates that the beneficiary is performing the initial diagnosis. Counsel contends that because the beneficiary is not making the final determination, he is not making the diagnosis. The AAO disagrees and finds that the duties of the position are similar to those described in the California Business and Professions Code as well as the California Dental Practice Act.

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 predental 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 is not licensed as a dentist and is thus not qualified to perform the services of the specialty occupation. The beneficiary is not qualified for the position, as the record does not reflect that he is licensed as a dentist.

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

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(v)(A), if an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

The petitioner's statement, that the beneficiary will not provide any patient care, does not establish that the proposed position will not require licensure. 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 and that the proffered position is that of a dentist.

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 requested a copy of the beneficiary's license to practice in the field and counsel asserts that a license is not required.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.