



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 01 2014**

OFFICE: CALIFORNIA SERVICE CENTER

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 denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2013. In the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in hospital management/healthcare services that was established in 2006. In order to employ the beneficiary in what it designates as a clinical documentation specialist position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on July 10, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

I. Factual and Procedural History

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a clinical documentation specialist to work on a full-time basis at a wage of \$24 per hour (which equates to \$49,920 per year). In the letter of support dated March 28, 2013, the petitioner stated that the beneficiary "will be responsible for conducting clinically based concurrent and retrospective reviews of medical records to evaluate if the clinical documentation is reflective of the quality of care outcomes and reimbursement compliance for acute care services provided." The beneficiary "will work closely with the medical staff to facilitate appropriate clinical documentation of patient care." The petitioner also indicated that the beneficiary "will also conduct documentation for Physician Quality Reporting Standards, CMS Meaningful Use Criteria on all selected visits, and document findings." The petitioner also provided a detailed description of the proposed duties.

The petitioner further indicated that the U.S. Department of Health and Human Services published final rules for a new International Classification of Diseases (ICD-10) transition for the United States healthcare data system. The petitioner asserted that "the new ICD-10 will have a major impact on hospitals, such as [the petitioner], that use health care information containing diagnosis and inpatient procedure codes." The petitioner further indicated that "the position of Clinical Documentation Specialist is essential to [its] organization's ability to fully comply with the new

ICD-10 coding system." The petitioner stated that the beneficiary "is required to review patient medical records that contain clinical diagnosis and treatment, as determined by an advanced degreed, licensed physician, to ensure proper ICD-10 coding for compliance with the new regulations and to ensure that physician diagnosis and treatment options are accurate and complete."

The petitioner indicated that the "required qualifications are minimum of a bachelor's degree in Health Administration, Public Health, Medicine or related field." Later in the same letter, the petitioner added that "the Clinical Documentation Specialist must have the knowledge of clinical diagnosis and treatment that can be obtained by someone with at least a bachelor's degree in medicine, nursing, or a related healthcare field."

With the petition, the petitioner provided a copy of the beneficiary's diploma in Bachelor of Medicine and Surgery from the [REDACTED], and an evaluation report which states that the beneficiary's degree is equivalent to a first professional degree in medicine from a regionally accredited university in the United States.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Medical Records and Health Information Technicians" – SOC (ONET/OES Code) 29-2071.¹

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 18, 2013. The director outlined the specific evidence to be submitted.

In response to the RFE, counsel for the petitioner provided a brief and additional evidence. Further, the petitioner provided the following description of the proffered position:

Detailed Job Duty	Percent of Time
Reviewing inpatient medical records for identified payor populations as directed on admission and throughout hospitalization	8%
Analyzing clinical status of patient, current treatment plan and past medical history and identifying potential gaps in physician documentation	8%
Ensuring that clinical documentation reflects the level of service rendered to patients is complete, accurate and compliant with the regulations of the Center for Medicare and Medicaid Services	8%
Utilizing both clinical and coding knowledge to obtain appropriate documentation through extensive interaction with physicians, nursing, other patient caregivers and Health Information Management Staff	20%

¹ The occupational category "Medical Records and Health Information Technicians" is grouped among occupations designated as Job Zone 2. A designation of Job Zone 2 indicates that these occupations usually require a high school diploma. See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 2.

Performing initial chart reviews for documentation of inpatient admission criteria and assign working DRG within 24 hours of admission, on the working days	8%
Managing the concurrent medical record review for clinical documentation improvement throughout the hospital	3%
Identifying physician documentation issues, omissions, discrepancies and assisting physicians with improving documentation in the medical record	3%
Participating in scheduled case management and hospitalist meetings and exchanging information pertaining to clinical documentation, plan of care affecting coding and reimbursement	3%
Maintaining up to date working DRG and implementing clear strategies to effectuate improved quality of clinical documentation for all the select cases	3%
Assisting in the development of diagnosis/DRG specific queries to aid physicians with proper and precise documentation	3%
Facilitating the appropriate clinical documentation to ensure that the intensity of services and level of acuity of the patient is accurately reflected in the medical record	3%
Ensuring abnormal findings are addressed and patient's past medical history of conditions is appropriately documented	3%
Utilizing computer based tools in retrieving and maintaining inpatient census data, coding and audit tracking, as well as utilizing documentation improvement communication tools	3%
Ensuring resolution of all queries through follow-up with physicians prior to patient's discharge as well as post-discharge queries	8%
Assisting identifying problems, offering solutions and participating in resolutions	3%
Performing audits on the encoder software in order to facilitate ongoing auditing, monitoring and corrective action within the Clinical Documentation Improvement (CDI) process	3%
Assist staff, physicians, and financial services with payment denials, medical necessity and documentation issues as well as instructing staff on proper documentation in the medical record	3%
Analyze audit inpatient claims with medical necessity denials looking for patterns by service or by the ordering physician and implement clinical documentation improvements to reduce such denials	3%
Maintaining DRG assignment mismatch report of differences in DRG assignment by CDS and coders and providing information to supervising Manager or Director for performance evaluation of CDI process	3%
Participating in the education of all members of the patient care team on documentation guidelines, providing educational material to medical	3%

and nursing staff on updated clinical documentation requirements, and assisting in improving clinical documentation for compliance in quality of care measures	
Total	100%

Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on July 10, 2013. The petitioner submitted an appeal of the denial of the H-1B petition.

II. Standard of Review

In the appeal brief, counsel states that "burden of proof is the standard of a 'preponderance of the evidence', i.e. that it is more probable than not that the beneficiary qualifies." Counsel further asserts that "a review of the entire record establishes by a preponderance of the evidence offered in this proceeding is fully sufficient to sustain the burden of showing that the position of Clinical Documentation Specialist with [the petitioner] qualifies as a specialty occupation."

The AAO notes that with respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence

taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS examines 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. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. As will be discussed, in the instant case, that burden has not been met.

III. Specialty Occupation

The director denied the petition finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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), 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 AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² As previously discussed, the petitioner indicated in the LCA that the proffered position corresponds to the occupational category for "Medical Records and Health Information Technicians."³

² All of the AAO's references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

³ On appeal, for the first time, counsel asserts that "the position offered by [the petitioner] is not that of a Medical Records and Health Information Technician," but Clinical Documentation Specialist. Counsel states that "these two positions are not identical" and that "in order to comply with regulations and complete and obtain certification of the Labor Condition Applica[tion], the Petitioner is forced to choose an SOC code that best fits the offered position which, for lack of a better option, was determined to be Medical Records and Health Information Technician."

The AAO notes that the Standard Occupational Classification (SOC) System is used by DOL for classifying occupations. Under the SOC system, workers are classified at four levels of aggregation: (1) major group (of which there are 23); (2) minor group (of which there are 96); (3) broad occupation (of which there are 449); and (4) detailed occupation (of which there are 821). Occupations are classified based upon work performed, skills, education, training, and credentials.

The SOC system includes residual categories within the various levels of the system to permit the reporting of occupations not identified at the detailed level. That is, if an occupation is not included as a distinct detailed occupation in the structure, it is classified in the appropriate residual occupation. Residual occupations contain all occupations within a major, minor or broad group that are not classified separately. Thus, for the less populous occupations, residual categories (that is, "All Other" categories) have been created within most levels of the SOC system. Residual categories provide a complete accounting of all workers employed within an establishment and allow aggregation and analysis of occupational employment data at various levels of detail. For instance, examples of residual categories include: "Healthcare Practitioners and Technical Workers, All Other"- SOC (O*NET/OES) Code 29-9099.00 and "Healthcare

On appeal, counsel states that the director "relies on the [*Handbook*] in coming to the conclusion that the position does not have a clear standard for how one prepares for a career as a Clinical Documentation Specialist, and no requirement for a degree in a specific specialty." Counsel asserts that "[the *Handbook*] clearly states, and [USCIS] quotes, that a Medical Records and Health Information Technician position typically needs a bachelor's degree."

The AAO reviewed the chapter of the *Handbook* entitled "Medical Records and Health Information Technicians," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Medical Records and Health Information Technicians" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Moreover, contrary to counsel's claims, neither the *Handbook* nor the director in the decision states that a positions classified under the occupational category "Medical Records Information Technician position typically needs a bachelor's degree."

The *Handbook* indicates that the entry level education for this occupational category is a post-secondary non-degree award. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Medical Records or Health Information Technicians, on the Internet at <http://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm#tab-1> (last visited March 31, 2014).

The subchapter of the *Handbook* entitled "How to Become a Medical Records and Health Information Technician" states, in pertinent part, the following about this occupation:

Health information technicians typically need a postsecondary certificate to enter the occupation, although they may have an associate's degree. Many employers also require professional certification.

Education

Postsecondary certificate and associate's degree programs in health information technology typically include courses in medical terminology, anatomy and physiology, health data requirements and standards, classification and coding systems, healthcare reimbursement methods, healthcare statistics, and computer systems. Applicants to health information technology programs increase their chances of admission by taking high school courses in health, computer science, math, and biology.

Support Workers, All Other"- SOC (O*NET/OES) Code 31-9799. Approximately 5 percent of all employment falls under categories for which little meaningful information could be developed (i.e., "All Other" residual categories). For additional information regarding the SOC system and residual categories, see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, on the Internet at <http://www.bls.gov/home.htm> (last visited March 31, 2014). Thus, the AAO notes that if the petitioner believed that its proffered position did not fall under an occupational category identified at a distinct detailed level, it should have classified the position under the appropriate residual occupation.

* * *

Licenses, Certifications, and Registrations

Most employers prefer to hire health information technicians who have professional certification. A health information technician can earn certification from several organizations. Some organizations base certification on passing an exam. Others require graduation from an accredited program. Once certified, technicians typically must renew their certification regularly and take continuing education courses. Certifications include Registered Health Information Technician (RHIT) and Certified Tumor Registrar (CTR), among others. Many coding certifications require coding experience in a work setting.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Medical Records or Health Information Technicians, on the Internet at <http://www.bls.gov/ooh/healthcare/medical-records-and-health-information-technicians.htm#tab-4> (last visited March 31, 2014).

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* indicates that health information technicians typically need a postsecondary certificate to enter the occupation, although they may have an associate's degree. Thus, for this occupation, a baccalaureate or higher degree in a specific specialty, is not normally the minimum requirement for entry.

On appeal, counsel claims that the proffered position is "not that of a Medical Records and Health Information Technician," but clinical documentation specialist, and that "these two positions are not identical." Counsel states that "there is no discussion as to the degree requirements for the actual position of Clinical Documentation Specialist."

The AAO notes that in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of the *Handbook*'s support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other independent, authoritative/persuasive sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider all of the evidence presented to determine whether the proffered position satisfies the requirements for a specialty occupation.

In the instant case, the AAO reviewed the record of proceeding regarding the proffered position and the *Handbook* and finds that the *Handbook* does not support the proposition that the proffered position is one that meets the statutory and regulatory provisions of a specialty occupation. Thus, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on

the issue. Here, the petitioner did not provide other probative evidence (e.g. documentation from other authoritative/persuasive sources) to establish that the proffered position is a specialty occupation.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other independent, authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The petitioner did not submit documentation from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of job advertisements and printouts from the organization's websites. The AAO reviewed the documentation. Notably, the petitioner and counsel did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Upon review of the documents, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

In the Form I-129, the petitioner stated that it engaged in a hospital management and healthcare industry. In a letter of support, the petitioner indicated that it is "a progressive, innovative and rapidly expanding hospital management company in California." The petitioner stated that it has over 9,000 employees and that it currently owns and operates fourteen acute care hospitals.

In the Form I-129 and the LCA, the petitioner designated its business operations under NAICS code 561110.⁴ The AAO notes that this NAICS code is designated for "Office Administrative Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments primarily engaged in providing a range of day-to-day office administrative services, such as financial planning; billing and recordkeeping; personnel; and physical distribution and logistics for others on a contract or fee basis. These establishments do not provide operating staff to carry out the complete operations of a business.

See U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 561110-Office Administrative Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed March 31, 2014).

The NAICS code selected by the petitioner does not appear to correspond to the description it provided of its business operations. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

For the petitioner to establish that an organization is similar under this criterion of the regulations, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, it appears that an associate's degree in nursing is acceptable for the position with [REDACTED] indicates that a bachelor's degree is required, but does not state that any particular discipline is required. The

⁴ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and, each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed March 31, 2014).

posting from [REDACTED] indicates that a bachelor's degree in a healthcare related field is required, but does not provide any further information. Another posting states that graduation from an accredited health information technology/health information administration program is sufficient. The posting for [REDACTED] requires a bachelor's degree without further specification. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition.⁵

It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

⁵ On appeal, counsel notes that "[t]he choice of required degree may vary by employer depending on the EHR system they use, the infrastructure of the system and the additional personnel they have working on a project." In referring to regulatory definition of specialty occupation, counsel asserts that the "term *specific* does not mean a 'single' category." Counsel states that "[b]y definition, it means 'belonging or relating to a particular subject' . . . the definition does not limit the number of specific degrees that may apply to any individual position."

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

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

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

The AAO finds that the petitioner failed to establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As noted, the petitioner indicated in its support letter that the U.S. Department of Health and Human Services (HHS) published final rules in January 2009 for a new International Classification of Diseases (ICD-10) in order to transform the data system of the United States' health care system." The petitioner asserted that "the transition to the new ICD-10 will have a major impact on the hospitals, such as ours, that use health care information containing diagnosis and inpatient procedure codes." The petitioner further claimed that the proffered position "essential to [its] ability to fully comply with the new ICD-10 coding system." In support, the petitioner submitted documentation from the U.S. Department of Health and Human Services.

On appeal, counsel asserted that "it is clear that a vast number of local, state and federal organizations are having difficulty finding their way through the new healthcare regulations" and that "[i]t only stands to reason that a position, primarily born out of these new regulations, will be responsible for handling complex issues." However, the petitioner and its counsel did not provide sufficient information to establish how this transition to the new ICD-10 would entail the duties in the proffered position that are so complex or unique that they can only be performed by an individual with a bachelor's or higher degree in a specific specialty, or its equivalent.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Further, 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

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.

The AAO observes that the petitioner has indicated that the beneficiary is "uniquely qualified" for the position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area.

Consequently, as the petitioner fails to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent, 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).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

Moreover, the AAO notes that 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

The petitioner stated in the Form I-129 petition that it has approximately 9000+ employees and that it was established in 2006 (approximately seven years prior to the submission of the H-1B petition). The petitioner did not provide the total number of people it has employed to serve in the proffered position. On appeal, counsel suggested that this is a new position by stating that the proffered position was "primarily born out of these new regulations."

Counsel stated that "the petitioner hereby submits a copy of its present job announcement which specifies a minimum of a baccalaureate degree." Upon review, the AAO finds that the posting does not contain sufficient information to conclude that the job announcement is for the proffered position. The posting indicates that the job title is [REDACTED] Trainee" for occupations "healthcare support workers, all other." The advertisement further states that the degree required is bachelor or higher in health professions and related clinical sciences. However, the posting does not contain job duties and day-to-day responsibilities to establish that the job posting is for the same position as the proffered position. Further, the petitioner did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, the petitioner did not establish the posting is same or similar to the proffered position.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

However, upon review of the record of the proceeding, the AAO notes that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than similar positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

For example, in the letter dated March 28, 2013, the petitioner indicated that the beneficiary "has been employed with [its] organization through [a] Curricular Practical Training." The record contains an undated letter from [REDACTED] Director of Reimbursement Management for the petitioner. The letter states that the company is "delighted to offer [the beneficiary] an Internship with [the petitioner] starting September 4th, 2012 through December 31, 2012." Further, it states the following:

You will be working as an Administrative Assistant during the Internship. Your duties will include-promote, maintain, and improve health care delivery by assisting facility personnel to adopt improved performance, infection and quality control, ensure better documentation, review clinical charts, administer fiscal resources for health education programs, document activities, and record information.

While the proffered position is as a clinical documentation specialist, it appears that the duties described above as an administrative assistant would overlap with the proposed duties for the proffered position. As reflected in this letter, the petitioner has not presented the proposed duties

with sufficient specificity and substantive content to establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, also, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge requiring attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

IV. Conclusion and Order

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

ORDER: The appeal is dismissed.