



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 20 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:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, 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 home health care agency. In order to employ the beneficiary in what it designates as a Compliance & QA Performance Improvement Manager position, it 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 on December 1, 2010, concluding 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 response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meet 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, the 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.

With the visa petition, counsel submitted evidence that the beneficiary has a bachelor's degree in nursing awarded by [REDACTED] in the Philippines, and a bachelor's degree in business administration with a major in computer applications from [REDACTED] – [REDACTED] also in the Philippines. Counsel submitted an evaluation, from [REDACTED], Illinois, prepared by an unidentified evaluator.¹ That evaluation states that the beneficiary's foreign degrees are equivalent to bachelor's degrees in nursing and business awarded by a U.S. institution.

Counsel also submitted, *inter alia*, (1) vacancy announcements; (2) letters from others in the petitioner's industry; (3) an article entitled [REDACTED]; reprinted from the [REDACTED]; (4) an unsigned, unattributed sixteen-page essay that contends that the proffered position is a specialty occupation position; and (5) a letter, dated March 29, 2010, from the petitioner's administrator;

The petitioner's administrator's letter contains the following summary of the duties of the proffered position:

Provides management oversight and strategic direction for quality and regulatory compliance within the organization including regulatory approvals, quality and environment management systems compliance, sustainability, service quality and

¹ Although the letter is signed, the signature is illegible, and the evaluator is not elsewhere identified. The evaluator's qualifications for performing that evaluation are also not identified.

process improvement. Coordinates quality, utilization risk management, security and privacy of health information activities for the home health care company to achieve executive level business vision and objectives and healthcare Standard of Care objectives across all departments through definitions, analysis, and implementation of process, policy, personnel, and systems improvement initiatives. Provides technical, educational, consultative, and coordinating support to assigned areas including but not limited taking patient cases and ensuring that proper Nursing Standards in accordance to Home Health Agency's Administrative Policies and Procedures.

The petitioner's administrator also provided the following, less abbreviated, version of the duties of the proffered position:

Management & Leaderships – Responsible for decision affecting health care services. Pursue strategic goals to ensure progress that embraces patient mindedness, financial strength and productivity.

- Responsible for planning, developing, implementation, evaluation and oversight of the continuous quality assurance program and managing the organizational and administrative operation of Medical Records and Information consistent with standards of accrediting and regulatory agencies and requirements for health care system.
- Responsibilities include designing evaluation methodologies, developing data collection and reporting procedures, analyzing data from the home healthcare services reporting system and other sources, facilitation changes to improve home healthcare services care, completing special studies and preparing reports describing home healthcare services performance, and conducting system assessments.
- Prepares department budget.
- Establishes a quality assurance database.
- Exercises considerable independent judgment in the analysis and evaluation of the home healthcare services system and in the development of quality improvements to enhance the delivery of care. General supervision is received from the Director of Nursing and Facility Administrator who reviews work through personal conferences and written reports for the design and implementation of an effective quality improvement program.
- Develops and implements policies and procedures for documenting, storing, and retrieving information and for processing medical documents,

insurance data, and correspondence requests in compliance with federal, state, and local statutes.

- Plan, develop and organize a methodical program of maintenance and service to a large volume of medically related documents and records.
- Analyzes and defines operational processes and related policies, organization structure and personnel, and supporting systems, initiates efficiency improvements, cost reductions and improvement of service.
- Translates process analysis models into electronic system requirements and design specifications; communicates with the medical electronic data/records director, developers, and users daily.
- Creates metrics associated with business, service quality, and process improvement objectives and monitors performances before, during and after monitoring of metrics.
- Works with departmental staff and other departments to obtain the data necessary to assess the quality of services being provided to patients.
- Monitors and coordinates the implementation of corrective action plan for deficiencies identified through utilization review, clinical record audits, Medicare claim denials, client satisfaction surveys, Joint Commission and/or state of federal surveys, and Performance Improvement Plan.
- Coordinates the following meetings: Professional Advisory Committee, Continuous Improvement Committee.
- Coordinates Annual Quality Assurance Report/Program Evaluation and quarterly reports and presents these reports to the Professional Advisory Committee, and top-management.
- Maintains integrity of the review and release of Protected Health Information to regulatory accrediting, third party, and private entities in accordance with HIPAA regulations.
- Coordinates the development and implementation of patient Safety programs, including infection control, hazardous communication, security, equipment management and inspection and safety audits.

- Responsible for taking patient cases from time to time as directed by the Director of Nursing. Submits all required reports before, during and after the patient's plan of care on time.

Trains employees in preparing and analyzing medical documents to assure compliance with corporate and regulatory standards.

- Analyzes educational needs of health care employees and makes recommendations for appropriate training to correct deficiencies; provides training to system components involved in the quality improvement program.
- Develops educational theory, methods and strategies for clinical instruction on MRQA policies, procedures, implementation, and assessment of teaching effectiveness.
- Develops in-service educational materials and work procedure training and conducts instructional programs for health care personnel.
- As a Performance Improvement Manager, the Beneficiary will ensure a high quality of service, adherence to regulatory requirements, and improvement of clinical practices and procedures in order to elevate the company's competitive advantage. She will:
 - Ensure clarity of standards, procedural compliance, development of staff so that they are equipped with the tools necessary to carry out their duties, as well as management of expectations and satisfaction of patients and their respective families.
 - Participate in program planning, development and evaluation activities related to the clinical services of the company.
 - Develop and maintain the competency of the nursing staff.
 - Perform periodic home visits with staff for the purpose of role modeling, problem solving, supervising and evaluating performance or quality of care.
 - Conduct patient clinical record reviews to assess the appropriateness of care plan, the utilization of services and to ensure complete documentation of needed services provided by new clinical staff.

- Address complaint pertaining to professional competence.
- Promotes and establishes clinical policies and procedures following recognized standards of care; including but not limited to: Outcome and assessment Information Set (OASIS), Centers for disease Control (CDC), accreditation and compliance standards and guidelines, and other evaluating entities, including state and federal agencies. For example:

OASIS:

- Responsible for development and oversight of compliance and quality assurance programs in connection with OASIS and clinical records
- Assure that every clinician has ready access to the OASIS Manual's Chapter 8
- Develop, implement and provide training for practical strategies for OASIS Compliance and Quality Assurance Accuracy. Training should include:
 - Review of each item, focusing on the specific assessment instructions
 - Denote the nuances in interpretation for each item
 - Draw attention to the suggested assessment strategies for determining the correct response to each item
- Provide opportunities for OASIS continuing education and retraining on an annual basis
- Show and discuss training video of a patient being assessed. Ask the clinicians to answer the OASIS items based upon the scenario.
- Develop an agency newsletter to include OASIS pointers
- Run and Review as series of OASIS assessment services, which incorporates OASIS assessment techniques and guidelines that include:

- Environmental assessment
- Pain assessment
- Skin/wound assessment,
- Functional assessment, and
- Cognitive/psychological assessment.
- Include OASIS review in patient case conferencing activities
- Include an OASIS competency as part of the clinicians annual evaluation
- Use competency testing as an opportunity for teaching and reviewing the OASIS Chapter 8 guidelines with the clinicians
- Hold OASIS rounds
- Clinical notes should include items such as:
 - Appropriate primary and supporting diagnosis including onset/exacerbation dates,
 - Identification and documentation of current, updated, and past medications history including five patient rights
 - Current DME
 - Safety Measures
 - Nutritional Requirements and allergies
 - Review and confirmation of physicians and other healthcare providers' Orders for disciplines, and

treatments must show services to be reasonable and necessary

- Utilization must be appropriate for given diagnosis
- Goals specific for current diagnosis and treatment
- Rehabilitation

Handle challenges of health care demands for comprehensive services, payers' desires for efficiency and cost control, requests for the latest technologies with renewed interest on emphasis on quality care:

- Analyzes patient data for reimbursement, facility planning, and quality of patient care, risk management, utilization management, and research.
- Work with management team for optimal management and administration of receipt, recording, and release of medical/health records.
- Review and recommend enhancements to our Medical Records systems and processes regarding record retention, storage, Admissions, Discharge procedures, minimization of legal exposure, training of medical Records stakeholders and all other pertinent information pertaining to this division.
- Provide weekly status reports of work activities to Director of Nursing.
- Review and revise records management practices for departments as needed to ensure workflows are effective and capture data in an appropriate format.

Quality, Performance and Security System Program Assessment, Implementation and Improvements – Responsible for the development and implementation of a medical records and quality assurance plan and list methods for continues assessment or evaluation on effectiveness of current quality assurance activities. These include but are not limited to:

- Reviewing quality assurance standards, assesses exiting clinical policies and procedures, and works with management, clinic personnel and other parties to evaluate and improve effectiveness of healthcare services.

- Maintaining continuity in the analysis of activities, documentation of information and data, and follows up to improve quality of care and completion of reporting functions.
- Monitors delivery patient care; collects, analyzes and tabulates statistical data from medical records, incident reports and other sources; identifies adverse events, sub-optimal patterns of care or utilization, optimal patterns of patient care or utilization, and patient care/physician profiles.
- Analyzes data from medical records or other sources and prepares reports describing home healthcare system performance; completes special studies as required.
- Designs quality improvement evaluation methodologies.
- Prepares and presents quality improvement information to various committees and organizations; participates in community seminars.
- Independently performs home healthcare system assessments.
- Assists in evaluating and developing home healthcare medical procedures and quality improvement filters.
- Serves as chair of the Quality Improvement Committee and coordinates case reviews; monitors the status of recommendations; assists in formulating patient care goals.
- Establishes and maintains working relationships with health care providers, doctors, nurses, and members of the Advisory Committee.
- Assist Director of Nursing in determination of final disposition for stored, scanned, and abstracted data and reports.
- Assure and Maintain confidentiality of personal health information & records
- Perform QA of work and report statistics as directed to maintain data
- Measure and Enhance Organizational Performance
- Prepares reports for senior management
- Writes policy and educates on quality assurance, compliance, privacy

- Functions as the organization's Privacy Officer

Healthcare Informatics

- Acts as liaison to IT teams to facilitate appropriate storage and backup of all captured data integrity and accuracy.
- Works with IT teams to design resources, devices, and methods required to optimize the acquisition, storage, retrieval, and use of health/medical data. This includes not only computers but clinical guidelines, formal medical terminologies and information and communications systems as it applies to the areas of nursing, clinical care, claims processing and billing, and other health care provider activities.
- Serves as subject matter expert for records management.
- Perform record scanning, indexing and abstraction, coding, transcription, retention of records and provide general oversight of these activities by team members.

Compliance, Regulations and Legal Issues

- Addresses the federal laws and regulations that affect the healthcare providers and patients, particularly those relating to the prevention of fraud and abuse, and the role of the company's compliance programs.
- Applies concepts and techniques for organizing and implementing compliance, risk management, and patient safety programs within the context of quality and performance improvement.
- Work very closely with Clinical and Regulatory Departments with regards to the Medical Staff Bylaws and Regulations regarding medical record completion.
- Understands legal risk exposure and mitigation pertaining to healthcare standards; works with key managers and directors to develop systems to eliminate risks. This includes
- Researches questions regarding regulations. Analyzes and provides interpretation of regulatory compliance requirements. Prepares company's response to regulatory changes and following up with appropriate areas to ensure required changes are implemented.

- Tracks laws and regulations that may affect the organization and/or its patients
- Regularly review, evaluates and updates as necessary current policies, procedures and documentation for compliance with laws and agency regulations.
- Update all related departments on industry trends and ensure everyone understands and adheres to the HIPAA & CMS regulations.
- Recommend, develop, re-design and implement as required any and all changes/upgrades to Director of Nursing.
- Responsible for coordination of regulatory and survey activities and follow up to insure compliance with assistance from other departments as necessary.

Finally, the petitioner's administrator stated the following about the proffered position:

KNOWLEDGE, ABILITIES, AND SKILLS

- Critically examines the concepts, strategies, and techniques related to the improvement of the quality of medical records information delivery. Addresses the increasing need to enhance productivity given the impact of external and other factors on the workplace. Principles and application of quality assurance, security and compliance concepts, procedures and techniques are emphasized.
- Understand technology and application of information systems including the gathering, organization, storage, and retrieval of complex medical data banks, as well as assessment of health service data needs and considerations in developing information systems.
- Thorough knowledge of research techniques and sources of information concerning healthcare system utilization.
- Developing procedures for the planning, delivery, and evaluation of medical records information.
- Has a high-level of understanding of medical terminology and its health care applications. Ability to understand and interpret medical terminology

and systems of diagnostic coding. Considerable knowledge of the field of medicine as it pertains to medical diagnosis, treatment and care.

- Knowledge and skills needed to understand the application of personnel and labor relations techniques to the health services sector as applied to the medical records & quality assurances organization.
- Ability to prepare complex administrative and technical reports pertaining to the medical services system.
- Ability to communicate clearly and concisely, verbally and in writing.
- Ability to establish and maintain effective working relationships with administrators, physicians and other health care professionals.

The petitioner's administrator further stated that the proffered position requires a bachelor's degree in nursing, health administration, or business management or other healthcare-related field for the proffered position.

On September 29, 2010, 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.

In response, counsel submitted a substantially similar list of duties. In response to the request for an explanation of why those duties require a bachelor's degree, counsel stated that they require a bachelor's degree because they are demanding and complex. Counsel did not identify any duties that could not be performed by, for instance, a registered nurse with an associate's degree.

Counsel also provided Chapter 12 of the OASIS (Outcome and Assessment Information Set) Implementation Manual, which discusses clinical audits to be conducted pursuant to that system.

The director denied the petition on December 1, 2010, 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 the equivalent. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter on "Medical Health Service Manager" positions, and the documents provided, as evidence that the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

As a preliminary matter, nursing, health administration, and business management do not delineate a specific specialty. The petitioner's administrator's concession that a degree in any of those subjects would be a sufficient educational qualification for the proffered position is tantamount to an admission that the performance of the duties of the proffered position does not require at least a bachelor's degree in a specific specialty or its equivalent. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next 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.² The petitioner asserts in the LCA that the proffered position falls under the occupational category "Medical and Health Services Managers." The duties of the proffered position, more succinctly expressed, include management, administration, nurse evaluation and education, quality assurance, and record keeping.

In the "Medical and Health Services Managers" chapter, the *Handbook* provides the following descriptions of the duties of those positions:

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

² 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.

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 June 19, 2013).

However, the *Handbook* chapter on "Registered Nurses" states, "Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides." The *Handbook* states the following, pertinent to registered nurse positions:

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. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Registered Nurses," at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-2> (last visited June 19, 2013) (emphasis added).

The duties the petitioner's administrator attributed to the proffered position are entirely consistent with the duties of some registered nurses as described in the *Handbook*. Further, the duties of the proffered position, as stated by the petitioner's administrator, include, "Responsible for taking patient cases from time to time as directed by the Director of Nursing," a duty inconsistent with a medical and health services manager position. On the balance, the AAO finds that the proffered position is a registered nurse position as described in the *Handbook*.³

³ The AAO notes, however, that even if the position were demonstrated to be a medical and health services manager position, this would not have changed the decision on appeal, as the *Handbook* does not indicate that medical and health services manager positions require a minimum of a bachelor's degree in a specific specialty or the equivalent. See 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-4> (last visited June 19, 2013). While the *Handbook* indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, it also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, it also indicates that a degree in a general field, such as business administration, is common. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education.

As to the educational requirements of registered nurse positions, the *Handbook* states, "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."

The AAO notes that a diploma from a nursing program has not been shown to be equivalent to a bachelor's degree, and an associate's degree is clearly not equivalent to a bachelor's degree. The *Handbook* does not indicate that registered nursing positions require a minimum of a bachelor's degree in a specific specialty or the equivalent.

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 in nursing, management, and administration, do not establish any particular level of formal 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 in a specific specialty, or the equivalent, 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 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. The record contains no indication that a professional association of registered nurses requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, as a condition of entry.

Counsel did submit letters from individuals with companies in the petitioner's industry. Of the four letters submitted, three stated that the people their companies employed in positions entitled, (1) Quality Assurance and Compliance Directors and Quality Assurance Supervisors, (2) Director of Quality Assurance, Medical Records Administrator, and Quality Assurance Supervisors, and (3)

Director of Quality Assurance, Medical Records INTAKE Coordinator, and Quality Assurance Supervisors, must have a minimum of a bachelor's degree in "Nursing, Health Administration, Business Administration, or other healthcare related fields."⁴

For several reasons, those three letters are not indicative of the proffered position being a specialty occupation position. First, whether the duties of any of those positions are sufficiently similar to the duties of the proffered position that they should be considered to be "parallel positions" within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is unclear. Second, as was explained above, an array of subjects such as nursing, health administration, and business administration does not delineate a specific specialty.

Finally, any educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

For all three reasons, those three of the four industry letters do not indicate that the companies that provided them require a minimum of a bachelor's degree in a specific specialty or the equivalent for positions parallel to the proffered position.

The fourth letter is from [REDACTED] and is on the letterhead of [REDACTED] of [REDACTED] Illinois. [REDACTED] position at that company, if any, is unstated. The letter states that [REDACTED] a Director of Nursing, Compliance and Quality Managers/Supervisors, Clinical Supervisors, and Medical Records Administrators and that all are required to have a minimum of a bachelor's degree in "nursing or other health-related fields" or the equivalent. That letter does not state the duties of those positions or otherwise indicate which, if any, might be sufficiently similar to the proffered position that they should be considered "parallel positions" within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Further, nursing and other health care fields, taken together, do not delineate a single specific specialty. For both reasons, that letter does not suggest that a degree requirement is common to the petitioner's industry in parallel positions organizations similar to the petitioner. That letter does not, therefore, satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As was noted above, the petitioner provided vacancy announcements. However, upon review of the documents, the AAO finds that they do not establish that organizations similar to the petitioner routinely employ individuals with degrees in a specific specialty in positions parallel to the position proffered in this case.

⁴ The AAO observes that, contrary to the plain meaning of that sentence, business administration is not a healthcare-related field.

The AAO notes that for the petitioner to establish that another organization is similar to the petitioner, it must demonstrate that the petitioner and the other organization share the same general characteristics. Such factors may include the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing, to list just a few elements that may be considered. None of the vacancy announcements provided establish that the companies that placed them are similar to the petitioner within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The positions announced are entitled, "RN, Clinical Associate; Director of Clinical Services; RN/Performance Improvement Nurse/Quality Assurance; Director of Quality Assurance; Quality Assurance Nurse; Quality, Admissions & Education Specialist (RN); Manager, Quality Management; Quality Management Nurse; Compliance Officer; Compliance Manager; Home Health Nurse Manager; Clinical and Compliance Specialist; Quality Regulatory Consultant; Coordinator Home Health Quality; Compliance Field Liaison Specialist; Nurse Compliance Specialist; RN Quality, Compliance Specialist; Supervisor-Clinical Home Care; Regional Compliance Manager; and Quality Assurance Specialist. None of those positions is described with specificity sufficient to show that they should be considered "parallel" to the proffered position within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).⁵

Those vacancy announcements contain various educational requirements.

Six of those vacancy announcements require a bachelor's degree in nursing.

Two vacancy announcements require a "Bachelor's Degree in Nursing or equivalent," but do not reveal what might be considered equivalent to such a degree.

Two vacancy announcements require a "Baccalaureate Degree in Nursing, or equivalent experience in acute and home health care setting," but do not reveal what experience might be considered equivalent to such a degree.

One announcement requires a bachelor's degree in nursing "or other commensurate healthcare degree."

One vacancy announcement states that the position requires a bachelor's degree in "Nursing, Physical Therapy, or allied professional discipline." The AAO observes that "Nursing, Physical Therapy, or allied professional discipline" does not delineate a single specific specialty.

One announcement calls for a bachelor's degree in healthcare, nursing, or administration. Healthcare, nursing, and administration do not delineate a single specific specialty.

⁵ The AAO observes that, although counsel has asserted that the proffered position is not a registered nurse position, the word "nurse" appears in the job titles of many of the vacancy announcements that she submitted to support the proposition that parallel positions require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One announcement states that the position announced requires a bachelor's degree in business administration or healthcare administration. Business administration and healthcare administration are not a single specific specialty and, in any event, as was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent. *Cf. Matter of Michael Hertz Associates, supra.*

One vacancy announcement calls for a "Bachelor's degree in nursing or RN with three years nursing management experience." That vacancy announcement does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One vacancy announcement states that a bachelor's degree in nursing is *preferred* for the position announced. The AAO observes that a preference is not a requirement.

One states that a bachelor's degree in nursing or health education is *preferred* for the position. The AAO observes that nursing and health education are not a single specific specialty and, in any event, a preference for a degree is not a minimum requirement.

One vacancy announcement requires a "Health Related Professional with Bachelor of Science Degree." That announcement does not unequivocally require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One vacancy announcement requires a bachelor's degree with an emphasis on nursing or healthcare administration. Nursing and healthcare administration are not a single specific specialty.

One announcement requires a bachelor's degree in nursing or a health-related field. Nursing and health-related fields do not delineate a single specific specialty.

One states that a bachelor's or master's degree is preferred, but not that it is required, and not that the preferred degree should be in any specific specialty.

Five announcements state that they require a bachelor's degree, but not that the degree must be in any specific specialty.

Even if it had been demonstrated that all of the vacancy announcements were placed by similar organizations in the petitioner's industry, and that all of the announcements indicated a bachelor's degree in a specific specialty or the equivalent to be a prerequisite for the vacancies they announce, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 25 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁶

⁶ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next review the record regarding 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."

As was noted above, counsel also provided an article entitled [REDACTED]. That article relies on data from the [REDACTED] and discusses the increasingly complex nature of home health care, particularly geriatric care, due to multimorbidity and cognitive impairment in senior citizens. Although it was apparently submitted for this purpose, it contains insufficient evidence that demonstrates that the proffered position is so complex or unique that it requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

The unattributed 16-page essay described above states,

A bachelor's degree is essential for the position because the beneficiary will monitor and implement all aspects of compliance and quality assurance performance improvement and oversee the company's healthcare staff to ensure procedural compliance, staff development and employees and client satisfaction.

statistically valid inferences, if any, can be drawn from the job postings with regard to determining the common educational requirements for entry into parallel positions in similar home health care 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 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 position of Compliance and QA Performance Improvement Manager for a company providing home health care 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 may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The AAO observes that the conclusion does not follow from the premise. Given that the petitioner's business is home health care, the duties described require knowledge of nursing and administration. However, the description of the duties of the proffered position does not specifically identify any tasks that are so complex or unique that only a degreed individual could perform them. Additionally, 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. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Further, that essay does not even allege that the proffered position requires a bachelor's degree *in any specific specialty*.

Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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).⁷

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 the equivalent.

The description of the duties of the proffered position is too long to permit addressing each duty individually. The AAO observes, however, that establishing a quality assurance database, organizing medical documents and maintaining their confidentiality, coordinating meetings and chairing committees, gathering quality assurance data and preparing reports, recommending and preparing training for other employees, showing a training video, assuring that every clinician has ready access to the OASIS Manual's Chapter 8, assuring compliance with OASIS and other reporting standards, and developing a newsletter contain no indication of inherent specialization and complexity that would require or be associated with a minimum of a bachelor's degree in a specific specialty or the equivalent.

⁷ 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 the 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").

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than administrative and supervisory registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

For the reason discussed above, 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 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 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.

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

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