

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2011

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)

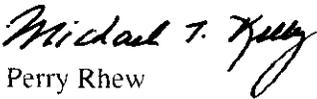
ON BEHALF OF PETITIONER:
[Redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 
Perry Rhew
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 and the petition denied.

The petitioner is a home health care services provider. It seeks to employ the beneficiary as an intake medical records coordinator and 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, concluding that the petitioner failed to establish that 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) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The AAO first turns to the director's basis for denial, in which she determined that the record is insufficient for U.S. Citizenship & Immigration Services (USCIS) to determine that the beneficiary is qualified to perform the duties of a specialty occupation.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has: (1) experience in the specialty equivalent to the completion of such degree, and; (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The director found that the beneficiary's foreign degree, which was evaluated as equivalent to a bachelor of science degree in nursing from an accredited institution of higher education in the United States, does not qualify her to perform the duties of the proffered position, which the director found to be similar to those of medical and health service managers in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*. According to the director, the *Handbook's* section on medical and health services managers states that such positions require at least a bachelor's degree in health services administration or business administration. Therefore, the director found that the beneficiary's bachelor's degree in nursing did not qualify her for a position as a medical and health services manager.

On appeal, counsel argues that the *Handbook's* section on medical and health services managers does not limit the degree of the candidate to health services management and business administration. The *Handbook* (2010-11 online edition) describes the training, other qualifications, and advancement of medical and health services managers to be as follows:

A master's degree *in one of a number of fields* is the standard credential for most generalist positions as a medical or healthcare manager. A bachelor's

degree is sometimes adequate for entry-level positions in smaller facilities and departments. In physicians' offices and some other facilities, on-the-job experience may substitute for formal education.

Education and training. Medical and health services managers must be familiar with management principles and practices. 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, at the departmental level within healthcare organizations, and in health information management. *Physicians' offices and some other facilities hire those with on-the-job experience instead of formal education.*

Bachelor's, master's, and doctoral degree programs in health administration are offered by colleges; universities; and schools of public health, medicine, allied health, public administration, and business administration. In 2008, according to the Commission on Accreditation of Healthcare Management Education, there were 72 schools that had accredited programs leading to the master's degree in health services administration.

For people seeking to become heads of clinical departments, *a degree in the appropriate field and work experience* may be sufficient early in their career. However, a master's degree in health services administration or a related field might be required to advance. For example, *nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and graduate degrees in nursing or health services administration.*

Health information managers require a bachelor's degree from an accredited program. In 2008, there were 48 accredited bachelor's degree programs and 5 master's degree programs in health information management, according to the Commission on Accreditation for Health Informatics and Information Management Education.

[Emphasis added.]

Also on appeal, counsel submits documentation from River College's nursing program, which offers associate and bachelor's degrees in nursing, indicating that case management and intake coordination are areas in which nursing graduates may find a career.

The AAO agrees with counsel that, based on the *Handbook's* description, there are many more acceptable fields of study for medical and health services managers than just health services administration or business administration, thereby demonstrating that the director defined the minimum requirements for this occupation too narrowly. Moreover, this narrow reading of the *Handbook's* section regarding education requirements for medical and health services managers

resulted in the director mistakenly finding that the proffered position is a specialty occupation, which in turn caused her to conclude that the beneficiary, who holds the U.S. equivalent of a bachelor's degree in nursing, is not qualified to perform the duties of a medical and health services manager.

The problem with the director's assessment is that it presumes that the proffered position is both a medical and health services manager and a specialty occupation when, as will be discussed *infra* in this decision, neither has been demonstrated to be the case. Moreover, even if the petitioner could demonstrate that the proffered position is a medical and health services manager, the wide range of fields and degrees or experience that may be acceptable as a minimum requirement for this occupation, according to the *Handbook*, means that a bachelor's degree or the equivalent in a specific specialty is not necessarily a normal minimum requirement. On appeal, counsel broadens the minimum requirement for the proffered position from a bachelor's degree in nursing to a bachelor's degree in a medical field, further demonstrating that the proffered position is not a specialty occupation as it does not require at least a bachelor's degree or the equivalent in a *specific specialty*. The AAO therefore finds that the beneficiary's degree, which has been found to be equivalent to a U.S. bachelor's degree in nursing, does not qualify her to perform the duties of the claimed specialty occupation in this petition as the petitioner has failed to demonstrate that the proffered position is, in fact, a specialty occupation.

Beyond the decision of the director, therefore, the AAO also finds that the petitioner failed to demonstrate that the proffered position is a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 requires theoretical and practical application of a body of highly specialized knowledge in field 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, 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, 8 U.S.C. § 1184(i)(1), 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. 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

As discussed previously, according to the *Handbook*, there is a wide range of fields and degrees or experience that may be acceptable for medical and health services manager positions, depending on the position and the type of employer. Therefore, based on the *Handbook's* overview of requirements for medical and health services managers, it is apparent that a bachelor's degree in a specific specialty is not necessarily a normal requirement.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not solely rely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook*. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the beneficiary will likely perform for the entity or entities ultimately determining the work's content.

In the response to the RFE, the petitioner states the beneficiary would perform the following duties:

- Screen referred patients for eligibility of insurance, Medicare and Medicaid, coordinate with billing department, and education of the patient and family regarding services provided, collect information, and work with treatment team to determine services needed (40% of time);
- Oversee scheduling of nursing staff and ensure appropriate staffing as well as communicate with staff (20% of time); and
- Organize medical information, communicate medical information to treatment team, ensure accuracy of medical records, organize patient charts and ensure confidentiality, and ensure completeness and accuracy of documentation (40% of time).

The petitioner also stated that the beneficiary will have a supervisory role in that she will oversee the functions of three medical records specialists. The organization chart provided by the petitioner indicates that the beneficiary will be directly supervised by the clinical director. The three medical specialists whose work will be overseen by the beneficiary are referred to as clinical managers in the organizational chart and each of these specialists will oversee a team coordinator, registered nurses and therapists, and medical records personnel, according to the chart.

Regarding the minimum requirements for the proffered position, in response to the RFE, counsel asserts that the petitioner requires at least a bachelor's degree in nursing. In order to demonstrate that the proffered position is a specialty occupation, counsel submits a number of advertisements as well as a letter from the petitioner, which states that the person who currently performs some of the proffered duties is a clinical intake nurse who holds a bachelor's degree in nursing. Additionally, counsel submits a letter from another home health care agency, which states that, regarding the two people who worked as its intake coordinators, one is a medical graduate with full licensure in Mexico, while the other has a bachelor's degree in nursing from the Philippines.

The submitted Labor Condition Application (LCA) was filed for an intake and medical records coordinator to work in Naperville, IL from September 29, 2008 to September 28, 2011. The LCA lists a prevailing wage of \$23.60 per hour, which the petitioner based on the prevailing wage for medical and health services managers from the Foreign Labor Certification Datacenter's *Online Wage Library*.

On appeal, the petitioner submits an additional letter from another home health care agency,

which states that home health care agencies *prefer* to hire people with a medical background for positions similar to the one proffered, and that hiring someone with a bachelor's degree in nursing is in the best interest of the employer.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. 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.

As discussed previously, a review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in the proffered position. Depending on the type of medical and health services manager position, a degree, or even experience, in a wide range of fields may be acceptable. The evidence presented by the petitioner does not establish why at least a bachelor's degree in nursing, as opposed to a bachelor's degree or equivalent experience in another field, is required for this particular position. Counsel argues on appeal that the petitioner, as a smaller company, requires someone who already has a bachelor's degree in a medical field because the petitioner does not have the time to train someone with an education in health services or business administration in the requisite medical terminology. However, this explanation for why the petitioner requires at least a bachelor's degree in nursing or a medical field does not demonstrate that the nature of the duties require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

Moreover, counsel does not provide documentation from the petitioner to support counsel's claim that "[o]nly formal higher education in a medical field will permit [the beneficiary] to accurately recognize and gather pertinent information related to the patients' condition. . . ." While the AAO recognizes that some medical knowledge may be a requirement for the proffered position, the petitioner's description of the position's duties are not sufficiently detailed to determine why a bachelor's degree in nursing (on appeal, counsel expands this requirement more broadly to include any medical field) is required, as opposed to a degree in another field. 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 Obaighena*, 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).

In fact, on appeal, counsel asserts that the proffered position is actually a combination of two positions – an intake coordinator as well as a medical records coordinator. According to the response to the RFE, 40% of the proffered position's duties entail screening patients for insurance eligibility, while 20% entail overseeing the scheduling of nursing staff, leaving the other 40% of the beneficiary's time for the organization of medical information and relaying that information to the treatment team. The petitioner did not demonstrate how screening patients for insurance eligibility and overseeing the scheduling of nursing staff, which comprises the majority of the proffered

position's duties, requires at least a bachelor's degree or equivalent experience in nursing, as opposed to another field. 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)).

Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. To establish its degree requirement as an industry norm, the petitioner has submitted advertisements from health care agencies. Of these advertisements, some do not provide a job title and/or description of duties, which makes it difficult to determine whether the proffered position is sufficiently similar to the positions advertised. Additionally, the advertisements that indicate at least a four-year degree is required do not state that the degree must be in a *specific specialty*. The petitioner also submits advertisements from non-health care related agencies, which are not in the petitioner's industry and therefore are not relevant to these proceedings. Moreover, these advertisements indicate a degree requirement in fields that are not related to nursing, like sociology or psychology, further establishing that a degree in a wide range of fields is acceptable for medical and health services managers. Therefore, the petitioner has failed to establish the petitioner's degree requirement as the norm within its industry as none of the companies placing the ads either require at least a bachelor's degree or equivalent experience in a *specific specialty*, or are sufficiently similar to the petitioner. As a result, these announcements do not establish a degree requirement in a specific specialty in parallel positions.

Additionally, of the two letters submitted by other employers that appear to be similar to the petitioner, the other employer claims in the letter provided in response to the RFE that it previously hired someone with a medical degree and then hired someone with a nursing degree to fill a similar position as the one proffered. However, even though both of the employees had foreign degrees, the petitioner did not submit copies of their degrees or education evaluations. Therefore, the AAO cannot verify that these individuals have at least a bachelor's degree or the equivalent in the fields claimed in the letter. Regarding the letter written by another employer that was submitted for the first time on appeal, this letter stated only that home health care agencies *prefer* to have someone

with at least a bachelor's degree in nursing to perform the duties of the proffered position, which is not the same as a requirement. Thus, rather than supporting the petitioner's claim that it is an industry norm to require at least a bachelor's degree in a specific specialty for the proffered position, the letter provided on appeal actually demonstrates that, although a bachelor's degree in nursing may be preferred for similar positions offered at other home health care agencies, it is not a requirement.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than medical health services managers that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Although the petitioner stated that its current employee who performs some of the duties of the proffered position has at least a bachelor's degree in nursing, this individual's position title is "intake nurse," which is not the same title as an intake and medical records coordinator. The petitioner states that this individual is actually a staff nurse who performs intake duties. Therefore, as this person does not hold the same position as the one proffered in this petition, the petitioner has not established a prior history of hiring only persons with at least a bachelor's degree in a specific specialty for the proffered position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that the proffered duties, as described by the petitioner in support of the petition and in response to the RFE, reflect a higher degree of knowledge and skill than would normally be required of medical and health service managers for which a degree in a wide range of fields may be sufficient. The AAO, therefore, concludes that the petitioner has not demonstrated that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied 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 is denied.