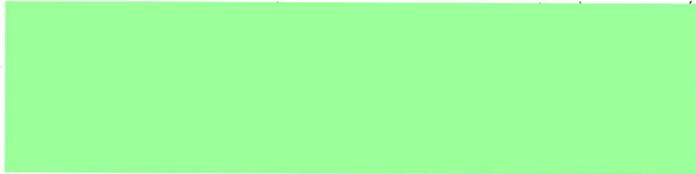
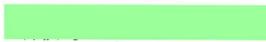


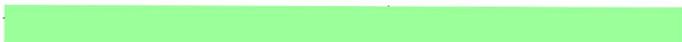


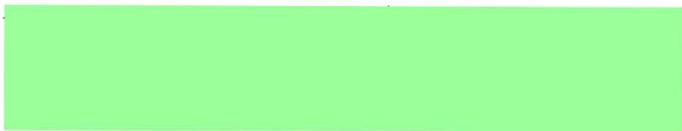
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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 Director, California Service Center, revoked the previously approved nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

On the Form I-129 petition, the petitioner claims to be a skilled nursing and rehabilitation facility seeking to employ the beneficiary as an admitting nurse supervisor 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 revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A), noting that the beneficiary's statements during a consulate interview demonstrated that the beneficiary would not be employed in the capacity specified in the petition.

After issuance of a Notice of Intent to Revoke (NOIR) and review of the petitioner's submissions in response to this notice, the service center director revoked approval of the petition on May 26, 2011.

The AAO turns first to the basis for the director's revocation, and whether this basis provided the director with sufficient grounds for revoking the H-1B petition under the language at 8 C.F.R. § 214.2(h)(11)(iii)(A), the regulation outlining the circumstances under which an H-1B Form I-129 petition's validity will be rescinded.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the

petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The AAO finds that the content of the NOIR comported with the regulatory notice requirements, as it provided a detailed statement that conveyed grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B). As will be discussed below, the AAO further finds that the director's decision to revoke approval of the petition accords with the evidence in the record of proceeding (ROP), and that neither the response to the NOIR nor the submissions on appeal overcome the grounds for revocation indicated in the NOIR. Accordingly, the AAO shall not disturb the director's decision to revoke approval of the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's NOIR, dated April 6, 2011; (3) the petitioner's response to the NOIR received on May 5, 2011; (4) the director's May 26, 2011 notice of revocation (NOR); and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

A brief summary of the factual and procedural history between the approval and the decision revoking it follows below.

On December 8, 2009, the petitioner filed the Form I-129 (Petition for a Nonimmigrant Worker) to employ the beneficiary in H-1B classification for the period from December 28, 2009 to November 30, 2012. The director initially approved the petition. Upon receipt of new information made available to USCIS after an interview, the director issued an NOIR on April 6, 2011. Specifically, the director noted that based on the beneficiary's statements to the consular officer, the beneficiary would not be employed in the position of admitting nurse supervisor as originally stated in the petition, but rather as a registered nurse providing direct patient care. The director also noted that based on these comments, the information contained in the certified Labor Condition Application (LCA) that accompanied the petition was not true and correct. The petitioner was afforded the opportunity to respond to the director's stated grounds for revocation.

In a response received on May 5, 2011, the petitioner and counsel addressed the issues identified by the director. The petitioner contended that, contrary to the director's contentions, the beneficiary was in fact to be employed in the position of admitting nurse supervisor, and contended that the beneficiary's statements in the consulate interview were taken out of context. In support of this contention, the petitioner submitted a declaration from the beneficiary dated April 27, 2011 explaining the inconsistencies.

The director found the petitioner had failed to overcome the concerns outlined in the NOIR, and on May 26, 2011, the director sent a decision revoking approval of the petition. The director found that,

contrary to counsel's assertions, the beneficiary would not be performing the duties of a specialty occupation.

On appeal, counsel argues that the petitioner has clearly established that the beneficiary will be employed in a specialty occupation position, as demonstrated by the director's initial approval of the petition. Counsel asserts that the beneficiary's statements, which were erroneously misconstrued during the consulate interview, erroneously resulted in the revocation of the petition's approval, and contends that the record clearly reflects that the proffered position in which the beneficiary will be employed is a specialty occupation. Counsel concluded that the petition did not warrant revocation.

To meet its burden of proof in this regard, the petitioner must establish that the job offered 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.

In a letter of support dated November 24, 2009, which was appended to the petition, the petitioner explained that it required the services of the beneficiary as an admitting nurse supervisor. Specifically, the petitioner stated as follows:

As such, [the beneficiary] would be responsible for managing and overseeing the pre-admission activities and processes in our facility including patient eligibility assessment, insurance verification, bed utilization, and management of patient flow. Due to the highly specialized duties involved, the position requires at minimum, a bachelor's degree or equivalent in nursing or a closely related health care field.

Specifically, the Admitting Nurse Supervisor will perform the following duties:

- Manage and implement effective quality assurance processes to monitor departmental adherence to admissions policies for maximizing reimbursement and coordination with nursing care services;
- Conduct in-depth assessment of patient's requirements and eligibility through review of medical records and status and communication with patients, families and health care personnel;
- Determine bed status and utilization and coordinate timely and appropriate movement of patients throughout the continuum of care;
- Ensure appropriate admission to the facility and resolve complex problems in census verification as well as bed assignment and utilization;
- Coordinate with physicians, nursing and rehab staff, medical records and billing personnel as to matters concerning the admission process;
- Ensure that patients' needs are met considering facility's current available medical, nursing, and rehabilitative resources;
- Assist in the preparation of assignments and work schedules of admitting staff;
- Assist in budget preparation concerning the admission process;
- Address patient and family admission concerns without compromising the facility's policies;
- Ensure compliance with state and company regulations pertaining to admission requirements and processes.

The petitioner concluded by stating that the duties of the proffered position could only be performed by someone with at least a bachelor's degree in nursing or a closely related health care field, and claimed that the beneficiary was qualified for the proffered position by virtue of her foreign educational credentials equated to that of a U.S. bachelor's degree in nursing.

The director found the initial evidence submitted insufficient to warrant approval, and thus issued an RFE on December 21, 2009. The director requested additional evidence regarding the duties of the proffered position, as well as additional information regarding the beneficiary's supervisory duties over other personnel. In response, the petitioner restated the duties set forth above, indicating that 15% of the beneficiary's time would be devoted to assisting in the preparation of assignments and work schedules of admitting staff and assisting in budget preparation concerning the admission process, where 85% of her time would be devoted to the remaining duties. However, after the beneficiary stated in her consulate interview that she would be performing the duties of a registered nurse and not those of an admitting nurse supervisor, it was determined that the beneficiary would not actually be employed in the capacity claimed in the petition. Specifically, when questioned by the USCIS officer, the beneficiary claimed that she would be providing direct patient care and would be working in the capacity of a registered nurse.

After articulating these findings in the NOIR, the director afforded the petitioner the opportunity to respond. In response, both counsel and the petitioner contended that the beneficiary's statements were misconstrued due to language barriers and the stress of the interview. In addition, both asserted that,

while the beneficiary initially applied for a registered nurse position with the petitioner, the only available vacancy was that of admitting nurse supervisor and therefore that was the position offered to the beneficiary. In support of this contention, the petitioner submitted a declaration by the beneficiary verifying these statements.

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The preliminary issue before the AAO is the proper classification of the proffered position and whether that position as classified qualifies as a specialty occupation.

A review of the director's notice of revocation demonstrates that the proffered position, according to the director's assessment, was that of a registered nurse, generally a non-specialty occupation. The U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, describes the occupation of registered nurse in relevant part as follows:

Registered nurses (RNs) provide and coordinate patient care, educate patients and the public about various health conditions, and provide advice and emotional support to patients and their family members.

Duties

Registered nurses typically do the following:

- Record patients' medical histories and symptoms
- Give patients medicines and treatments
- Set up plans for patients' care or contribute to existing plans
- Observe patients and record the observations
- Consult with doctors and other healthcare professionals
- Operate and monitor medical equipment
- Help perform diagnostic tests and analyze results
- Teach patients and their families how to manage their illnesses or injuries
- Explain what to do at home after treatment

Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides. For more information, see the profiles on licensed practical and licensed vocational nurses; nursing aides, orderlies, and attendants; and home health and personal care aides.

Registered nurses sometimes work to promote general health by educating the public on warning signs and symptoms of disease. They might also run general health screenings or immunization clinics, blood drives, or other outreach programs.

Most registered nurses work as part of a team with physicians and other healthcare specialists.

Some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as nurse educators, healthcare consultants, public policy advisors, researchers, hospital administrators, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

Registered nurses' duties and titles often depend on where they work and the patients they work with. They can focus on the following specialties:

- A specific health condition, such as a diabetes management nurse who helps patients with diabetes or an oncology nurse who helps cancer patients
- A specific part of the body, such as a dermatology nurse working with patients who have skin problems
- A specific group of people, such as a geriatric nurse who works with the elderly or a pediatric nurse who works with children and teens
- A specific workplace, such as an emergency or trauma nurse who works in a hospital or stand-alone emergency department or a school nurse working in an elementary, middle, or high school rather than in a hospital or doctor's office.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-2> (last visited January 8, 2013). The AAO notes that the *Handbook's* discussion of this occupational category encompasses some of the duties of the proffered position as described by the petitioner, in that the beneficiary as an admitting nurse supervisor will oversee other nursing staff members such as licensed practical nurses, which is evidenced by the organizational chart submitted in response to the RFE. In addition, it is noted that, while the petitioner repeatedly claims that the beneficiary will primarily be performing administrative and managerial tasks, registered nurses also perform such duties. As the *Handbook* indicates, "[s]ome nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license." The *Handbook* goes on to state that hospital administrators are often registered nurses, which is likely the nature of the proffered position in this matter. Therefore, despite the statements of the beneficiary, it appears that the proffered position is properly classified as a registered nurse even if no direct patient care will be provided.

A review of the *Handbook's* education and training requirements for this occupation, as correctly noted by the director, indicates that it does not normally require a bachelor's degree in a specific specialty or its equivalent for entry into the position:

Registered nurses usually take one of three education paths: a bachelor's of science degree in nursing (BSN), an associate's degree in nursing (ADN), or a diploma from an approved nursing program. Registered nurses must also be licensed.

Education

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

Bachelor's degree programs usually include more training in the physical and social sciences, communication, leadership, and critical thinking, which is becoming more important as nursing practice becomes more complex. They also offer more clinical experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

Generally, licensed graduates of any of the three types of education programs (bachelor's, associate's, or diploma) qualify for entry-level positions as a staff nurse.

Many registered nurses with an ADN or diploma find an entry-level position and then take advantage of tuition reimbursement benefits to work toward a BSN by completing an RN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field.

Handbook, 2012-13 ed., "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited January 8, 2013).

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), which provides for specialty occupation qualification of those positions whose normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty or its equivalent. The *Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, indicates that the position of registered nurse can be filled by RNs with associate degrees or two or three-year hospital diplomas, as well as BSNs, and indicates that any of these three educational backgrounds would prepare a candidate for an entry-level position as a registered nurse. Based on this evidence, the petitioner has failed to establish that a baccalaureate or higher degree, or the equivalent, in a specific specialty, is normally required for entry into this occupational category. The petitioner, therefore, has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO notes that counsel and the petitioner repeatedly equate the proffered position to that of a medical and health services manager. Therefore, in order to perform a thorough review of the issues at hand, the AAO will also review this section of the *Handbook*.

The AAO does not dispute that a review of this occupational category reveals similarities to the proffered position. According to the *Handbook*, this occupational category is described as follows:

Medical and health services managers, also called healthcare executives or healthcare administrators, plan, direct, and coordinate medical and health services. They might manage an entire facility or specialize in managing a specific clinical area or department, or manage a medical practice for a group of physicians. As healthcare changes, medical and health services managers must be able to adapt to changes in laws, regulations, and technology.

Duties

Medical and health services managers typically do the following:

- Work to improve efficiency and quality in delivering healthcare services
- Keep up to date on new laws and regulations so the facility complies with them
- Supervise assistant administrators in facilities that are large enough to need them
- Manage finances of the facility, such as patient fees and billing
- Create work schedules
- Represent the facility at investor meetings or on governing boards
- Keep and organize records of the facility's services, such as the number of inpatient beds used
- Communicate with members of the medical staff and department heads

In group medical practices, managers work closely with physicians, nurses, laboratory technicians, and other healthcare employees. For more information, see the profiles on physicians and surgeons, registered nurses, and medical and clinical laboratory technologists and technicians.

Medical and health services managers' titles depend on the facility or area of expertise in which they work. The following are some examples of types of medical and health services managers:

Nursing home administrators manage staff, admissions, finances, and care of the building, as well as care of the residents in nursing homes. All states require them to be licensed; licensing requirements vary by state.

Clinical managers manage a specific department, such as nursing, surgery, or physical therapy and have responsibilities based on that specialty. Clinical managers

set and carry out policies, goals, and procedures for their departments; evaluate the quality of the staff's work; and develop reports and budgets.

Health information managers are responsible for the maintenance and security of all patient records. They must stay up to date with evolving information technology and current or proposed laws about health information systems. Health information managers must ensure that databases are complete, accurate, and accessible only to authorized personnel.

Assistant administrators work under the top administrator in larger facilities and often handle daily decisions. Assistants might direct activities in clinical areas, such as nursing, surgery, therapy, medical records, or health information.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited January 8, 2013). According to the *Handbook*, medical and health services managers plan, direct, coordinate, and supervise the delivery of healthcare, and are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system. In this matter, the description of the proffered position indicates that the beneficiary will be responsible for overseeing the admitting department, thus encompassing some of the duties of a clinical manager as stated in the above excerpt. However, the record confirms that in addition to performing administrative duties in overseeing the admissions process, the beneficiary will also be responsible for conducting in-depth assessments of patient requirements, a task not typically associated with the duties of a medical and health services manager. This fact, coupled with the uncertainty regarding the true nature of the proffered position as a result of the beneficiary's conflicting statements provided in the consulate interview, render it unlikely that the beneficiary will be working solely as a medical and health services manager as contemplated by the *Handbook*.

Nevertheless, even if the AAO determined that the proffered position was that of a medical and health services manager, which it does not, a review of the *Handbook's* education and training requirements for this occupational category indicates that it does not normally require a bachelor's degree in a specific specialty or its equivalent for entry into this occupation in the United States. Therefore, even if the proffered position warranted classification of the proffered position into this occupational category, this classification, contrary to counsel's claims, does not by virtue of this categorization satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. According to the *Handbook*, the educational requirements of a medical and health services manager are as follows:

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees in health services, long-term care

administration, public health, public administration, or business administration also are common.

Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

Work Experience

Although bachelor's and master's degrees are the most common educational pathways to work in this field, some facilities may hire those with on-the-job experience instead of formal education. For example, managers of physical therapy may be experienced physical therapists who have administrative experience. For more information, see the profile on physical therapists.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited January 8, 2013). The *Handbook* does not report that a medical and health services manager needs, as a standard entry requirement, at least a bachelor's degree in a specific specialty or its equivalent, and the *Handbook* indicates that "some facilities may hire those with on-the-job experience instead of formal education." It also indicates that those with general degrees in business administration may enter the occupation.

For the reasons outlined above, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide standard requirement of at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation.

In support of the petition, the petitioner submitted an expert opinion evaluation from Professor [REDACTED] in support of the contention that a bachelor's degree in a specific specialty is common to the petitioner's industry. Professor [REDACTED] claims that the "skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree or its equivalent, with a concentration in Nursing, or a related field, is considered necessary by people in the industry seeking to hire an Admitting Nurse Manager on Duty. . . ." and concluded that such a degree is considered an industry standard.

The AAO finds Professor [REDACTED] evaluation insufficient to establish an industry-wide standard in this matter. While Professor [REDACTED] evaluation claims that individuals employed in the position of admitting nurse manager on duty are routinely required to have a minimum of a bachelor's degree in nursing, the basis upon which she rests this assertion is unclear. Although she claims that, based on her position as an Associate Professor of Nursing, she is qualified to render an expert opinion on this subject, she provides no independent evidence to support her conclusion that a bachelor's degree in nursing is a degree that is routinely required by employers similar to the petitioner for entry into the position of admitting nurse manager on duty for a sub-acute rehabilitation facility, a claim that is at odds with the *Handbook* in that (1) it indicates that at least a bachelor's degree in nursing is not required to perform the duties of a registered nurse and (2) it does not list nursing as a field studied by most individuals holding generalist medical and health services manager positions. Rather, she simply restates the proffered position description as provided by counsel and the petitioner. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). In this matter, the evaluation by Professor [REDACTED] is not supported by objective evidence demonstrating that a bachelor's degree in nursing is routinely required within the petitioner's industry for entry into the proffered position.

The petitioner also submitted three job vacancy announcements for positions it contends are parallel to the proffered position in organizations similar to the petitioner. The AAO will individually address each posting below.

The first posting is for the position of "Admitting Manager" for an anonymous employer, whose posting indicates that it is a hospital for special surgery. Absent additional details regarding the poster and the nature of the employer's business, this posting cannot be deemed representative of parallel positions within the petitioner's industry.

The second posting is for an "Admissions Manager" at [REDACTED]. This posting also omits information pertaining to the potential employer, thereby rendering it impossible to determine the employer's size and scope in relation to the petitioner. Moreover, this posting simply requires the incumbent to possess a bachelor's degree, and not a degree in a specific specialty.

The third posting is by [REDACTED], a provider of skilled nursing care, assisted living, post-acute medical and rehabilitation care, hospice care, home health care and rehabilitative therapy. There is no information regarding the size and scope of this business, and the educational requirements indicate that simply a four year degree, and not a degree in a specific specialty, is required for entry into this position.

The AAO also notes the submission of four letters from the petitioner's alleged competitors, stating that they routinely require their admitting nurse supervisors to possess a bachelor's degree in nursing. At best, however, these statements attest that administrative level registered nurse positions require a bachelor's degree in nursing, which contradicts the petitioner's classification of the proffered position on the Labor Condition Application (LCA) as a medical and health services manager which, while not normally considered a specialty occupation for the reasons previously discussed, is a position that routinely prefer degrees in management or public or business administration for entry into the occupational category, not nursing.

For the reasons set forth above, the job postings submitted fail to establish that there is a common, specialty-degree requirement for parallel positions in organizations similar to the petitioner.¹ The

¹ According to the *Handbook's* detailed statistics on medical and health services managers, there were approximately 5,000 persons employed as medical and health services managers by private specialty hospitals in 2010. See Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-6>. Based on the size of this study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just three job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the rehabilitation care industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of admitting nurse supervisor for a rehabilitation center required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

petitioner; therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a bachelor's or higher degree in a specific specialty or its equivalent can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area directly related to the duties and job responsibilities of that particular position. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty-degreed employment.

The petitioner has thus failed to establish either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In response to the RFE, the petitioner provided a copy of a diploma and paystub for [REDACTED] and an illegible transcript and paystub for [REDACTED]. The petitioner does not state what positions they held and for what period of time, although a review of the petitioner's organizational chart demonstrates that [REDACTED] holds the position of health services manager. In any event, the relevant question to be examined in this criterion is not the educational background of other employees of the petitioner, but whether the petitioner has previously required specialty, baccalaureate degreed individuals for its position of admitting nurse supervisor. There is no evidence in the record, and the petitioner makes no claim at any time during the adjudication process, that it currently or has previously employed other persons in the position of admitting nurse supervisor. Since the record is devoid of sufficient evidence that the petitioner currently or previously hired and employed specialty, baccalaureate-degreed individuals to fill the proffered position, the petitioner has failed to satisfy this criterion.

The AAO further notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 384. 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.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

Aside from the expert opinion letter of Dr. [REDACTED], the evidentiary weight of which has been discounted, the petitioner has submitted no independent documentation in support of the contention that specialized and complex knowledge is required to perform the duties of the proffered position. The petitioner and counsel simply provide their own unsupported opinions with regard to the qualifications necessary for an admitting nurse supervisor to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. Relative specialization and complexity have not been developed for the proffered position and, as such, the evidence of record does not establish that this position is significantly different from other nurses, or even medical and health service manager positions, that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.² Therefore, the evidence does not establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

² Although counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex, the duties as described lack sufficient specificity to distinguish the proffered position from other nurse or medical and health services manager positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. In fact, based on registered nurse wages at the time, the wage offered to the beneficiary of \$56,472 per year was nearly \$4,000 below that of an entry-level, Level I Registered Nurse (29-1111). As a supervisor of other nurses, it would generally be expected that the beneficiary would be at least a Level III wage, which for registered nurses was \$75,026 per year at the time the instant petition was filed. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, there is insufficient evidence that the beneficiary possesses the requisite nursing license to perform the duties of the proffered position in California. As discussed previously, the proffered position has been deemed equivalent to that of a registered nurse, rendering it necessary for the beneficiary to have obtained a registered nursing license prior to the approval of the petition. For this additional reason, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

Lastly, the petition is also subject to revocation on notice due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically and as discussed above, the proffered position has been deemed to be that of a registered nurse and not a medical and health services manager. As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 29-1111, not SOC (O*NET/OES) Code 11-9111, in order for it to be found to correspond to the petition. Furthermore, given the supervisory nature of the position as claimed by the petitioner, the LCA should also have been certified for at least a Level III registered nurse position, requiring the petitioner to pay the beneficiary at that time a salary of at least \$75,026 per year.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification and wage level, and the petition would have to be revoked on notice for this additional reason, even if the ground identified by the director had been overcome on appeal.

Pursuant to 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), an approved petition is revocable if the statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact. In this matter, the contradictory statements by the beneficiary when examined in light of the position description lead to the conclusion that the statement of facts contained in the petition is not true and correct. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N at 591. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the petitioner has not established the beneficiary's eligibility for the requested nonimmigrant visa classification.

Lastly, 8 C.F.R. § 214.2(h)(11)(iii)(A)(3) and (4) call for the revocation of a petition on notice where the petitioner either violated the terms and conditions of the approved petition or the requirements of section 101(a)(15)(H) of the Act or 8 C.F.R. § 214.2(h). In failing to offer a bona fide position of admitting nurse supervisor in accordance with the terms and conditions of the approved petition and as required by the pertinent H-1B statutory and regulatory requirements, the petition's approval was subject to revocation on notice for this additional reason, and the assertions and evidence presented on appeal have failed to demonstrate that the petitioner did not violate these provisions.

For the reasons set forth above, the petitioner has failed to overcome the basis of revocation in this matter. Therefore, the appeal will be dismissed and the petition will remain revoked.

ORDER: The appeal is dismissed. The petition's approval is revoked.