

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2050
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **MAY 17 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 "Medical Center/Nursing Facility" established in 2008. To employ the beneficiary in what it designates as a "Care Case Management Specialist" position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (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 the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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.

As a preliminary matter, the AAO will discuss whether the proffered position qualifies as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). In this matter, however, it appears the director did not analyze the proffered position to determine whether it met the definition of a specialty occupation. Therefore, the AAO will first determine whether the proffered position is a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires [(1)] 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 requires [(2)] 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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Care Case Management Specialist 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 position.

With the visa petition, counsel provided a letter, dated November 23, 2010, from the petitioner's vice president for human resources, which contains the following description of the proffered position:

The Care Case Management Specialists are instrumental in observing and analyzing the effect of a computer-based system for patient medical charts called Electronic Medical Records (EMR). EMR is a type of clinical information system dedicated to collecting, storing, manipulating and retrieving clinical information important to the delivery of each patient's care.

The Care Case Management Specialist must ensure that appropriate system updates for patient data recoding are made, and that improvements incorporated into the current system guarantee an accurate flow of information within the EMR. They recommend modifications in: existing intake and reporting methods, procedures to document progress of treatment plans, the system to record physician's instructions and methods to comply with regulatory standards. They also obtain feedback from staff regarding effectiveness of care management data and collection procedures. The Care Case Management Specialist develops an appropriate care case management system based on their findings.

The Care Case Management Specialist also assists in the coordination of treatment plans, and is responsible for administrative requirements that must be performed in accordance with federal, state and county regulations such as the preparation and submission of pertinent documents.

As to the educational requirement of the proffered position, the petitioner's vice president of human resources stated:

There is no license or licensing board for Care Case Management Specialists. Care Case Management Specialists do not need to be licensed because they do not engage in direct patient care. Medical knowledge on a professional level is vital to this job. For that reason, the eight individuals currently filling this position in this facility and associated facilities all possess a minimum baccalaureate degree and are required to hold this degree, with no exceptions. These are executive level positions that have supervisory duties over the nurse managers, who also require baccalaureate degrees. The Care Case Management Specialist is on par with the Assistant Director of Nursing, Director of Staff Development and Director of Quality Assurance.

The petitioner's vice president of human resources stated that the petitioner requires, without exception, a bachelor's degree for employment in the proffered position. She did not, however, state that the proffered position requires a minimum of a bachelor's degree *in any specific specialty*.

On January 24, 2011, the service center issued an RFE in this matter. The service center requested evidence (1) that the petitioner would employ the beneficiary in a specialty occupation, and (2) pertinent to beneficiary's qualifications. The service center outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) a letter, dated March 7, 2011, from the petitioner's vice president of human resources; (2) a printout of one page of a description of the proffered position that the petitioner posted on its webpage; (3) letters verifying the beneficiary's past employment; (4) a list of 12 people the petitioner claims to employ in the proffered position; and (5) evidence pertinent to the education of people the petitioner employs.

In her March 7, 2011 letter, the petitioner's vice president of human resources stated:

We employ 12 care case specialists at this time. Their background, like [the beneficiary's] is in nursing and every one of them has both a nursing or medical based baccalaureate degree as well as extensive experience in healthcare. Copies of their diplomas and proof of employment are enclosed.

He also stated the following:

[The proffered] position requires not only mastery of substantive nursing courses, but additional coursework at the baccalaureate level to perform medical records system [sic] for patient data oversight.

Other than noting that the beneficiary has a bachelor's degree in nursing, the petitioner's vice president of human resources did not address her qualifications for employment in a specialty occupation.

Each of the printouts of descriptions of the proffered position appears to contain the same description of the duties, but each of those duty descriptions is incomplete. One of those duty descriptions states:

Plan, assist, organize and direct the [petitioner's] case management data and collection for up to 18 patients (residents). Examine existing care case management data and collection system adopted in one of the three skilled nursing facilities and assess for accuracy, effectiveness, accessibility, and possible establishment of a central records system. Review assigned residents' files to determine demographics, common health problems or ailments and prescribed treatment plans to pinpoint health services and/or equipment requirements. Review existing health information collection procedures adopted in the facility. Observe actual operations in assigned facility and recommend modifications in existing intake and reporting methods, procedures to document progress of treatment plans, system to record physician's instructions and methods to comply with regulatory standards. Obtain feedback from staff regarding effectiveness of existing care case management data and collection procedures, elicit recommendations to improve existing system and evaluate information from staff interviews. Analyze case care management operational reports or records. Report findings to Administrator and VP Clinical Services, and discuss recommendations to improve system. Based on findings, develop appropriate care case management system. Consult with assigned residents' physicians or designated healthcare professionals to ensure that physical condition and prescribed treatment plans are accurately reflected in the company's systems. Research on trends in case management data and collection methods and procedures, and ascertain applicability to company's operations. Research state and county regulations on records to be maintained, and develop appropriate modifications to company's system to ensure regulatory requirements are complied with. Note: typical workload is 12 - 18 assigned residents at any given time. Perform administrative requirements in compliance with federal, state and county regulations, such as completion and review of necessary forms, reports, etc., and submitting the pertinent documents and reports to the Administrator and/or referring physician as required. Assess assigned residents' needs and coordinate potential resources in the continuum of care which promotes quality and cost effectiveness within the residents' health care plan. Review and assess existing medical/health records of assigned residents' maintained physical condition. Monitor use of available health care services, including but not limited to

referral patterns, use of rehabilitation and specialty services and claims review, in an objective and systematic manner that promotes the appropriateness and quality of care. Assess existing services and resources available for use of residents. Research on available services, resources in the community. Consult with resident's physician or designated healthcare professional to determine treatment plans to be adopted using [the petitioner's] available resources and services. Consult with appropriate agencies to determine resources available for use. Establish and maintain tracking systems for monitoring implementation of

The employment verification letters provided confirm the beneficiary's previous employment in various nursing positions in the Philippines and [REDACTED] Maryland.

The director denied the petition on March 22, 2011. On appeal, counsel asserted that the evidence is sufficient to show that the visa petition should be approved.

Counsel also stated, on appeal, that the "nature of the position is that qualification can derive from a variety of backgrounds." Counsel appears to concede that the proffered position does not require a minimum of a bachelor's degree or its equivalent *in a specific specialty*. That is tantamount to conceding that the proffered position does not qualify as a specialty occupation position. This is sufficient reason, in itself, to dismiss the appeal and to deny the visa petition.

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.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook*, supports the conclusion that this occupational classification normally requires a

¹ 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.

bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

As noted above, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Medical and Health Services Managers." The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category. 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 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 May 15, 2013).

The duties of the proffered position, as initially described in the letter from the petitioner's vice president for human resources, consist primarily of making entries to the EMR system. They also include coordinating treatment and recommending modifications to the petitioner's intake and reporting methods, its treatment plan documentation procedures, its system for recording physicians' instructions, and its regulatory compliance methods.

Those duties do not include managing an entire facility, managing a specific clinical department, managing a medical practice, or management of anything at the level contemplated by the *Handbook* in its discussion of medical and health services manager positions. Although the duties of the proffered position include some duties that are arguably managerial, the degree of responsibility involved is clearly at a much lower level than that contemplated in the *Handbook* chapter pertinent to medical and health services managers. The low-level management duties described do not convince the AAO that the proffered position is a medical and health services manager position as described in the *Handbook*.

However, the AAO will assume, *arguendo*, that the proffered position corresponds to the SOC medical and health services manager, as asserted in the LCA, so as to address counsel's assertions pertinent to such positions. While the *Handbook* reports that a baccalaureate degree is *typically* the minimum educational requirement for a medical and health services manager position, it does not indicate that such a degree is a minimum entry requirement or, more importantly, that the degrees

held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation. *See id.* This is evident in the range of educational or experience requirements in the *Handbook's* discussion in the "How to Become a Medical or Health Services Manager" section of its chapter on "Medical and Health Services Managers," which does not specify a minimum requirement of a bachelor's degree in a specific specialty for entry into the occupation. Moreover, it also indicates that a degree in a general field, such as business administration, is common.² Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education. The *Handbook* states in relevant part:

Most medical and health services managers have at least a bachelor's degree before entering the field; however, master's degrees also are common. Requirements vary by facility.

Education

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

Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow

² To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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 at 147.

Again, the *Handbook* indicates that most generalist positions in this field can be performed by an individual with only a general-purpose degree, i.e., a degree in "business administration," or on-the-job experience. This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree *in a specific specialty* or its equivalent for entry into the occupation.

students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

Work Experience

Although bachelor's and master's degrees are the most common educational pathways to work in this field, some facilities may hire those with on-the-job experience instead of formal education.

Important Qualities

Analytical skills. Medical and health services managers must be able to understand and follow current regulations and be able to adapt to new laws.

Communication skills. These managers must be able to communicate effectively with other health professionals.

Detail oriented. Medical and health services managers must pay attention to detail. They might be required to organize and maintain scheduling and billing information for very large facilities, such as hospitals.

Interpersonal skills. Medical and health services managers need to be able to discuss staffing problems and patient information with other professionals, such as physicians and health insurance representatives. They must be able to motivate and lead staff.

Problem-solving skills. These managers are often responsible for finding creative solutions to staffing or other administrative problems.

Technical skills. Medical and health services managers must be able to follow advances in health care technology. For example, they may need to use coding and classification software and electronic health record (EHR) systems as their facility adopts these technologies.

Advancement

Medical and health services managers advance by moving into more responsible and higher paying positions. In large hospitals, graduates of health administration programs usually begin as administrative assistants or assistant department heads. In small hospitals or nursing care facilities, they may begin as department heads or assistant administrators. Some experienced managers also may become consultants or professors of healthcare management. The level of the starting position varies with the experience of the applicant and the size of the organization.

For those already in a different healthcare occupation, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration. For more information, see the profile on registered nurses.

Licenses

All states require nursing care facility administrators to be licensed; requirements vary by state. In most states, these administrators must have a bachelor's degree, pass a licensing exam, and complete a state-approved training program. Some states also require administrators in assisted-living facilities to be licensed. A license is not required in other areas of medical and health services management.

Id. at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited May 15, 2013).

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 closely related to the position's duties, 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 requires a petitioner to establish that a requirement for bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, 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).

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. The petitioner did not submit sufficient evidence demonstrating an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent such as submissions from professional associations, individuals, or similar firms in the petitioner's industry 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. Thus, the petitioner has not 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 does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook*'s information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the 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).

Next, the record of proceeding does not establish that the petitioner normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the proffered position. The petitioner claims to employ the following 12 people in the proffered position:

The evidence pertinent to educational credentials includes diplomas showing that [REDACTED]

[REDACTED] all have bachelor's degrees in nursing. However, four of the five diplomas were

awarded by foreign universities, and no evaluations of those foreign degrees were submitted demonstrating the equivalency of those degrees to United States baccalaureate or higher degrees. *See 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).* The record contains no evidence pertinent to the other seven people whom the petitioner claims to employ in the proffered position.³ Previously hiring only one employee with a bachelor's degree in nursing does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree in a specific specialty, or the equivalent, for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than positions within the same occupational category that are not usually associated with a degree in a specific specialty.⁵

³ The record also contains evidence pertinent to the educational accomplishments of

As the petitioner does not claim to employ them in the proffered position, any relevance of those documents to any material issue in this case is unknown to the AAO.

⁴ 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").

⁵ Moreover, even assuming *arguendo* that the proffered position was properly classified by the petitioner as a medical and health services manager, it has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.dol.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level such as a Level IV position, requiring a significantly higher prevailing wage.

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.

Even if the petitioner had established that the proffered position qualifies as a specialty occupation, the director correctly determined that the beneficiary is not qualified to perform the duties of such a specialty occupation.

The degree referenced by section 214(i)(1)(B) of the Act, set out above, means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm'r. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

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

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

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner did not submit evidence to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(1)-(3).

Specifically, the beneficiary does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) as there is no evidence in the record of a U.S. accredited college or university baccalaureate or higher degree.

The beneficiary does not meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), as the record does not contain an evaluation of her foreign degree in terms of any U.S. degree equivalent.

The petitioner's vice president of human resources stated, in his November 23, 2010 letter, that no license is required for the proffered position. As such, the beneficiary is unable to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

Next, in order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁶

⁶ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training or experience.

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The petitioner did not submit evidence to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4). The AAO will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It is worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the regulation, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of professional recognition.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁷;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

⁷ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains no evaluation of the beneficiary's education and degree considered together with her additional training and/or experience; or of her education and degree, considered apart from her additional training and/or experience. As such, she has not been shown to be qualified to work in a specialty occupation position pursuant to the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) or (3), respectively.

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, as the record contains no evidence related to them.

Neither the skeletal letters from the beneficiary's former employers nor any other evidence of record demonstrates the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in any particular specialty occupation; or that the alien has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion. Consequently, the petitioner has not established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As the petition fails to establish that the beneficiary is qualified to serve in any specialty occupation, the petition must also be denied for failure to qualify the beneficiary under 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The appeal will be dismissed and the visa petition denied on this basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition

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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.