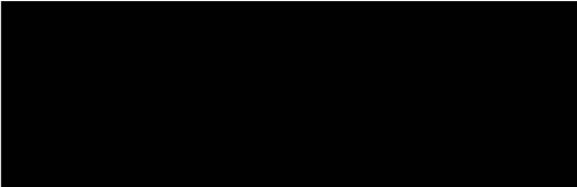


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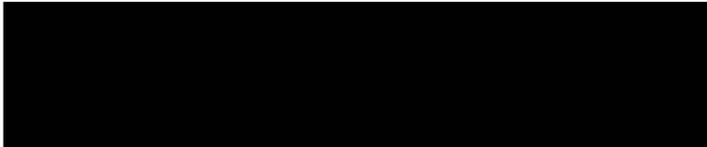
D2

FILE: WAC 04 011 52441 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 and seeks to employ the beneficiary in a position titled "Dental Management Services and Research Analyst." The petitioner 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, the petitioner submits a brief and additional information stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

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 are 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 proceedings before the AAO contains: (1) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services in a position titled “Dental Management Services and Research Analyst.” Evidence of the beneficiary’s duties includes the Form I-129 petition with attachments and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would:

- Oversee and administer overall dental operations and activities in accordance with accepted national standards and administrative policies;
- Coordinate with top management on issues affecting daily operations;
- Confer with dentists and other employees in the clinic on how they can enhance their methods of dealing with patients and how they can improve their methods of treating patients;
- Formulate and implement dental care and management strategies geared towards utilizing the highest form of quality in responding to patient needs;
- Set standards that will serve as benchmarks in dealing with and treating patients;
- Hire new employees and establish systems and guidelines for evaluating employee performance;
- Ensure that all employees are client-oriented which should be reflected in the way staff and/or dentists: answer telephone inquiries from clients; set appointments; conduct patient interviews to assess and identify their concerns; perform preliminary screenings; perform oral treatments; and use dental instruments and medications;
- Conduct dental research relative to cosmetic, general and restorative services;

Study patients' medical histories affecting their present dental concerns and analyze cases that need special case management, consult with medical library journals and other resources to stay updated on the latest medical/dental breakthroughs on treatment and case management of adult periodontal gum diseases specifically gingivitis, periodontitis, and advanced periodontitis; and

Research the latest strategies on delivering quality dentistry to patients with HIV/AIDS.

The petitioner requires a minimum of a bachelor's degree in dental medicine for entry into the proffered position.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though varied, are essentially those noted for medical and health services managers in a small dental practice with some additional research responsibilities. The *Handbook* notes that a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities and at the departmental level within healthcare organizations. Physicians' offices (as in this instance) and some other facilities may substitute on-the-job experience for formal education, and do not require a baccalaureate level education at all. The petitioner has, therefore, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submitted copies of six job advertisements. Of the advertisements submitted, only two are for positions that appear to be similar to that being offered in this instance. Those two are for the position of dental office manager. One notes that it requires a bachelor or associate degree in an unspecified discipline. The second states that a high school diploma or equivalent is required, and that a bachelor's degree in an unspecified field of study is preferred. The remaining advertisements submitted are for a dental treatment plan coordinator, a dentist, a regional manager for a company that provides business support services to more than 200 dental offices in 17 states, and a clinical director for a facility providing dental services to HIV/AIDS patients and providing community health services. These positions are not similar to the proffered position and/or are not from organizations similar in nature and scope as that of the petitioner. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routinely performed by health service managers without a baccalaureate level education in a specific specialty at similar organizations in the industry. The position also contains some research responsibilities which would require the beneficiary to

review dental journals and literature and provide dentists with information concerning new treatments, procedures, etc. The nature and purpose of the research to be performed, however, is not particularly complex and is regularly performed in the industry by dental assistants, dental hygienists and other individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.