

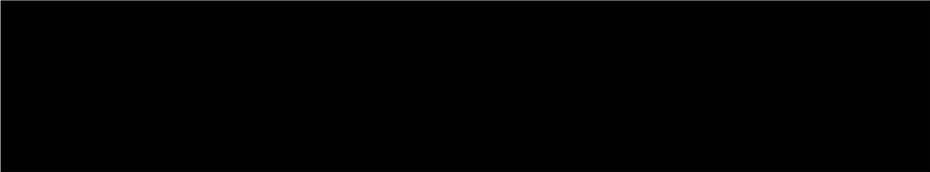


U.S. Citizenship  
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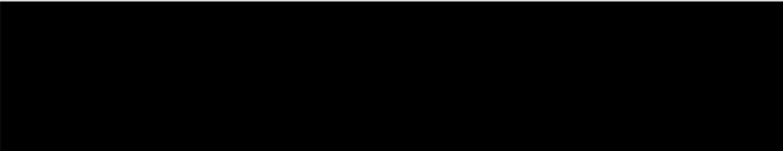
FILE: WAC 04 234 50524 Office: CALIFORNIA SERVICE CENTER Date: MAY 09 2006

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, Chief  
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 The director's decision shall be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a dental office that seeks to employ the beneficiary as a research associate. 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 additional and previously submitted 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 research associate. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to the petitioner's August 16, 2004 letter, the petitioner has been adopting innovative and experimental methods and materials in advanced restorative dentistry and has been gathering clinical data. The petitioner asserts that the beneficiary would perform duties that entail reviewing patient charts and gathering and compiling information from clinical histories and records of procedures that have been performed, and any adverse reactions experienced; compiling the results of treatments, therapies, and procedures and designing and formulating computational and statistical analysis methods to identify constants and variables in clinical and experimental data; utilizing the computer to categorize, monitor, and analyze data for scientific research; analyzing data to identify any correlation between the procedures performed and healing time, rate of success and any adverse reaction; comparing the data to available data from more traditional procedures; organizing statistical findings and photographs for publication in either professional journals or internal promotional materials; keeping abreast of developments in cosmetic and restorative dentistry. The petitioner asserts that it requires a baccalaureate degree in dental science or a life science.

The director stated that although a research associate would require a baccalaureate degree, he found that the petitioner did not prove that the offered position is *bona fide*. The director considered the petitioner's ability to pay the beneficiary's wage as relevant in determining whether there was sufficient H-1B level work. The director concluded that an inconsistency in the record, the Form I-129 petition showing a gross annual profit of \$400,000, and the submitted tax return reflecting \$180,202, signified that the record lacked a reliable evidentiary basis of determining the authenticity of the petitioner's offer of employment.

On appeal, counsel submits a December 21, 2004 letter from the petitioner. This letter explains the inconsistency in the record, indicates that the petitioner is able to pay the beneficiary's salary, and conveys that the petitioner has purchased another dental office. In the letter, the petitioner asserts that CIS previously approved a similar H-1B petition filed by the petitioner for another beneficiary. According to the petitioner, the November 4, 2004 letter from [REDACTED] discusses the dental research agreement between the petitioner and the University of Southern California School of Dentistry, in which the petitioner is to provide dental research work. Counsel submits into the record the petitioner's statement of revenues and expenses for the period ended October 31, 2004, tax records for 2003, deposit receipt/earnest money agreement dated December 14, 2004, H-1B approval notices, the November 4, 2004 letter from Professor [REDACTED], and the DE-6.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO finds that the petitioner established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for

entry into the particular position. On appeal, the petitioner states that as long as it has a relationship with the University of Southern California School of Dentistry it will have dental research work and a dental research job for the beneficiary. The November 4, 2004 letter from [REDACTED] discussed the research project concerning night guard vital bleaching of tetracycline-stained teeth: 36 months post treatment research project. The letter stated the following about the research protocol:

The purpose of this longitudinal whitening study is to determine the stability, post treatment side effects, and patient satisfaction at 36 months post treatment after 6 months of active treatment of tetracycline-stained teeth with 15% carbamide peroxide.

This project will require data from at least 100 participants in all that have undergone 1 to 6 weeks of treatment for teeth with normal stains, 1 to 3 months for nicotine stained teeth, and 2 to 6 months or longer of nightly application for tetracycline stained teeth. The material and methods used are 15% carbamide peroxide applied in a custom-fitted tray after proper examination and diagnosis. Patient will be required to return every 2 weeks for evaluation, and changes in the shade of their teeth after treatment and any side effects must be recorded and analyzed.

In reaching the conclusion that the proposed position qualifies as a specialty occupation, the AAO has referenced the California Business and Professions Code related to the practice of dentistry. Section 1625 of these regulations states that a person practices dentistry when he or she does any one or more of the following:

- (a) By card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist;
- (b) Performs or offers to perform, an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structure, or corrects malposed positions thereof;
- (c) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structure, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance;
- (d) Makes or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures; and
- (e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise a place where dental operations are performed.

[REDACTED] indicated that the material and methods require “proper examination and diagnosis,” and that patients “will be required to return every 2 weeks for evaluation, and changes in the shade of their teeth after treatment and any side effects must be recorded and analyzed.” The AAO finds that the beneficiary’s performing of these duties constitute the practice of dentistry (the performance of a diagnosis) as defined at California Business and Professions Code, Section 1625, paragraph b. In consequence of that, the offered position qualifies as a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) as it requires graduation from an accredited dental school and licensure to practice dentistry in California.

The AAO finds that the discrepancy in the record concerning gross annual income is explained by petitioner and that the explanation is supported by the submitted evidence on appeal.

The petition may not be approved, however, as no evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – a dentist, including licensure under the laws of California. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a dentist that conducts research, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. 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 November 23, 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.