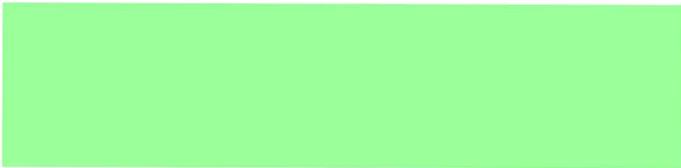




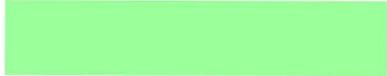
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: JUN 21 2013

OFFICE: VERMONT SERVICE CENTER

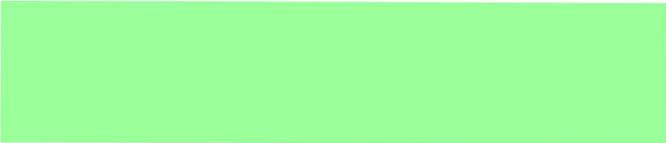


IN RE: Petitioner:  
Beneficiary:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will remain denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Cosmetic Dentistry; Restorative Dentistry" business with 21 employees. To employ the beneficiary in what it designates as a "Dental Research Assistant" position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation 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). The director denied the petition on the grounds that the petitioner failed to establish that 1) the proffered position qualifies for classification as a specialty occupation, and 2) the beneficiary is qualified to perform services in a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

Counsel for the petitioner submitted the following documents, *inter alia*, with the Form I-129: (1) a certified Labor Condition Application (LCA); (2) a support letter from the petitioner dated September 9, 2009; (3) a copy of the beneficiary's diploma awarded by the [redacted] in the Philippines; and (4) a copy of the beneficiary's dentistry license issued by the Republic of the Philippines, Professional Regulation Commission, Board of Dentists.

In the petitioner's support letter, the petitioner states the following with respect to the beneficiary's job duties:

The position of Dental Research Assistant being offered to [the beneficiary] involves researching the latest journals focusing on Oral Care with a particular interest in Oral Care and Systematic Diseases. Research the influence of systematic diseases on oral health care in older adults. Systematic diseases are more common in older adults than in younger people, even among those who are functionally independent. Responsible for identifying all new technologies related to Oral Care diagnosis. Create a database of quantitatively accurate Oral Care information that will be used by our team of professionals.

The petitioner also stated that the proffered position requires a "degree in Dental Medicine as well as Clinical experience."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on September 22, 2009. The petitioner was asked to submit documentation to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

In its response, the petitioner provided the following job duties and percentages of time to be

spent on each duty:

1. Conducting research on the latest breakthrough on how to deal with the common related problems in the oral cavity, such as ulceration that may lead to cancer[-] related problems:
  - a) Review pt/dental/medical history – 10%
  - b) Review Xrays – 10%
  - c) Biopsy – 10%
  - d) review patient's chart – 5%
  - e) review medication taken – 5%
2. Research on latest dental materials/equipment to be used for restoration and diagnosis in the Oral Care – 25%
3. Review medical literature including professional journals, online references, records to identify dental procedures or processes for application in the dental practice – 20%
4. Analyze and create statistical database for easy access of team of professional regarding the report and recommendation on how to improve the treatment to the patient – 15%

The petitioner also submitted, *inter alia*, the following: (1) four job postings; (2) a copy of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook's* (hereinafter the *Handbook*) chapter on Dentists, with the following passage highlighted – "oral pathologists (studying oral diseases)"; and (3) a letter from the petitioner dated September 29, 2009. In its September 29, 2009 letter, the petitioner stated that it currently employs a "Dental Research Associate, [REDACTED] and that [REDACTED] has a "Bachelor's degree and a Doctor of Dental Medicine Degree from the Philippines." The petitioner also submitted copies of a 2008 Form W-2 Wage and Tax Statement for [REDACTED] Doctor of Dental Medicine degree awarded by [REDACTED] in the Philippines.

The director denied the petition on November 9, 2009. Specifically, the director found that the job postings submitted do not demonstrate that the minimum requirement for the proffered position in the same industry is a baccalaureate degree in a specific field of study. The director also questioned the petitioner's need for two individuals, i.e., the petitioner and [REDACTED] to perform the duties of the proffered position based on the nature, scope, and/or size of the petitioner's business. The director also stated that it was unclear "how the beneficiary would be relieved from performing non-qualifying functions."

With respect to the second ground of denial, the director stated that it appeared that the petitioner is claiming to offer the beneficiary an oral pathologist position, an occupation that requires a license. Finding that the record of proceeding lacks evidence that the beneficiary is a licensed dentist in New York, or other evidence that the beneficiary is immediately eligible to practice her profession in New York, the director concluded that the evidence of record does not establish that the beneficiary is qualified to perform services in a specialty occupation.

On appeal, counsel contends in a brief that the proffered position qualifies for classification as a specialty occupation and that a license is not required to perform the duties of the proffered position. Counsel also submits, *inter alia*, a print-out of an e-mail sent from the "NYS Board for Dentistry" on November 19, 2009, in response to a November 17, 2009 inquiry sent via email by an individual employed by counsel.

The AAO will first discuss whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] 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 [(2)] 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, a proposed position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

As a preliminary matter, in addressing whether the proffered position is a specialty occupation, it is noted that the record is devoid of substantial documentary evidence as to the duties to be performed by the beneficiary. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." The AAO finds that despite the director's specific request for a "detailed statement describing the beneficiary's proposed duties" including a statement on "which specific tasks require the expertise of someone who holds a baccalaureate degree," the record is devoid of a detailed statement of the proposed duties and substantial documentary evidence corroborating the specific duties of the proffered position. Given the lack of detail and corroborating evidence, the AAO cannot determine the occupational category substantially reflecting the duties of the proffered position.

There must be sufficient, corroborating evidence in the record that demonstrates not only actual employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will be in a specialty occupation. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1) and (12). In this instance, not only did the petitioner fail to submit a detailed statement of the proffered position's duties, no such corroborating evidence relevant to the claimed duties of the proffered position was submitted. The petitioner also failed to submit documentary evidence that it is in need of an additional full-time dental research assistant on its staff.

For instance, one of the duties of the proffered position is simply stated "Biopsy" without any further details or indications as to the work the beneficiary will do with regard to biopsies, e.g., perform biopsies, research biopsies, and/or analyze biopsies. Moreover, the claimed duties require the beneficiary to perform, in large part, analysis and creation of a "statistical database for easy access of team of professional[s] regarding the report and recommendation on how to improve the treatment to the patient"; however, the record is devoid of any evidence that the petitioner has a need for a statistical database, and that it has concrete plans to create the database.

The claimed duties also require the beneficiary to "[r]eview medical literature including professional journals, online references, records to identify dental procedures or processes for application in the dental practice"; however, no evidence was submitted demonstrating that such a duty is required within the context of the petitioner's dental practice. It is further noted that the petitioner claims to employ Ms. Ignacio in a similarly titled position, i.e., "Dental Research Associate"; however, no corroborative evidence was submitted to demonstrate that [REDACTED] is in fact employed as a "Dental Research Associate" and no examples of [REDACTED] work in this regard was submitted.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Furthermore, while the petitioner asserts in the LCA that the proffered position falls under the occupational category "Life Scientists, All Other," SOC (ONET/OES) code 19-1099.99, the petitioner failed to demonstrate which, if any, of the proffered position's duties reflect the duties of life scientists or how such a classification is relevant to the proffered work. A review of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* reveals that some of the proffered work may be performed by oral pathologists.<sup>1</sup> Specifically, the petitioner states

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at

that the beneficiary will be "[c]onducting research on the latest breakthrough on how to deal with the common related problems in the oral cavity, such as ulceration that may lead to cancer[-] related problems" which the petitioner claims includes performing work described vaguely as "Biopsy."

According to the *Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, oral pathologists "diagnose oral diseases, such as oral cancer or oral lesions (bumps or ulcers in the mouth." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Dentists," <http://www.bls.gov/ooh/healthcare/dentists.htm#tab-2> (last visited Feb. 20, 2013). The American Academy of Oral and Maxillofacial Pathology describes the work of oral and maxillofacial pathologists with the following statement on its website:

Oral and maxillofacial pathology is the specialty of dentistry and pathology which deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes and effects of these diseases.

The practice of oral and maxillofacial pathology includes research, diagnosis of diseases using clinical, radiographic, microscopic, biochemical or other examinations, and management of patients.

American Academy of Oral and Maxillofacial Pathology, <http://www.aaomp.org/about/index.php> (last visited Feb. 20, 2013).

Furthermore, the petitioner's counsel appears to suggest that the proffered position is an oral pathologist position. Specifically, as the director noted, in response to the director's RFE, counsel submitted a section of the *Handbook's* chapter on "Dentists" with the following passage highlighted: "*oral pathologists* (studying oral diseases)."<sup>2</sup> Counsel stated the following in his October 22, 2009 letter that accompanied this submission:

We submit herewith a Statement from the petitioner describing the beneficiary's proposes day-to-day duties with a percentage of time to be spent on each duty.

We are also submitting two job postings for Dental Research Assistants in the same industry of comparable size and scope as the petitioner showing a requirement of at least a bachelor's degree in any specific field compatible with the job being offered. To this effect we are also enclosing pages 281-282 of the [*Handbook*] citing this nature of work of a dentist. Furthermore, also enclosed are job postings for a Research Assistant positions [sic] from the University of Maryland and National Opinion Research Center at the University of Chicago

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<http://www.stats.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

<sup>2</sup> The director referred to this document submitted by counsel as the "Department of Labor's O\*Net Summary Report"; however, it is noted that it is, in fact, a copy of the *Handbook's* chapter on "Dentists."

showing the required education all of which indicate that this position is a specialty occupation.

It is not clear, however, other than 1) the vague description of the proffered duties, 2) counsel's statements in his letter, and 3) the highlighted section of the *Handbook*, that the proffered position is an oral pathologist position.

As the petitioner has failed to present sufficient, credible evidence of the actual job duties the beneficiary will perform, it has therefore failed to demonstrate that the occupation more likely than not requires a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry. *See* INA § 214(i)(1). The petitioner also has not shown through submission of documentary evidence, that it meets any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Rather, while the petitioner claims that it requires a dental research assistant and that it requires a "degree in Dental Medicine," it has not demonstrated that 1) it requires a dental research assistant, 2) the duties to be performed by the dental research assistant, and 3) the proffered work requires such a degree. Thus, the petitioner has not met its burden of proof in this regard, and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition will remain denied for this reason.

The AAO will next discuss whether the beneficiary is qualified to perform services in a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. However, as noted above, the petitioner has asserted that the proffered position requires a "degree in Dental Medicine." While evidence in the record indicates that the beneficiary was awarded a doctor of dental medicine degree by a university in the Philippines, the petitioner did not submit an evaluation of the beneficiary's foreign degree or sufficient evidence to establish that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), if the petitioner relies on a beneficiary's foreign education to show that the beneficiary is qualified to hold the proffered position, the petitioner must provide an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience; or an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The record contains neither. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established. Therefore, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation, and the petition must be denied for this additional, alternative reason.

Furthermore, the AAO finds that even if the proffered position was properly classified as an oral pathologist position, as the petitioner seems to suggest, the beneficiary would not qualify to perform the duties of that specialty occupation. The applicable law regarding the profession of

dentistry in the State of New York is set out in Title 18 of the Rules and Regulations of the State of New York. Specifically, part 506 of Article 3, Policies and Standards Governing Provision of Medical and Dental Care, of Title 18 states the following:

506.1 Qualifications of dentists.

(a) General qualifications of dentists.

Dentists shall be licensed and currently registered by the New York State Education Department, or, if in practice in another state, by the appropriate agency of that state and shall meet the qualifications of a general practitioner or of a specialist.

\* \* \*

(c) Qualifications of specialists.

A specialist is one who is:

- (1) a diplomate of the appropriate American Board;
- (2) is listed as a specialist in the American Dental Directory of the American Dental Association section on "character of practice"; or
- (3) is listed as a specialist on the roster of approved dental specialists of the New York State Department of Health.

N.Y. COMP. CODES R. & REGS. tit. 18, § 506.1 (2012).

Further, the New York State Education Department, Office of Professions, website lists oral pathology as a dental specialty:

Dental specialists may include these practitioners:

- **endodontists** perform such procedures as root canals;
- **oral and maxillofacial radiologists** use imaging technologies to diagnose diseases in the head and neck;
- **oral and maxillofacial surgeons** diagnose and treat injuries and defects of the head, neck, face, and jaws (as long as the mouth is involved);
- **oral and maxillofacial pathologists** *study the causes and effects of diseases of the mouth;*
- **orthodontists** treat problems related to misaligned teeth;
- **pediatric dentists** specialize in treating children;
- **periodontists** diagnose and treat diseases of the gums;
- **prosthodontists** replace missing teeth with fixed or removable substitutes such as dentures; and
- **public health dentists** control dental diseases and promote good dental health in the community.

New York State Education Department, Office of the Professions, New York State Licensed Professions, Dentistry, <http://www.op.nysed.gov/prof/dent/dentbroch.htm> (last visited Feb. 20, 2013) (emphasis added).

Thus, if the proffered position is an oral pathologist position, the beneficiary is required to a) hold a license to practice dentistry in the State of New York, and b) meet the requirements of section 506.1(c) of Title 18 of the Rules and Regulations of the State of New York to perform the duties of an oral pathologist in the State of New York.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order 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.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, if a license is required to perform the proffered work, the petitioner must establish that the beneficiary possesses the requisite license. In this matter, the applicable law in the State of New York indicates that a license is required to perform the duties of an oral pathologist. Therefore, the failure of the petitioner to provide evidence of the beneficiary's valid license *and* satisfaction of the requirements of section 506.1(c) would preclude the approval of this petition even if the beneficiary had established that the proffered position is an oral pathologist position.

As a final matter, counsel provided a print-out of an email exchange between counsel's office and the New York State Dental Board on appeal. Specifically, the e-mail originating from counsel's office states the following: "Does a Dental Research Assistant/Associate need to be licensed in the State of New York? Your response will be greatly appreciated. Thank you very much." In response, the "NYS Board for Dentistry" states the following: "The New York State dental board office does not license dental research assistants or associates." In the appeal brief, counsel states that licensure is only required when direct or indirect patient care is a duty of the position, and that the proffered position involves neither direct nor indirect care. Again, the AAO notes that one of the duties the petitioner attributed to the proffered position is "Biopsy." The duties pertinent to biopsies are not further described and do not appear to have been revealed to the New York licensing authority. In fact, the e-mails do not indicate that any of the duties were communicated to the New York State dental board office. Therefore, while the e-mail appears to demonstrate that the State of New York does not license positions titled "Dental Research Assistant" or "Dental Research Associate," per se, it is not sufficient evidence demonstrating that a license to perform the proffered position's duties is not required.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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