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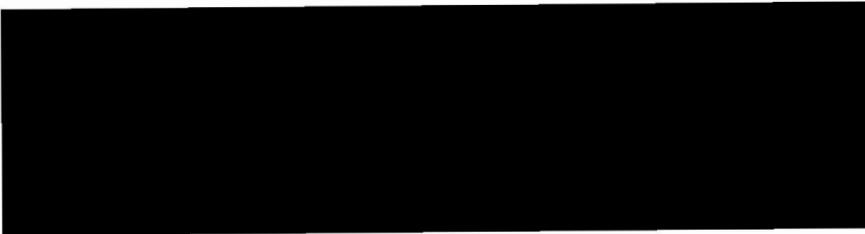
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FILE: WAC 02 185 52736 Office: CALIFORNIA SERVICE CENTER Date: **SEP 28 2006**

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 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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner California corporation is a dental office with a staff consisting of a dentist, two dental assistants, and three RDAs (Registered Dental Assistants). It seeks to employ the beneficiary in a position that it designates as "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 on the basis that the petitioner had not established that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and documentary evidence. Counsel contends that the evidence of record establishes that the proffered position requires a bachelor's degree in dentistry.

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 AAO has considered the evidence of record in its entirety, including: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the director’s request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief with its accompanying documents. The AAO determines that the totality of the information that the petitioner has presented on appeal and earlier in the proceeding establishes that the proffered position involves the practice of dentistry.

Section 1625 of the California Business and Professional Code (CBPC) defines the practice of dentistry as including “diagnosis” of “diseases and lesions . . . of the human teeth, alveolar process, gums, jaws, or associated structures.” Subsections (b) and (e) of that section state that a person “practices dentistry” when he or she “performs . . . a diagnosis of any kind” or “manages or conducts as manager . . . a place where dental operations are performed.”

The AAO finds that the following statements in the record indicate that the proffered position involves the practice of dentistry as defined at CBPC section 1625(b), because they indicate that the beneficiary would play a material role in diagnosis:

[The beneficiary] will conduct the necessary research to determine the cause and[/]or effect of the diseases that the patient is exhibiting or prepare a complete analysis of the patient[']s infection or disorder.

[Petitioner’s May 1, 2002 letter filed with the Form I-129]

Another area of the duties that [the beneficiary] will be involved in is assisting the clinic’s dentists with the analysis of patients’ records. He will examine patient’s records to compose dental reports for the ultimate approval of the clinic’s dentists. He will utilize his medical background to provide complete analysis of the patient’s oral and maxillo-facial conditions based upon the dentist’s findings, reports, medical history and laboratory results. [The beneficiary] will record these conditions for diagnosis and treatment by the dentist. [The beneficiary’s] expertise in the area of dental medicine will be utilized in suggesting to the dentist solutions as to patients’ conditions. . . .

. . . .

The majority of the duties are medical in nature and require the analysis of a dentist’s work. The duties also include specialized research in the field of dental medicine and devising methods to utilize the fruit of the research at the petitioner’s clinic. Only a person who has

been formally trained as a dentist can analyze a dentist's work and make recommendations as to improvements in diagnosis or treatment.

[Counsel's February 3, 2003 letter of reply to the RFE]

The AAO further finds that the following statements in the record indicate that the proffered position involves the practice of dentistry as defined at CBPC section 1625(e), because they indicate that the duties of the proffered position involve management of substantive aspects of dental work:

[The beneficiary] will administer and direct the activities of the dental office in accordance with accepted national standards, administrative policies and OSHA compliance guidelines.

....

[The beneficiary] will[,] as needed, hire additional staff, fire and evaluate their work.

[Petitioner's May 1, 2002 letter filed with the Form I-129]

[The beneficiary] will hire additional staff as needed, and evaluate their work.

[The beneficiary] will coordinate dental care evaluation and develop criteria and methods for such evaluation/reports.

[The beneficiary] will not directly supervise the clinic's staff, but he will analyze and determine the quality of their work, and the employees' compliance with the established procedures and standards. The duties . . . require a bachelor's degree, at a minimum, because these duties require analysis of a dental doctor's work. Only a person who has been formally trained in dental medicine can analyze a dentist's work and make recommendations as to improvement in diagnosis or treatment.

The petitioner may be able to hire more dentists to handle the volume of patients, but such dentists will be busy performing work and tending to the patients and will not have the requisite time, as does not the clinic's present dentist, to properly assure the quality of the services

....

In the instant case, the position of Dental Specialist requires a strong dental background in order to attend to the complex duties involved. [The beneficiary] will be required to administer a dental program and formulate dental policies, standards and procedural changes in accordance with accepted national standards and administrative policies. He will also be required to confer with clinical staff to formulate policies. Such duties clearly exceed those of a normal Health Services Manager and require the knowledge and experience of a dental practitioner.

[Counsel's February 3, 2003 letter of reply to the RFE]

As the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the practice of dentistry requires at least a degree in dentistry - - usually a four-year degree obtained after a bachelor's degree - - the proffered position meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) for a position for which the normal minimum entry-level requirement is at least baccalaureate or higher degree.

The petition may not be approved, however, as the evidence of record does not establish that the beneficiary is qualified to perform services in the proffered position in accordance with the provisions in the Act and CIS regulations on licensure as a condition for approval of certain H-1B petitions.

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), states that an alien applying for classification as an H-1B nonimmigrant worker must possess "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation." 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 regulations at 8 C.F.R. §§ 214.2(h)(v)(B) and (C) address situations where the relevant jurisdiction allows temporary licensure or limited practice under the supervision of a properly licensed person.

The *Handbook* states that all 50 states and the District of Columbia require dentists to be licensed. Section 1626 of the CBPC states, "It is unlawful for any person to engage in the practice of dentistry in the state . . . unless the person has a valid, unexpired license or special permit from the [Board of Dentistry]."

There is no evidence in the record of proceedings that the beneficiary held a license, temporary license, or any other authorization from the State of California to practice dentistry at the time the petition was filed.

As licensure was not a basis for the director's denial of the petition, the case will be remanded in order to afford the petitioner an opportunity to submit additional evidence on that issue.

The director's decision will be withdrawn, and the matter will be remanded for entry of a new decision. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether, at the time the petition was filed, the beneficiary was licensed to practice dentistry in the State of California, and

other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If adverse to the petitioner, the decision is to be certified to the AAO for review.

As always, 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 February 12, 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.