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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

[Redacted]

DATE: **JUL 16 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting 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. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a health care services firm. In order to employ the beneficiary in what it designates as a charge nurse supervisor position, the petitioner seeks to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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.

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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a charge nurse supervisor position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9111.00, Medical and Health Services Managers from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in nursing from [REDACTED] Utah. Counsel also provided a letter, dated April 19, 2012, from the petitioner's human relations director. That letter states the following as the duties of the proffered position:

- Oversee and supervise the work of other licensed staff: RNs, LVNs, C.N.As, and other facility staff assigned to the particular area and the particular shift. This includes leadership of nursing practice and delivery as well as the work of activities, maintenance, dietary, social services, and administrative staff.
- Make independent clinical judgments concerning the observation, care and counsel of persons requiring nursing care, which includes, but is not limited to:
  - Administration of medicines and treatments prescribed by the physician;
  - participation in activities for the safe promotion of health and the prevention of illness in others at the facility;
  - provide care to medically fragile patients through assessment, planning, intervention, implementation and evaluation of other health care professionals,
  - collection, recording and analysis of health status data, and formulation of tentative diagnosis for validation by other health care providers;

- provision of care instructions to family members including safe use of medication and medical equipment, diet and nutrition, rehabilitation and follow up of care;
- documentation of patient status and responses to interventions by all health care team members; and
- scheduling and coordination of patient care services such as tests, therapies and procedures.

On September 1, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*,: (1) a letter, dated October 27, 2012, signed by both counsel and the petitioner's director of human relations; (2) a job description, obtained from [REDACTED]<sup>1</sup> of an RN/Nurse Supervisor position; (3) a license issued by the State of California Department of Public Health; (4) a letter, dated October 1, 2012, from a registered nurse with experience administering skilled nursing facilities and home care agencies; (5) an evaluation, dated October 23, 2012, of the proffered position; (6) an organizational chart of the petitioner's operations; and (7) seven vacancy announcements.

The joint letter from counsel and the petitioner's human relations director stated that the proffered position "falls under the classification of Medical and Health Services Managers as listed and described according to the [U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*]," and cited that as evidence that the position qualifies as a specialty occupation position. That letter further states:

[T]he proffered position is mainly managerial and administrative in nature, therefore requiring at minimum a bachelor's degree even if [USCIS] feels the position fall [sic] under the Registered Nurse occupation category rather than a Medical and Health Service[s] Manager occupation as we have asserted.

That letter refers to the license provided as, "a copy of the business license issued to [the petitioner] for the skilled nursing facility operated by [the petitioner] at [REDACTED]. It refers to the job description from [REDACTED] as, "a detailed outline of the job functions of a Nurse Supervisor, the same position for which [the petitioner] is requesting on the underlying H-1B petition."

The petitioner in this matter, as identified on the Form I-129 visa petition, is [REDACTED]. The license provided is for the operation of a skilled nursing facility at 275 [REDACTED].

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<sup>1</sup> [REDACTED] job descriptions are available at [REDACTED] procedures-1.html.

California, but was issued to [REDACTED]. The relationship between that entity and the petitioner, if any, is unknown to the AAO.

The position description provided, which was procured from [REDACTED] but represented by counsel and the petitioner's human relations director to be for the same position for which the visa petition was filed, provides the following description of the duties of RN/Nurse Supervisor positions:

**Supervisory Functions 20%**

Assist the Director of Nursing Services in directing the day-to-day functions of the nursing activities in accordance with current rules, regulations, and guidelines that govern the long-term care facility.

Participate in developing, maintaining, and updating written policies and procedures that govern the day-to-day functions of the nursing service department.

Ensure that reference material (i.e., PDR'S, regulations, professional standards of practice, etc.) maintained at the nurse's stations is current. Recommend written material that will assist the nursing service department in meeting the day-to-day needs of the resident.

Ensure that the Nursing Service Procedures Manual is current and reflects the day-to-day nursing procedures performed in this facility.

Ensure that all nursing service personnel comply with the procedures set forth in the Nursing Service Procedures Manual.

Make written and oral reports/recommendations to the Director as necessary/required, concerning the operation of the nursing service department.

Periodically review the department's policies, procedure manuals, job descriptions, etc. Make recommendations for revisions to the Director.

Assist in developing methods for coordinating nursing services with other resident services to ensure the continuity of the residents' total regimen of care.

Ensure that all nursing service personnel are in compliance with their respective job descriptions.

Participate in the development, maintenance and implementation of the facility's quality assurance program for the nursing service department.

Participate in facility surveys (inspections) made by authorized government agencies as requested by the Administrator or Director of Nursing Services.

Periodically review the resident's written discharge plan. Participate in the updating of the resident's written discharge plan as required.

Assist the Director in planning the nursing services portion of the resident's discharge plan as necessary.

Meet with the nursing staff, as well as support personnel, in planning the department's services, programs, and activities.

Admit, transfer, and discharge residents as required.

Complete accident/incident reports as necessary.

Interpret the department's policies and procedures to personnel, residents, visitors, and government agencies as required.

Perform duties such as completing medical forms, reports, evaluations, studies, charting, etc., as necessary.

Agree not to disclose assigned user ID code and password for accessing resident/facility information and promptly report suspected or known violation of such disclosure to the Administrator.

Agree not to disclose resident's protected health information and promptly report suspected or known violation of such disclosure to the Administrator.

Report any known or suspected unauthorized attempt to access facility's information system.

**Committee Functions 5%**

Attend various committee meetings of the facility (i.e., Infection Control, Policy Advisory, Pharmaceutical, Quality Assessment, etc.) as required.

Assist in preparing written and/or oral reports of the nursing service programs and activities to submit to such committee(s) as directed.

Provide information to the Quality Assurance and Assessment Committee as requested.

Participate in developing the agenda for the Care Plan Committee meetings as necessary.

Participate in regularly scheduled reviews of the discharge plans and make such plans available to the Care Plan Committee as required or as may be necessary.

Implement recommendations from established committees as instructed by the director.

**Personnel Functions 5%**

Ensure that a sufficient number of licensed practical and/or registered nurses are available for your tour of duty to ensure that quality care is maintained.

Ensure that a sufficient number of certified nursing assistants are available for your tour of duty to ensure that routine nursing care is provided to meet the daily nursing care needs of each resident.

Develop work assignments, and/or assist in completing and performing such tasks.

Delegate to each charge Nurse the authority, responsibility, and accountability necessary to perform his/her assigned duties.

Ensure that all nursing assistants have graduated from an approved nursing assistant training program.

Ensure that all certified nurse assistants are under the direct supervision of a licensed nurse.

Make daily rounds of the nursing service department to ensure that all nursing service personnel are performing their work assignments in accordance with acceptable nursing standards. Report problem areas to the Director of Nursing.

Monitor absenteeism to ensure that an adequate number of nursing care personnel are on duty at all times. Report problem areas to the Director of Nursing.

Ensure that established policies and procedures, including dress codes, are followed by all departmental personnel.

Review complaints and grievances made or filed by department personnel. Make appropriate reports to the Director of Nursing as required or as may be necessary.

Develop and maintain a good working rapport with inter-department personnel, as well as other departments within the facility to ensure that nursing services and activities can be adequately maintained to meet the needs of the residents.

Create and maintain an atmosphere of warmth, personal interest and positive emphasis, as well as a calm environment throughout the unit and shift.

Meet with your shift on a regularly scheduled basis to assist in identifying and correcting problem areas and/or to assist in the improvement of services.

Review and evaluate your department's work force and make recommendations to the Director of Nursing.

Participate in employee performance evaluations, determining your shift's staffing requirements, and making recommendations to the Director of Nursing concerning employee dismissals, transfers, etc.

Ensure that departmental disciplinary action is administered fairly and without regard to race, color, creed, national origin, age, sex, religion, handicap, or marital status, or any other protected class(es).

Report occupational exposures to blood, body fluids, infection materials, and hazardous chemicals in accordance with the facility's policies and procedures governing accidents and incidents.

Report known or suspected incidents of fraud to the Administrator.

Ensure that departmental computer workstations left unattended are properly logged off or the password protected automatic screen-saver activates within established facility policy guidelines.

### **Nursing Care Functions 30%**

Inform nursing service personnel of new admissions, their expected time of arrival, room assignment, etc.

Ensure that rooms are ready for new admissions.

Greet newly admitted residents upon admission. Escort them to their rooms as necessary.

Make rounds with physicians as necessary.

Encourage attending physicians to record and sign progress notes, physicians' orders, etc., on a timely basis and in accordance with current regulations.

Inform the Director when physician visits are not made in a timely manner.

Consult with the resident, his/her family, and the resident's physician in planning the resident's care, treatment, rehabilitation, etc. as necessary.

Notify the resident's attending physician and next of kin when there is a change in the resident's condition.

Visit residents on a daily basis in order to observe and evaluate each resident's physical and emotional status.

Ensure that direct nursing care be provided by a licensed nurse, a certified nursing assistant, and/or a nurse aide trainee qualified to perform the procedure.

Review nurses' notes to ensure that they are informative and descriptive of the nursing care being provided, that they reflect the resident's response to the care, and that such care is provided in accordance with the resident's wishes.

Provide direct nursing care as necessary.

Start IVs, obtain sputum, urine and other specimens for lab tests as ordered.

Take TPRs, blood pressures, etc., as necessary.

Admit, transfer and discharge residents as necessary.

Report problem areas to the Director of Nursing. Assist in developing and implementing corrective action.

Keep the Director of Nursing informed of the status of residents and other related matters through written/oral reports.

Direct and assist the Charge Nurse in monitoring seriously ill residents.

Authorize the use of restraints when necessary and in accordance with our facilities [sic] policies and procedures upon receipt of a Physician Order.

Ensure that all RNs and LPNs on your shift comply with written procedures for the administration, storage, and control of medications and supplies.

Monitor medication passes and treatment schedules to ensure that medications are being administered as ordered and that treatments are provided as scheduled.

Review medication cards for completeness of information, accuracy in the transcription of physician orders, and adherence to stop order policies.

Inspect the nursing service treatment areas daily to ensure that they are maintained in a clean and safe manner.

Ensure that residents who are unable to call for help are checked frequently.

Meet with residents, and/or family members, as necessary. Report problems to the Director of Nursing.

Assist in arranging transportation for discharged residents as necessary.

Inform family members of the death of a resident.

Call funeral homes when requested by the family.

**Staff Development 5%**

Participate in developing, planning, conducting, and scheduling in-service training classes that provide instructions on "how to do the job," and ensure a well-educated nursing service department.

Develop, implement and maintain an effective orientation program that orients the new employee to your shift, its policies and procedures, and to his/her job position and duties.

Provide leadership training that includes the supervisory principles essential for your Charge Nurses.

Encourage your Charge Nurses to attend and participate in outside training programs. Schedule times as appropriate.

Assist the Director of Nursing in developing and revising the nursing assistant training curriculum used by the facility.

Assist the Director of Nursing in planning clinical supervision for nurse aide trainees.

Assist the In-service Director/Educator in developing annual facility in-service training programs (e.g., OSHA, TB, HIPAA, Abuse Prevention, Safety, Infection Control, etc.).

Assist the In-service Director Educator in developing advance directive in-service training programs for the staff and community.

Assist support services in developing, implementing, and conducting in-service training programs for the staff and community.

Assist the In-service Director\Educator in the development of in-service training programs for the nursing staff. Ensure that these programs meet the continuing education requirements which allow licensed personnel (e.g., RNs, LPNs, LVN's, CNAs, etc.) to keep their licenses on an active status.

Attend and participate in continuing education programs designed to keep you abreast of changes in your profession, as well as to maintain your license on a current status.

**Safety and Sanitation 5%**

Assist the Safety Officer in developing safety standards for the nursing service department as necessary.

Assist the Director and/or Infection Control Coordinator in identifying, evaluating, and classifying routine and job related functions to ensure that tasks involving potential exposure to blood/body fluids are properly identified and recorded.

Ensure that all personnel performing tasks that involve potential exposure to blood/body fluids participate in appropriate in-service training classes **prior** to performing such tasks.

Ensure that an adequate supply of personal protective equipment is on hand and readily available to personnel who perform procedures that involve exposure to blood or body fluids.

Ensure that personnel follow established procedures for the use and disposal of personal protective equipment.

Monitor your shift's personnel to ensure that they are following established safety regulations in the use of equipment and supplies.

Ensure that nursing service personnel comply with established departmental policies and procedures.

Ensure that all nursing service work areas (i.e., nurses' stations, medicine preparation rooms, etc.) are maintained in a clean, safe, and sanitary manner.

Ensure that all resident care rooms, treatment areas, etc., are maintained in a clean, safe, and sanitary manner.

Ensure that nursing service personnel follow established handwashing and hand hygiene procedures.

Ensure that nursing service personnel participate in and conduct all fire safety and disaster preparedness drills in a safe and professional manner.

Participate in the development, implementation, and maintenance of the infection control program for monitoring communicable and/or infection diseases among the residents and personnel.

Ensure that nursing service personnel follow established infection control procedures when isolation precautions become necessary.

Participate in the development, implementation and maintenance of the procedures for reporting hazardous conditions or equipment.

Ensure that all personnel wear and/or use safety equipment and supplies (e.g., back brace, mechanical lifts, etc.) when lifting or moving residents.

Report missing/illegible labels and MSDSs to the safety officer or other designated person.

### **Equipment and Supply Functions 1%**

Recommend equipment and supply needs of the department.

Ensure that an adequate stock level of medications, medical supplies, equipment, etc., is maintained on premises at all times to meet the needs of the resident.

Assist the Maintenance Director in developing a preventive maintenance program for maintaining the nursing service department's equipment and supplies in a safe and operable manner.

Participate in the development and implementation of the procedures for the safe operation of all nursing service equipment.

Ensure that only trained and authorized personnel operate the nursing service department's equipment.

Ensure that all personnel operate nursing service equipment in a safe manner.

Monitor nursing procedures to ensure that nursing service supplies are used in an efficient manner to avoid waste.

Ensure that appropriate MDSs are on file for hazardous chemicals used in the nursing service department.

**Care Plan and Assessment Functions 24%**

Participate in the comprehensive assessments of the nursing needs of each resident as necessary.

Participate in the written plan of care (preliminary and comprehensive) for each resident that identifies the problems/needs of the resident, indicates the care to be given, goals to be accomplished, and which professional service is responsible for each element of care.

Encourage the resident to participate in the development and review of his/her care plan.

Review resident Care plans for appropriate resident goals, problems, approaches, and revisions based on nursing needs.

Ensure that all personnel involved in providing care to the resident are aware of the resident's care plan. Ensure that nursing personnel refer to the resident's care plan prior to administering daily care to the resident.

Review nurses' notes to determine if the care plan is being followed.

Assist the Resident Assessment/Care Plan Coordinator in planning, scheduling, and revising the MDS, including the implementation of CAA's.

Review resident's medical and nursing treatments to ensure that they are provided in accordance with the resident's care plan and wishes.

**Budget and Planning Functions 1%**

Keep abreast of economic conditions/situation, and recommend to the Director of Nursing adjustments in nursing services that ensure the continued ability to provide quality care.

Recommend to the Director of Nursing the equipment needs of the nursing service department.

Report suspected or known incidence [sic] of fraud relative to false billings, cost reports, kickbacks, etc.

**Resident Rights 4%**

Maintain the **confidentiality** of all resident care information including protected health information. Report known or suspected incidents of unauthorized disclosure of such information.

Monitor nursing care to ensure that all residents are treated fairly, and with kindness, dignity, and respect.

Ensure that all nursing care is provided in privacy and that nursing service personnel **knock** before entering the resident's room.

Ensure that all nursing service personnel are knowledgeable of the resident's responsibilities and rights, including the right to refuse treatment.

Review complaints and grievances made by the resident and make a written/oral report to the Director indicating what action(s) were taken to resolve the complaint or grievance. Follow facility's established procedures.

Maintain a written record of the resident's complaints and/or grievances that indicates the action taken to resolve the complaint and the current status of the complaint.

Report and investigate all allegations of resident abuse and/or misappropriation of resident property. Report to the Abuse Coordinator and Director of Nursing.

Ensure that nursing staff honor the resident's refusal of treatment request. Ensure that such requests are in accordance with the facility's policies governing advance directives.

In her October 1, 2012 letter, the registered nurse noted the superior education in science and humanities received by nurses who graduate from bachelor's degree programs, and stated that this difference "significantly enhances the type of nursing care that she implements and directs." She stated that a bachelor's degree in nursing "is truly a necessity in long-term care settings."

The October 23, 2012 evaluation of the proffered position was prepared by an associate professor of nursing at [REDACTED] New York. She stated:

Companies seeking to employ a Charge Nurse Supervisor require prospective candidates to have a strong foundation in the field of Nursing which can only be obtained through a bachelor's degree or progressively responsible experience in the field of Nursing.

She further stated:

The skills required to oversee and supervise the work of nurses[;] lead nursing practice and delivery[;] administer medicines and treatments[;] collect, record[,], and analyze health status data[;] provide care instructions to family members[;] document patient status and responses[;] and schedule and coordinate patient care services are learned and refined through courses of Nursing including Leadership and Care Management in Professional Nursing Practice, Research for Nursing Practice, Pathophysiology, Health Assessment, and Community Health Nursing.

The director denied the petition on November 9, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel provided a letter, dated January 2, 2013, from a person who describes herself as, and whose résumé also asserts that she is, "a registered nurse with an extensive clinical background as well as a focus on healthcare administration in nursing homes." She also stated:

The nature of the specific duties of the Charge Nurse Supervisor is so specialized and complex that knowledge required to perform them is associated with the attainment of a baccalaureate or higher degree.

Counsel also provided a letter, dated December 18, 2012, from the Director, Regulatory Affairs, of the [REDACTED] who cited three studies for the proposition that "increased RN staffing is linked to better functional status, decreased incontinence and pressure ulcers, and reduced use of restraints among nursing home residents." She did not indicate that those studies have any relevance to any possible advantage of employing registered nurses with bachelor's degrees over registered nurses without bachelor's degrees.

She further stated:

█ is also aware that [skilled nursing facilities] are moving to recruit nurses with advanced education in order to assure needed levels of RN expertise in the workforce. Unfortunately, despite such effort, [skilled nursing facilities] struggle to find adequate numbers of qualified RNs who are able to fill leadership roles in [long-term care] settings.

She did not indicate that a bachelor's degree in nursing is a requirement for a registered nurse position at a long-term care facility, or a requirement for a supervisory or administrative registered nurse position at such a facility.

In his appeal brief, counsel asserted that the evidence presented demonstrates that the proffered position qualifies as a specialty occupation position, citing a USCIS memorandum for the proposition that administrative nurse positions qualify as specialty occupation positions.

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 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 AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9111.00, Medical and Health Services Managers from O\*NET. The *Handbook* describes the occupation of "Medical and Health Services Managers" as follows:

### **What Medical and Health Services Managers Do**

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *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 July 10, 2013).

Although the petitioner states that the proffered position qualifies as a medical and health services manager position, both of the duty descriptions provided show that his duties are largely limited to the supervision of the petitioner's nurses and certified nursing assistants who work on his shift. Although he would contribute to various other efforts, promulgating policies and procedures and the improvement of the petitioner's quality assurance program, for instance, the record does not show that he would have personal charge of any such company-wide endeavors. The organizational chart provided shows that the proffered position is on an equal level with the petitioner's case manager, its nursing staff coordinator, its assistant director of nursing services, and its registered nurse anesthetist, and that, as they do, he reports to the director of nursing services, who reports to the facility administrator.

In contrast, a medical and health services manager, as that position is described in the *Handbook*, "plan[s], direct[s], and coordinate[s] medical and health services," and might do so in the context of managing an entire facility, such as the petitioner's facility director apparently does. The *Handbook* does not appear to contemplate that such a position might be limited to supervising a single shift of nurses and certified nursing assistants.

However, the *Handbook* describes registered nurse positions as follows:

#### **What Registered Nurses Do**

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.

Some registered nurses combine one or more of these specialties. For example, a pediatric oncology nurse works with children and teens who have cancer.

Many possibilities for specializing exist. The following list includes just a few other examples of ways that some registered nurses specialize:

**Addiction nurses** care for patients who need help to overcome addictions to alcohol, drugs, tobacco, and other substances.

**Cardiovascular nurses** treat patients with heart disease and people who have had heart surgery.

**Critical care nurses** work in intensive care units in hospitals, providing care to patients with serious, complex, and acute illnesses and injuries that need very close monitoring and treatment.

**Genetics nurses** provide screening, counseling, and treatment of patients with genetic disorders, such as cystic fibrosis and Huntington's disease.

**Neonatology nurses** take care of newborn babies.

**Nephrology nurses** treat patients who have kidney-related health issues that are attributable to diabetes, high blood pressure, substance abuse, or other causes.

**Rehabilitation nurses** care for patients with temporary or permanent disabilities.

**Advanced practice registered nurses** may provide primary and specialty care, and, in most states, they may prescribe medicines. All states specifically define requirements for registered nurses in these four advanced practice roles:

- **Clinical nurse specialists** provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health.
- **Nurse anesthetists** provide anesthesia and related care before and after surgical, therapeutic, diagnostic, and obstetrical procedures. They also provide pain management and emergency services.
- **Nurse-midwives** provide care to women, including gynecological exams, family planning advice, prenatal care, assistance in labor and delivery, and care of newborns.

- *Nurse practitioners* serve as primary and specialty care providers, providing a blend of nursing and primary care services to patients and families.

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 July 10, 2013).

The *Handbook* clearly states, "Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides." It further states, "Some nurses have jobs in which they do not work directly with patients," and "they may work as nurse educators [or] . . . hospital administrators . . . ."

The *Handbook* indicates that some registered nurses work in positions that are chiefly, or even exclusively, supervisory and/or administrative. Further, all of the duties attributed to the proffered position are consistent with the duties of a registered nurse position as described in the *Handbook*, and the AAO finds that the proffered position is a registered nurse position as described in the *Handbook*.<sup>3</sup>

The *Handbook* states the following pertinent to the requirements of registered nurse positions.

### **How to Become a Registered Nurse**

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**

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<sup>3</sup> Further, even if the proffered position were established as being that of a medical and health services manager, a review of the *Handbook* does not indicate that, as a category, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation of medical and health services manager. The information on the educational requirements in the "Medical and Health Services Managers" chapter of the *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty or its equivalent. It indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, which runs contrary to the assertion that the position requires a specialized degree. The *Handbook* also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, it indicates that a degree in a general field, such as business administration, is common. Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education. Thus, the *Handbook* is not probative evidence of the occupational category "Medical and Health Services Managers" being a specialty occupation.

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.

### **Important Qualities**

**Critical-thinking skills.** Registered nurses must be able to assess changes in the health state of patients, including when to take corrective action and when to make referrals.

**Compassion.** Registered nurses should be caring and sympathetic, characteristics that are valuable when treating patients.

**Detail oriented.** Registered nurses must be responsible and detail oriented because they must make sure that patients get the correct treatments and medicines at the right time.

**Emotional stability.** Registered nurses need emotional stability to cope with human suffering, emergencies, and other stresses.

**Organizational skills.** Nurses often work with multiple patients with various health needs, and organizational skills are critical to ensure the patient is given proper care.

**Patience.** Registered nurses should be patient so they can provide quality care under stressful or hectic circumstances.

**Speaking skills.** Registered nurses must be able to talk effectively with patients to correctly assess their health conditions. Nurses need to clearly explain how to take

medication or give other instructions. They must be able to work in teams with other health professionals and communicate the patients' needs.

### **Licenses**

In all states, the District of Columbia, and U.S. territories, registered nurses must have a nursing license.

To become licensed, nurses must graduate from an approved nursing program and pass the National Council Licensure Examination, or NCLEX-RN.

Other requirements for licensing vary by state. Each state's board of nursing can give details. (For more on the NCLEX-RN examination and a list of state boards of nursing visit the National Council of State Boards of Nursing.)

### **Certification**

Nurses may become credentialed through professional associations in specialties such as ambulatory care, gerontology, and pediatrics, among others. Although certification is usually voluntary, it demonstrates adherence to a higher standard, and some employers may require it. Certification is required for all registered nurses serving in any of the four advanced practice registered nurse roles.

### **Advancement**

Most registered nurses begin as staff nurses in hospitals or community health settings. With experience, good performance, and continuous education they can move to other settings or be promoted to positions with more responsibility.

In management, nurses can advance from assistant unit manager or head nurse to more senior-level administrative roles, such as assistant director, director, vice president, or chief of nursing. Increasingly, management-level nursing positions require a graduate degree in nursing or health services administration. Administrative positions require leadership, communication and negotiation skills, and good judgment.

Some RNs choose to become advanced practice registered nurses (APRNs). APRNs work independently or in collaboration with physicians. They may provide primary care, and, in most states, they may prescribe medications. APRNs require at least a master's degree. Each state's board of nursing can provide the specific regulations regarding APRNs.

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home-based, and chronic care businesses.

Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need registered nurses for jobs in health planning and development, marketing, consulting, policy development, and quality assurance.

Other nurses work as postsecondary teachers in colleges and universities. For more information, see the profile on postsecondary teachers.

*Id.* at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited July 10, 2013).

The AAO will now address the memorandum submitted and relied upon by counsel on appeal. Section C of that memorandum states:

Certain other nursing occupations, such as an upper-level "nurse manager" in a hospital administration position, may be H-1B equivalent since administrative positions typically require, and the individual must hold, a bachelor's degree. (*See* Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 269.) Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (*See* Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook at 75.)

Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002).

First, the Williams Memo only indicates that certain upper-level nurse manager positions "may" qualify, not that all such positions qualify as specialty occupations. Second, the AAO notes that the Williams Memo misrepresents the findings of the *Handbook*. The *Handbook* does not state that administrative positions typically require a bachelor's degree. Instead, the *Handbook* states that "[a] bachelor's degree is often necessary for administrative positions . . . ." *See Handbook*, 2002-03 ed., "Registered Nurses" at 269. In any event, the *Handbook* did not state that such a degree is a prerequisite for entry into the position.

Next, the AAO finds that the nursing services administrators part of the Williams Memo refers to medical and health services manager positions, and the AAO finds that the proffered position and the duties comprising it do not fit in this occupational category. Rather, as indicated above, the proffered position is a registered nurse position, and the *Handbook* indicates that registered nurses, including those with associate degrees or diplomas, oversee other healthcare workers, such as

licensed practical nurses, nursing aides, and home care aides. Thus, the Williams Memo is not evidence that the particular position that is the subject of this petition is a specialty occupation.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of nursing, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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.

As stated earlier, in determining whether there is 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The record does contain an evaluation from an associate professor of nursing, a letter from a registered nurse, and a letter from the Director, [REDACTED]

The October 23, 2012 evaluation of the proffered position implied that a bachelor's degree in nursing is necessary to obtain a supervisory position in nursing. However, that evaluation does not list any reference materials on which the evaluator relied as a basis for that conclusion. The evaluator

appears not to have based her opinion on any objective evidence, but instead to have relied on her own subjective judgment.

The AAO may, in its discretion, use as advisory opinion 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 Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). The evaluation of the proffered position will be accorded little evidentiary weight.

The registered nurse's October 1, 2012 letter states that a bachelor's degree in nursing is necessary in nursing positions in long-term care settings. Again, that appears to be the writer's subjective opinion, not corroborated by any empirical data, and will be accorded little evidentiary weight.

The December 18, 2012 letter from the director of regulatory affairs of the [REDACTED] cited three studies for the proposition that a larger number of registered nurses in a facility corresponds to better outcomes. The AAO observes that those studies have no apparent relevance to whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The [REDACTED] director of regulatory affairs also stated that skilled nursing facilities are "moving to" recruit nurses with advanced education, but that they struggle to find registered nurses qualified for leadership roles in long-term care. She did not state, or even suggest, that entry into a supervisory registered nurse position in a long-term care facility requires a minimum of a bachelor's degree in a specific specialty or its equivalent. It is of little evidentiary value, therefore, for the proposition that a supervisory registered nurse position in a long-term care facility qualifies as a specialty occupation position.

Counsel also provided seven vacancy announcements, as was stated above. Specifically, the petitioner submitted announcements for the following positions and their educational requirements posted on the Internet:

1. Registered Nurse – Supervisor for [REDACTED] requiring either a bachelor's degree in nursing and two years of experience, or an associate's degree or nursing diploma and four years of experience;
2. Registered Nurse Supervisor for [REDACTED] the announcement of which states: "A Nursing or related Health Care degree from an accredited college or university or an accredited RN program is preferred";
3. Registered Nurse Supervisor, the announcement of which was placed by a recruiting company for an unidentified client in San Diego and states that a bachelor's degree in nursing or a master's degree is preferred for the position and completion of an accredited RN program is required for the position;
4. Nurse Supervisor for [REDACTED] stating that a bachelor's degree in nursing or related field experience is preferred for the position;

5. RN-Nurse Care Manager/Nursing Supervisor with [REDACTED] stating that a "Bachelor's degree in nursing is strongly preferred" for the position;
6. RN Nurse Supervisor for [REDACTED] stating that a bachelor's degree in nursing is preferred for the position; and
7. Registered Nurse Supervisor for [REDACTED] requiring "Bachelor's degree from 4-yr college or university in nursing; or one to two yrs related experience and/or training as [assistant director of nursing] or [director of nursing]; or equivalent combination of education and experience."

The petitioner is in the long-term care industry. The AAO notes that some of the positions have not been shown to be in the long-term care industry, and some clearly are not. Further, *none* of the announcements indicate that the vacant positions require a bachelor's degree in nursing or its equivalent.

The first announcement indicates that an associate's degree in nursing and four years of experience would be a sufficient qualification for the position announced. An associate's degree and four years of experience is not equivalent to a bachelor's degree pursuant to the salient regulations. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The second, third, and sixth announcements indicate that a minimum of a bachelor's degree in nursing is preferred for the positions announced, and the fifth announcement indicates that such a degree is strongly preferred. The fourth announcement indicates that either a bachelor's degree in nursing or experience is preferred. Obviously, a preference for a candidate with a bachelor's degree, even a strong preference, with or without the possibility of accepting experience in lieu of that degree, is not a requirement that the individual have such a degree to qualify for the position.

The seventh announcement indicates that two years of experience is an acceptable substitute for the bachelor's degree in nursing the positions announced would otherwise require. Again, two years of experience is not equivalent to a specialized bachelor's degree. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Further still, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from seven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>4</sup>

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<sup>4</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *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

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements submitted supported the finding that the position of supervisory registered nurse for long-term care facilities similar to the petitioner required a bachelor's or higher degree in nursing, such a limited number of postings that appear to have been consciously selected could not credibly demonstrate that such an educational requirement is common throughout the petitioner's industry among companies similar to the petitioner for entry into positions parallel to the proffered position.

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>5</sup>

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as supervising nurses and certified nursing assistants; administering medicines; providing care instructions to family members; scheduling patient care services; ensuring that the Nursing Service Procedures Manual is current; admitting, transferring, and discharging residents; completing accident and incident reports; and completing medical forms, reports, evaluations, and studies, for instance, have not been shown to be so specialized and complex that the knowledge required to perform them is usually associated with attainment of a minimum of a bachelor's degree in nursing or its equivalent. Therefore, the petitioner has not 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. The appeal will be dismissed and the petition denied for this reason.

The record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

As was observed above, on the visa petition, the petitioner identified itself [REDACTED] and stated that the beneficiary would work at [REDACTED] California. In her April 19, 2012 letter, the petitioner's human relations manager stated that the petitioner operates healthcare facilities across California, including [REDACTED], a long-term care and rehabilitation facility.

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<sup>5</sup> 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 claimed 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 artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In response to the September 1, 2012 RFE issued in this matter, counsel provided a letter indicating that [REDACTED] was issued a license to operate the [REDACTED] at [REDACTED] California.

As was previously observed, the relationship between the petitioner and [REDACTED] is not explained in the record. The petitioner itself, [REDACTED] does not appear to operate the facility at which the beneficiary would allegedly work. How it would, under those circumstances, be the beneficiary's actual employer, with standing to file the instant visa petition, is unclear. Even if the visa petition were otherwise approvable, the petitioner would be obliged to reconcile this discrepancy before the visa would be approved.

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 proffered 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 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. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.