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FILE: WAC 03 018 52416 Office: CALIFORNIA SERVICE CENTER Date: **NOV 28 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, California Service Center, denied the nonimmigrant visa petition. 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, with six employees and \$800,000 in gross annual income. It seeks to employ the beneficiary as a dental specialist/researcher. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation and that the petitioner had not presented a reasonable and credible offer of employment.

The record of proceeding before the AAO contains: (1) the October 24, 2002 Form I-129 with supporting documentation; (2) the director's October 26, 2002 request for additional evidence (RFE); (3) counsel for the petitioner's November 8, 2002 response to the director's RFE; (4) the director's November 15, 2002 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is the petitioner's offer of employment and whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria 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 seeks the beneficiary's services as a dental specialist/researcher. Evidence of the beneficiary's duties includes the petitioner's September 27, 2002 letter in support of the petition and counsel's November 8, 2002 response to the director's RFE. The petitioner initially stated:

The Petitioner is in need of a Dental Specialist/Researcher who possesses the necessary skill and knowledge required to administer and direct the activities of the dental practice in accordance with accepted national standards, administrative policies[,] and OSHA compliance guidelines. The Beneficiary will maintain complete dental reports and related documentation of the patients' records. She will examine patients' records to compose complete dental reports for the ultimate approval of the dentist. She will keep up to date on the latest dental research results and utilize the dental library to perform the duties. She will coordinate dental care evaluation and develop criteria and methods for such evaluation/reports. She will confer with the personnel regarding operational policies and recommend procedural changes. The Beneficiary will be responsible for setting up a system of operation and activities to be implemented in the dental office and laboratory that will assure a smooth flow of work, and improve overall efficiency of the business.

The position does not need to have a State License as the position does not involve any direct care and the Beneficiary will not engage in any direct patient care activities. However, the offered position requires a very strong dental back ground [sic] and this type of knowledge may only be obtained by attending a dental school.

In response to the director's request for a more detailed description of the beneficiary's proposed duties, counsel for the petitioner provided the same description as above and added that the percentage of time spent performing the duties is approximately:

- 50% - Administration/Direction of dental practice, Implementing System of Operations
- 40% - Research and Evaluation/Composition of Reports
- 10% - Coordination with Personnel/Procedural Recommendations

Counsel added that the beneficiary would be responsible for supervising six employees, including four dental assistants and two receptionists. Counsel also added: "the instant position requires the applicant to perform medical research and analysis in order to evaluate patients' conditions and recommend treatment." Counsel further noted: "[t]he instant position requires a college degree because it requires an in-depth knowledge of dental medicine in order to understand not only the terminology, but also how to interpret and evaluate the dentist's diagnoses. It also requires the ability to analyze contradictory information, an understanding of information systems, and other knowledge that one acquires while obtaining an advanced degree in the field." Finally, counsel stated: "[the beneficiary] will be responsible for conducting research and analysis of patients' conditions and providing the dentists with an evaluation."

The record also contains: (1) the petitioner's California Form DE-6 for the quarter ending September 30, 2002 showing that the petitioner employed six individuals the first month of the quarter and seven employees the second and third months of the quarter; and (2) a copy of the beneficiary's diploma and transcript from a Philippines Dental College.

On November 15, 2002, the director denied the petition determining that the described duties appeared to correspond to the duties of a general office manager and did not meet any of the criteria for classification as a specialty occupation. The director also determined that the structure and activities of the petitioner's dental clinic of six employees was not sufficiently complex to warrant the professional services of a health services manager. The director also questioned whether the offer of employment was a reasonable and credible offer consistent with the needs of the petitioner. The director concluded that the petitioner did not have a *bona fide* position that could be considered a specialty occupation.

On appeal, counsel for the petitioner takes issue with the director's determination that the duties of the position correspond to the duties of a general office manager and notes that the director did not specify the duties of the proffered position that align with that of an office manager. Counsel asserts that the position of dental specialist/researcher resembles the position of health services manager, a position the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports requires a minimum of a four-year degree and that the duties of the dental specialist/researcher position are more complex and demanding than those listed in the *Handbook*. Counsel references the *Handbook's* report that the occupation of health service manager encompasses all individuals who plan, organize, coordinate, and supervise the delivery of healthcare as evidence that the proffered position is that of a health services manager. Counsel also contends that the size of the petitioner's facility should not be a factor in determining the necessity for a specialty position.¹

¹ Counsel claims that the petitioner's dental clinic is made up of eleven employees, not six, including five dentists, four dental assistants, and two receptionists. Counsel does not substantiate this claim with documentary evidence. 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. *Matter of Obaigbena*, 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 does not agree with the director's or counsel's analysis of the proffered position. To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title.² The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner's description of the proffered position is not that of a health services manager.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. In reaching its own conclusion regarding the degree requirements of the proffered position, the AAO has relied upon the *Handbook* comparing the position's duties against those described for a range of dental professions. This review has found that the petitioner has not provided a meaningful description of many of the tasks associated with the proffered position. For example, "administer and direct the activities of the dental practice in accordance with accepted national standards, administrative policies[,] and OSHA compliance guidelines," is a broad statement that does not convey an understanding of the beneficiary's daily tasks. It is not possible to discern from such a general statement that the proffered position comprises the tasks of a specialty occupation. Likewise, "setting up a system of operation and activities to be implemented in the dental office and laboratory that will assure a smooth flow of work, and improve overall efficiency of the business," does not describe the daily tasks associated with the position. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. The petitioner has failed, in part, to detail the actual work to be performed for this position and cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO acknowledges counsel's assertion that the generally described tasks are the tasks of a health services manager. However, as observed above, the petitioner does not submit sufficient information to establish that the beneficiary's 50 percent of time devoted to "Administration/Direction of dental practice, Implementing System of Operations administrative tasks" is time spent performing the duties of a health services manager. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO notes that the petitioner has included tasks such as maintaining dental reports and examining patients' records to compose dental reports for the dentist as duties of the proffered position. However, once again the tasks outlined are ill defined and do not establish that they require the theoretical and practical application of a body of highly specialized knowledge. The AAO observes that the *Handbook* reports that dental assistants:

² In this matter, the Dental Board of California does not recognize the title of dental specialist. Counsel provided a February 3, 2006 letter from the Dental Board in California in another matter before the AAO indicating that there is no such title as dental researcher/specialist.

"obtain [patients'] dental records," and "keep treatment records," duties that appear to be included in the petitioner's description of the proffered position's tasks. The *Handbook* does not indicate that the tasks of a dental assistant require the attainment of a four-year degree.

Moreover, the nature of some of the tasks described suggest that the incumbent in this position may be performing tasks that are the tasks of a dentist, a position that must be licensed as a dentist in the State of California.³ The AAO notes that the petitioner emphasizes that the position does not involve the direct care of patients, however, counsel in response to the director's RFE states: "the instant position requires the applicant to perform medical research and analysis in order to evaluate patients' conditions and recommend treatment," "[t]he instant position requires a college degree because it requires an in-depth knowledge of dental medicine in order to understand not only the terminology, but also how to interpret and evaluate the dentist's diagnoses," and "[the beneficiary] will be responsible for conducting research and analysis of patients' conditions and providing the dentists with an evaluation." Section 1625 of the California Business and Professions Code states that the practice of dentistry includes anyone who normally performs, or causes to be performed by a dentist, the examination, diagnosis of any kind, and treatment of various disorders of the teeth. As the position in this matter requires that the incumbent evaluate patients' conditions and recommend treatment, as well as, evaluate the dentist's diagnoses, the position appears to be that of a dentist. Further, California Business and Professions Code Section 1625(e) provides that a person who manages a dental practice is practicing dentistry. Fifty percent of the beneficiary's time is to be spent in the administration and direction of a dental practice. Such a position requires a license to practice dentistry in the State of California.⁴

The majority of the position's duties are not clearly defined and the AAO cannot discern whether the tasks are the tasks of a dentist, a dental auxiliary, or a registered dental auxiliary. The record does not support counsel or the petitioner's assertion that the proffered position is that of a health and services manager. The record does not provide sufficient information regarding the actual duties of the position to demonstrate that it is a specialty occupation on the basis of a degree requirement under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), may qualify it under one of the three remaining criteria.

The petitioner has not submitted evidence to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner also fails to provide a meaningful description to establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. As discussed above, the only detail of the duties of the proffered position suggest that the individual performing the duties may be a dental assistant, a position that is commonly performed by non-degreed individuals.⁵ The petitioner has not provided sufficient evidence to satisfy either prong of the criterion 8 C.F.R.

³ California Business and Professions Code Section 1625.

⁴ The record does not contain evidence that the beneficiary is licensed to practice dentistry in the State of California.

⁵ The AAO notes again that counsel's description of some of the duties of the position suggests that the position may require the services of a licensed dentist, a position that is a specialty occupation requiring a license to

§ 214.2(h)(4)(iii)(A)(2) and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

The petitioner has also failed to establish that it normally requires a degree or its equivalent for the position. The petitioner has not provided evidence of other employees in the proffered position who have attained a baccalaureate degree or its equivalent. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Counsel for the petitioner has asserted that the proffered position is complex. In assessing whether the petitioner has met its burden with regard to the fourth criterion, the AAO has again reviewed the duties of the proffered position to determine whether they reflect a higher degree of knowledge and skill than would normally be required of someone trained as a dental auxiliary, or are sufficiently detailed to substantiate that the duties are associated with the duties of a health services manager or a dentist. The AAO acknowledges the foreign training of the beneficiary, but emphasizes that the description of the duties of the proffered position are generalized and when portions are defined suggest that the beneficiary will be performing the duties of a dental auxiliary or will be practicing dentistry as someone who performs, or causes to be performed by a dentist, the examination, diagnosis of any kind, and treatment of various disorders of the teeth. Having considered the few ascertainable duties of the proffered position, the AAO finds no evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that normally needed by a dental auxiliary.⁶ The petitioner's reliance on the skill and education of this particular beneficiary does not elevate the described duties to those of a specialty occupation. The petitioner has not provided a definitive description of duties or other evidence that establishes that the position includes duties that are so specialized or complex that the position requires an individual with a baccalaureate or higher degree. The AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the director's decision, the AAO observes that the record contains evidence that the beneficiary graduated from the Philippine Dental College in 1990 with a doctor of dental medicine. The record, however, does not contain a credentials evaluation of the beneficiary's foreign education. Thus, the record does not contain evidence that the beneficiary is qualified to perform any position that requires a four-year degree. For this additional reason the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D.

perform in the State of California.

⁶ The AAO notes once again that the general references in the proffered position indicating the beneficiary will manage the dental practice, evaluate patients' conditions, recommend treatment, and evaluate the dentist's diagnoses, suggest that the position may be that of a dentist, a specialty occupation that requires licensure in the State of California. As the record does not include evidence that the beneficiary has obtained a dental license in California, the petition could not be approved on the basis of performance of these duties as they appear to include the duties of a dentist and the beneficiary has not been licensed to perform the occupation.

Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 met that burden.

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