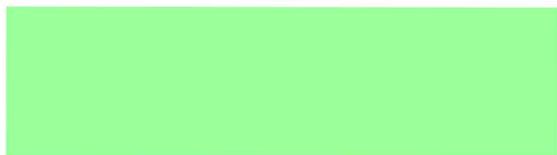
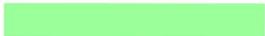




U.S. Citizenship  
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Services

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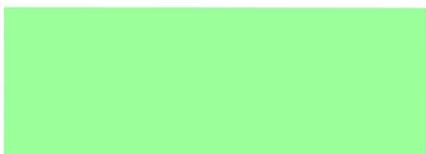


DATE: **OCT 16 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Home Health Care Medicare Certified Agency" with 12 employees, established in 2006. In order to employ the beneficiary in what it designates as a part-time "Registered Nurse" position, the petitioner seeks 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 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, we have 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.

We base our decision upon our 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 October 8, 2013 request for evidence (RFE) and the petitioner's response to it; (3) the director's denial letter; and (4) the Form I-290B and counsel's submissions on appeal.

## II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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.

### III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Registered Nurse" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 29-1111, Registered Nurses from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level III position.

With the visa petition, counsel submitted a Certificate of General Nursing and Midwifery awarded to the beneficiary by the [REDACTED] after she attended the [REDACTED] India. A letter from the Nursing Superintendent of [REDACTED] indicates that the beneficiary's certificate was the result of her passing the appropriate exam in 1998, and that she subsequently worked at the hospital for two years. Counsel also provided evidence pertinent to the beneficiary's other employment experience in nursing. Counsel provided no evidence that the beneficiary's education, considered either with or without her experience, is equivalent to a bachelor's degree in nursing.

Counsel also submitted a description of the proffered position, which states the following duties:

- Promote health and help patients prevent disease, infection, or cope with illness.
- Observe and diagnose patients.
- Prepare and manage patient care plans and medical treatments.
- Use medical equipment to monitor patient's vital signs.
- Perform routine lab and screenings [sic] tests such as blood pressure tests.
- Record results and other medical data in patient charts.

- Draw blood, give injections and immunizations and start intravenous fluids.
- Consult with medical staff.
- Delegate duties to licensed practical nurses and nurses aides.

That position description further states that the proffered position requires a bachelor's degree in nursing or an associate's degree and six years of nursing experience.

On August 21, 2013, the service center issued an RFE in this matter. However, neither the evidence requested nor the documents submitted in response bear directly on the bases for today's decision.

On October 8, 2013, the service center issued another RFE in this matter. The service center requested evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted: (1) five vacancy announcements; (2) two letters from others in the home health care industry; (3) evidence pertinent to other nurses working for the petitioner; (4) a revised description of the proffered position; (5) a section of Michigan law pertinent to the regulation of the nursing profession, (6) print-outs of web content from the sites of various organizations; and (7) counsel's own letter, dated December 30, 2013. The vacancy announcements will be addressed below.

The letters from others in the home health care industry were written by the owner of [REDACTED] and the administrator of [REDACTED]. They note that home healthcare nurses must operate independently with little supervision. The owner of [REDACTED] stated that newly graduated nurses are unable to function independently and that they require an associate's degree and six years of experience or a bachelor's degree and two years of experience. The administrator of [REDACTED] states that nurses with only an associate's degree and very little experience require a lot of supervision, and that [REDACTED] therefore requires either a bachelor's degree in nursing or an associate's degree and six years of experience.

The petitioner provided evidence pertinent to its other employees listed as [REDACTED]. Diplomas submitted indicate that [REDACTED] have bachelor's degrees in nursing. A diploma indicates that [REDACTED] has a bachelor's degree, and her résumé indicates that the bachelor's degree is in nursing.

A portion of a transcript indicates that [REDACTED] has an associate's degree with a major in nursing. His résumé states that he has over twenty years of experience.

[REDACTED] résumé states that she received an associate's degree in nursing and is working toward a bachelor's degree in nursing. The record contains no evidence to support either assertion, but does contain a copy of her registered nurse's license.

The revised description of the proffered position contains the following list of duties and percentages of time to be spent performing those duties:

**Nurses help patients to live independently**, manage chronic diseases like CHF, Diabetes type I & II, Knee replacement and other post operative patients, Multiple sclerosis, Dementia, COPD, PVD etc. Understand and manage their medications. Initiate preventive and rehabilitative nursing procedures as appropriate for the patients care and safety. Provide safe and secure environment. Also to promote health and help patients to prevent disease, psychological support to cope with illness. Protects patients from infection with infection-control policies, protocols and storage procedures. 15%

**Observe and diagnose patients** – Observing and reporting symptoms, reaction to treatments, drugs and changes in the patient's physical and emotional and objective findings to confer with physician.

Nurses can identify diagnosis and treat. Examples of Nursing Diagnosis are mostly activity intolerance, generalized weakness and debilitation secondary to acute or chronic illness and disease. This is especially apparent in elderly patients with a history of orthopedic, cardiopulmonary, diabetic, or pulmonary-related problems. Activity intolerance may also be related to factors such as obesity, malnourishment, side effects of medications (e.g. beta-blockers), or emotional states such as depression or lack of confidence to exert one's self. Nursing goals are to reduce the effects of inactivity, promote optimal physical activity, and assist the patient to maintain a satisfactory lifestyle. 10%

**Prepare and manage patient care plans and medical treatments-** Nursing care plan can be created without a physician's orders, they encompass the treatment nurse will provide and parameter to notify physician. Nursing care plans are blueprints for residents' entire care needs, and direct the actions of all health care team members. Written nursing care plans are usually arranged into the three parts of Care Plan Problem, Care Plan Goal, and Care Plan Interventions. 15%

**Use medical equipment to monitor patient's vital signs** – BP apparatus, Thermometer, Pulse oxymeter, Glucometer, stethoscope.

Vital signs- temperature, blood pressure, pulse, respiration and heart beat. 10%

**Perform routine lab and screenings tests** such as blood pressure tests ,Blood sugar, CBC, BMP and if needed PT INR. 15%

**Record results and other medical data in patient charts.**

Attached Sample Chart 15%

**Draw blood, give injections and immunizations, and start intravenous fluids-** Types of injections are Subcutaneous, Intra Muscular and intravenous. Nurses should aware of the size and length of the needle, different types of administration, depth of needle in order to ensure proper amount and dosage is given to patients. 5%

**Consult with medical staff** –Mostly verbal communication between discipline and physician. 10%

**Delegate duties to licensed practical nurses and nurses aides**

Licensed Practical nurse Provides quality and safe delivery of home care services under the direction of a registered nurse. These duties may vary but include Wound care, Catheter care and changes that are free of complications, Bowel program treatments, Injections, Colostomy care, Skilled observations, recording, and timely reporting to the RN, and/or Nursing Supervisor any pertinent changes in the client's condition or needs.

Likewise [REDACTED] – allocates duties to provide Personal care like bathing dressing and grooming. Also meal assist and Light house work. 5%

[Errors in the original]

The revised position description also states that the proffered position requires "[a] Bachelor's in Nursing or equivalent," but does not provide any indication of the alternative qualifications it would consider to be equivalent to a bachelor's degree in nursing.

The sections of law provided are General Rules 338.10201 through 338.10203 of the Michigan Administrative Code. They indicate, *inter alia*, that to become a registered nurse in Michigan, one must graduate from a nurse education program acceptable to the board. It does not state that the degree awarded by that nursing program must be a bachelor's degree.

The print-outs of web content are from sites maintained by (1) the [REDACTED] (2) the [REDACTED] and (3) the [REDACTED].

The [REDACTED] website states, pertinent to home health care, that home healthcare nurses must be able to work independently, may supervise aides, and must be able to perform complex procedures.

The website of the [REDACTED] describes four routes to registered nursing licensure: the Diploma in Nursing, the Associates Degree in Nursing, the Bachelor's Degree in Nursing, and graduate degrees in nursing. It states that the Diploma in Nursing available through

hospital-based schools, and that the Associate's Degree in Nursing is a two-year degree that prepares individuals for a defined technical scope of practice. The website also indicates that the Bachelor of Science in Nursing is a four-year degree offered by colleges and universities, and that graduate degrees in nursing prepare nurses for Advanced Practice Nurse, nurse administrator, teaching, and research positions, and may focus on clinical practice or leadership roles.

In its website, the [REDACTED] describes itself as "the national voice for America's baccalaureate- and higher-degree nursing education programs." The content of the [REDACTED] website states that, because of "rapidly expanding clinical knowledge" and "mounting complexities in health care," "registered nurses at the entry-level of professional practice should possess, at a minimum, the educational preparation provided by a [BSN]. It further states that, at the time that web content was published in 1996, 40% of registered nurses held bachelor's or higher degrees in nursing. It states that various hiring authorities either require or prefer a bachelor's degree in nursing over alternative qualifications for nursing positions, and that some require a bachelor's degree for promotion to positions beyond entry-level.

In her December 30, 2013 letter submitted in response to the October 8, 2013 RFE, counsel asserted that the evidence submitted is sufficient to show that the proffered position qualifies as a specialty occupation position.

The director denied the petition on March 22, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel again asserted that the evidence submitted is sufficient to demonstrate that the visa petition should be approved.

#### IV. SPECIALTY OCCUPATION ANALYSIS

Initially, we observe that the petitioner has never clearly asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

That position description provided with the visa petition states that the proffered position requires a bachelor's degree in nursing or an associate's degree and six years of nursing experience. An associate's degree in nursing and six years of nursing experience has not been demonstrated to be equivalent to a bachelor's degree in nursing pursuant to the salient law. Section 214(i)(2) of the Act allows the substitution of equivalent experience for all or part of the otherwise requisite education. Further, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) indicates that three years of experience *may* be equivalent to one year of education provided additional criteria are satisfied.

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

For purposes of determining equivalency to a baccalaureate degree in the

specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . 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 occupation;<sup>1</sup>
- (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;
- (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.

It is always 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 rule, 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 recognition of expertise in the specialty occupation.

In the instant case, the petitioner has indicated that it would accept six years of experience in nursing as equivalent to two years of education toward a bachelor's degree in nursing, but without consideration of the supplemental requirements that are also part of the determination of the equivalence of employment experience to education. The documentation originally submitted with the visa petition does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

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<sup>1</sup> *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).

Further, in the revised description of the proffered position that was submitted in response to the RFE, the petitioner stated that the proffered position requires a "Bachelor's in Nursing or equivalent," but without discussing what the petitioner would consider to be equivalent to a bachelor's degree in nursing. Again, that document does not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent *within the meaning of the salient regulations*.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn 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 we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which we routinely rely 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)).

We 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. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 29-1111, Registered Nurses from O\*NET. We reviewed the chapter of the *Handbook* entitled "Registered Nurses," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of registered nurses:

### **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.

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

## Duties

Registered nurses typically do the following:

- Record patients' medical histories and symptoms
- Administer patients' medicines and treatments
- Set up plans for patients' care or contribute to existing plans
- Observe patients and record 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 illnesses or injuries
- Explain what to do at home after treatment

Most registered nurses work as part of a team with physicians and other healthcare specialists. Some registered nurses oversee licensed practical nurses, nursing assistants, and home health aides.

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

- 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

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

Many possibilities for working with specific patient groups exist. The following list includes just a few other examples:

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

**Cardiovascular nurses** care for 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.

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

**Nephrology nurses** care for patients who have kidney-related health issues stemming from diabetes, high blood pressure, substance abuse, or other causes.

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

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

**Clinical nurse specialists (CNSs)** are a type of advanced practice registered nurse (APRN). They provide direct patient care in one of many nursing specialties, such as psychiatric-mental health or pediatrics. CNSs also provide indirect care, by working with other nurses and various other staff to improve the quality of care that patients receive. They often serve in leadership roles and may advise other nursing staff. CNSs also may conduct research and may advocate for certain policies.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Registered Nurses," <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-2> (last visited Oct. 15, 2014).

Other than diagnosing patients, the duties attributed to the proffered position are consistent with the duties of registered nurses as described in the *Handbook*. We find that the proffered position is more likely than not a registered nurse position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of registered nurse positions:

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

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

### **Education**

In all nursing education programs, students take courses in anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take 4 years to complete; ADN and diploma programs usually take 2 to 3 years to complete. All programs also include supervised clinical experience.

Bachelor's degree programs usually include additional education in the physical and social sciences, communication, leadership, and critical thinking. These programs also offer more clinical experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

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

Many registered nurses with an ADN or diploma choose to go back to school to earn a bachelor's degree through an RN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field. Some employers offer tuition reimbursement.

Certified nurse specialists (CNSs) must earn a master's degree in nursing. CNSs who conduct research typically need a doctoral degree.

### **Licenses, Certifications, and Registrations**

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

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

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

Nurses may become certified through professional associations in specific areas, such as ambulatory care, gerontology, and pediatrics, among others. Although certification is usually voluntary, it demonstrates adherence to a higher standard, and some employers may require it.

CNSs must satisfy additional state licensing requirements. They may choose to earn certification in a specialty.

### **Important Qualities**

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

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

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

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

***Organizational skills.*** Nurses often work with multiple patients with various health needs. Organizational skills are critical to ensure that each patient is given proper care.

***Physical stamina.*** Nurses should be comfortable performing physical tasks, such as helping to lift and to move patients. They may be on their feet for most of their shift.

***Speaking skills.*** Registered nurses must be able to talk effectively with patients to assess their health conditions. Nurses need to explain how to take medication or to give other instructions. They must be able to work in teams with other health professionals and communicate the patients' needs.

### **Advancement**

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

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

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

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

Some RNs choose to become nurse anesthetists, nurse midwives, or nurse practitioners, which, along with certified nurse specialists, are types of advanced practice registered nurses (APRNs). APRNs may provide primary and specialty care, and, in most states, they may prescribe medicines. For example, clinical nurse specialists provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health.

Other nurses work as postsecondary teachers in colleges and universities.

*Id.* at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4> (last visited Oct. 15, 2014).

The *Handbook* does not indicate that registered nursing positions, as a category, require a bachelor's degree. To the contrary, it indicates that an associate's degree, or a "diploma program" that takes two to three years to complete, would be sufficient for entry into positions falling within this occupational category.

On appeal, counsel asserts, "The adjudicator incorrectly used the [*Handbook*] as the only authoritative source for normal entry requirements." Citing to the [REDACTED] print-out, counsel contends the following:

[T]he American Nurses Association states that the education level of Bachelor's degree **is now the normal requirement** instead of the Associate's degree and that the latter was once the most common route. The [REDACTED] also pronounced that

**"Bachelor of Science degree in nursing as the minimum educational requirement for professional nursing practice."**

We observe, first, that the web content counsel obtained from the American Nurses Association states in the "How to Become a Nurse" section that nurses may obtain diplomas and associate's degrees to become nurses and makes no statement related to a bachelor's degree being the normal requirement for entry into a registered nurse position.

Although, the [REDACTED] web content states that the [REDACTED] "recognizes the Bachelor of Science degree in nursing as the minimum educational requirement for professional nursing practice," it also recognizes other paths to nursing careers that do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.<sup>3</sup> The web content also states that "THE BSN NURSE IS PREFERRED" and that "[m]any hospitals not already requiring the Bachelor's of Science degree in nursing have established 'BSN-preferred' policies for new hires." It is noted that a *preference* for an individual with a degree is not an indication of a *requirement* of at least a bachelor's degree in a specific specialty.

Further, we find 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 the nursing field, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and

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<sup>3</sup> The [REDACTED] identifies itself as a representative of nursing schools with bachelor's degree and graduate degree programs in nursing and we note the apparent bias of the organization.

recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

The submission from the [REDACTED] website indicates that three avenues exist to registered nursing careers. The submission from the [REDACTED] website also acknowledges that one may enter a registered nursing career not only with a bachelor's degree in nursing, but with either an associate's degree in nursing or a hospital diploma, neither of which is equivalent to a four-year bachelor's degree in nursing.

The two letters provided by others in the petitioner's industry state that they require a bachelor's degree in nursing for their home healthcare nurse positions. They do not assert, let alone demonstrate, that such a requirement is common to the petitioner's industry.

As was noted above, counsel submitted five vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. All of those vacancy announcements are for registered nurse positions. However, one announcement is for an Intake Registered Nurse and one is for a [REDACTED]. Those positions are not necessarily parallel to the proffered position, which is a home healthcare registered nurse position. Further, given that one vacancy announcement is for a position working at a hospice, and the petitioner sends its nurses to provide care at patients' homes, that vacancy announcement was not placed by a similar organization in the petitioner's industry.

Further still, one vacancy announcement states that the position announced requires a bachelor's degree, but not that the requisite degree must be in nursing or any other specific specialty. Another states that it requires a four-year degree, but not that the degree must be in nursing or any other specific specialty. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, another vacancy announcement states that a four-year degree is required for the position announced and that a bachelor's degree in nursing is preferred. Yet another states that the position requires graduation from an accredited school of nursing, and that a bachelor's degree in nursing is preferred. A preference is not a minimum requirement. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations in the petitioner's industry and otherwise similar to the petitioner and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate

what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>4</sup>

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position 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 that collectively constitute the proffered position 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 specialized bachelor's degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses are likely to be beneficial, and 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 associate's degrees and hospital diplomas, educational qualifications that are not equivalent to a bachelor's degree, are acceptable for such positions. 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

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<sup>4</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>5</sup>

The evidence submitted indicates that [REDACTED] have bachelor's degrees in nursing. The evidence submitted pertinent to [REDACTED] indicates that she has a Bachelor of Science degree; however, the evidence is not clear that it is specifically a degree in nursing.

The evidence pertinent to [REDACTED] indicates that he does not have a bachelor's degree in nursing but has, in addition to an associate's degree in nursing, 20 years of experience in nursing. Whether his experience would satisfy all of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), set out above, is unclear.

[REDACTED] résumé makes clear that she does not have a minimum of a bachelor's degree in a specific specialty or its equivalent pursuant to the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Further, the petitioner is a home healthcare company with 12 employees, established in 2006. Nothing in the record indicates that the five people for whom evidence was submitted are the only five people the petitioner currently employs as registered nurses. The petitioner has also failed to submit evidence of the actual positions held by these five people in its organization. We note that [REDACTED] résumé indicates she may not be performing the duties of a registered nurse for the petitioner as she states in the "OBJECTIVE" section "MY RECENT EXPERIENCE HAS BEEN REVIEWING MEDICARE (OASIS) CHARTING. THIS HAS BEEN VERY INTERESTING IN THAT I WOULD BE AUDITING CHARTS AND MARKING THEM FOR CORRECTION OR LACK OF INFORMATION NEEDED." The evidence in the record is insufficient to demonstrate that the petitioner has normally required a bachelor's degree for the registered nurse positions it has filled in the past. Without any analysis of the number of registered nurses the petitioner now employs and the number it has employed, we are unable to find, based on the evidence pertinent to

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<sup>5</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

five people, that the petitioner has demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as promoting health and helping patients prevent disease and infection or cope with illness, preparing and managing patient care plans and medical treatments, monitoring vital signs and recording results, drawing blood, giving injections, etc., contain no indication of a nature so specialized and complex that they require knowledge typically associated with a bachelor's degree. To the contrary, most of those duties appear to be generic duties of a registered nurse position as described in the *Handbook*.

Diagnosing patients, which the duty descriptions state is among the duties of the proffered position, does appear to be outside of the normal duties of a registered nurse, but the petitioner has provided no evidence to indicate that, at the level of sophistication at which that duty would be performed in the context of the proffered position, diagnosis is so specialized and complex it requires knowledge usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The evidence of record does not, therefore, satisfy 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.

#### V. ADDITIONAL BASIS

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The AAO observes that if the petitioner had demonstrated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate that the beneficiary has a bachelor's degree or its equivalent in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

The evidence of record pertinent to the beneficiary's qualifications consists of a Certificate of General Nursing and Midwifery issued in India and employment verification letters pertinent to the beneficiary's previous employment experience.

The record does not contain an evaluation of the beneficiary's education, showing that her education is equivalent to a U.S. bachelor's degree in any specific specialty, as would be required if the petitioner intended to demonstrate that she is qualified for the proffered position pursuant to her education, standing alone. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The record does not contain an evaluation of the beneficiary's education and employment experience, considered together, which is typically required if the petitioner intends to demonstrate that she is qualified for the proffered position by her education together with her employment experience. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The remaining avenue pursuant to which the beneficiary might be found to be eligible pursuant to her education and employment experience, considered together, would be:

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.

*See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

However, in order for USCIS to reach such a determination: "It must be clearly demonstrated that . . . the alien's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation . . . ." 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The employment verification letters submitted contain no indication that the beneficiary gained her work experience while working with peers, supervisors, or subordinates who had a minimum of a bachelor's degree in nursing, or in any other specific specialty, or its equivalent, which would be required for a USCIS determination pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Pursuant to the instant visa category, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, we would not typically further address the issue of the beneficiary's qualifications.

However, the evidence submitted in the instant case does not demonstrate that the beneficiary has a minimum of a bachelor's degree in *any* specific specialty or its equivalent. The evidence does not, therefore, show that the beneficiary is qualified to work in *any* specialty occupation position. The visa petition must be denied on this additional basis.

## VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the 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 proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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