



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: AUG 05 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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.

I. FACTUAL AND PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a health services provider established in 1963. In order to employ the beneficiary in what it designates as a registered nurse/ICU-CCU 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 the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the 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 and supporting materials. We reviewed the record in its entirety before issuing this decision.

For the reasons discussed below, we agree 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, and the petition will be denied.

II. THE PROFFERED POSITION

In the support letter dated July 1, 2013, the petitioner describes the duties and requirements of the proffered position as follows:¹

[The beneficiary] will perform initial systematic assessments of ICU-CCU patients; Interpreting the plan of ICU-CCU medical care; assessment of patients; devising the patient care plan; providing individualized nursing care and evaluating nursing care for groups of ICU-CCU patients-taking into account their medical, social, cultural and family circumstances. Engages and promotes multidisciplinary teamwork, including working alongside specialist doctors and nurses, health visitors, social workers, radiographers and physical therapists and classify patients according to

¹ It must be noted for the record that in the July 1, 2013 letter of support, the petitioner mistakenly referenced the beneficiary by another name. In addition, the petitioner mistakenly referenced the beneficiary in the letter in the masculine pronoun case. The record provides no explanation for these inconsistencies. Thus, we must question the accuracy of the letter and whether the information provided is correctly attributed to this particular position and beneficiary.

acuity for use in determining staffing need. She will review ancillary service reports, communicate abnormal results to physicians, and notify supervisor and physician when ancillary services are not completed. In his position, she plans for discharge of patient considering all available resources and documents discharge summary. She will perform nursing treatments and procedures and total patient care which may require expert skills and judgment in accordance with established nursing standards. She prepares and maintains reports, charts, records and forms as required by hospital, state and federal regulations and reviews work performed by LPS's and sides to ascertain that treatment and procedures are being performed in compliance with patient care plan and established hospital policy and procedure. She is directly involved in clinical care of patients, assessing plans, organizing and participating in programs that improve patient's well being.

It is obvious and has, in fact, been our experience that only a highly skilled professional with at least a Bachelor's (B.S.N.) Degree in Nursing as Registered Nurse in the Intensive Care/Critical Care specialty can perform this job.

With the petition, the petitioner provided a document entitled "[The petitioner], Position Description" for the position of staff nurse, along with an addendum entitled "Addendum to Staff Nurse Job Description ICCU." The document indicates that the position requires graduation from a state accredited or approved school of nursing.²

On October 4, 2013, the petitioner and counsel submitted further information regarding the proffered position and additional evidence. The submission included a document entitled "[The petitioner], ICU/CCU Staff Nurse Duties," which provided a revised description of the duties of the proffered position and the percentage of time the beneficiary will spend on each duty. Specifically, the document describes the duties of the proffered position as follows:

Percentage of Time Performing Task	Tasks Performed
1	Takes report from prior shift and gives report to oncoming shift which includes condition of patients, diagnosis, treatments, procedures given and required and other aspects of the plan of care.
25	Performs assessments and reassessments of patients[.]
1	Reviews ancillary service reports, communicates abnormal results to physicians and notifies supervisor and physician when ancillary services are not completed.
5	Interprets plan of medical care, evaluates

² Thus, the position description does not indicate that at least a bachelor's degree in nursing (or its equivalent) is required for the position.

	patients, and devises patient plan of care.
1	Maintains proper control of medicine, equipment and supplies specific to assigned unit.
1	Plans for discharge of patient considering all available resources and continuum of care needs.
1	Refers patients to chaplain, social worker, and agencies as required.
1	Provides a safe and secure environment for the patient.
15	Implements the patient plan of care by assigning tasks to nursing and non-nursing personnel, and <u>continuously assessing and evaluating patient care and patient's responses to nursing care.</u>
20	Performs nursing treatments and procedures and total patient care which may require expert skill and judgment in accordance with established nursing standards.
5	May accompany physicians when possible on rounds, communicates pertinent information about patient to the physician, and assist the physician with treatments and procedures or delegate if not possible.
5	Performs certain special procedures for which specialized training and supervised experience has been received.
1	Plans for and provides effective patient and family education.
5	Documents pertinent findings, plan of care and evaluation of care in the medical record.
1	Assists patients in performing activities of daily living to meet the basic human needs.
1	Prepares and maintains reports, charts, records and forms as required by hospital, state and federal regulations.
1	May accompany patients who are transferred to another medical facility.
1	Notifies supervisor, doctor, and/family/guardian as appropriate when patient's condition changes.
1	Observes and evaluates work performed by LPNs, Nursing Aides, ORTs, and Clerks to validate that treatments and procedures are

	being performed in compliance with the plan of care and established hospital guidelines.
1	Participates in teaching activities for other hospital personnel and nursing students.
1	Participates in the orientation of new employees.
1	Participates in committee meetings as requested.
1	Attends in-service programs per contract.
1	Assumes responsibility for personal professional development.
1	Assists in the development of review and revision of Nursing policies and procedures.
1	Respects the dignity and confidentiality of all matters relating to the patients.
1	Performs other related duties as required within the scope of the job classification.

III. STANDARD OF PROOF

In the appeal brief, counsel references the "preponderance of the evidence" standard. 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, U.S. Citizenship and Immigration Services (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; *see e.g., Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). As will be discussed, in the instant case, that burden has not been met.

IV. REVIEW OF THE DIRECTOR'S DECISION

Specialty Occupation

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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), 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 issue is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. To make this determination, we turn to the record of proceeding. To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in 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 make its determination whether the proffered position qualifies as a specialty occupation, we first turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which USCIS routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

USCIS recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The petitioner submitted a Labor

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Registered Nurses."

Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Registered Nurses" - SOC (ONET/OES Code) 29-1111.

We reviewed the chapter of the *Handbook* entitled "Registered Nurses," including the sections regarding the typical duties and requirements for this occupational category.⁴ However, the *Handbook* does not indicate that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a specific specialty, or its equivalent.

The subchapter of the *Handbook* entitled "How to Become a Registered Nurse" states the following about this occupation:

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

⁴ For additional information regarding the occupational category "Registered Nurses," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Registered Nurses, on the Internet at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-1> (last visited July 31, 2014).

who conduct research typically need a doctoral degree.

* * *

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Registered Nurses, available on the Internet at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited May 8, 2014).

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Rather, it states that there are three general paths for becoming a registered nurse, i.e., a bachelor's degree in nursing, an associate's degree in nursing, or a diploma from an approved nursing program. The *Handbook* states that associate's degrees and diploma programs for this occupation usually take two to three years to complete. The narrative of the *Handbook* indicates that generally, licensed graduates of any of the three types of educational programs (bachelor's, associate's, or diploma) qualify for

entry-level positions. It does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in nursing, or its equivalent.

In response to the director's RFE, the petitioner submitted several articles regarding nurses in support of the claim that the proffered position requires at least a bachelor's degree in nursing. However, contrary to the purpose for which the articles were submitted, the articles do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the position. For instance, the article from the [REDACTED] states that "[t]here are three routes to becoming a registered nurse: a 3-year diploma program typically administered in hospitals; a 3-year associate degree usually offered at community colleges; and the 4-year baccalaureate degree offered at senior colleges and universities." In addition, the article from [REDACTED] states that "[t]he path to a nursing degree involves three roads." The article further states that "[t]he first is a two year associate degree, the second is a three year diploma program and the third is a four year bachelor's degree from a college or university." The articles indicate that some employers are increasingly showing a preference for more highly educated nurses, but not that a baccalaureate or higher degree in nursing (or its equivalent) is normally required as the minimum for entry into these particular positions.

In addition, the petitioner submitted an opinion letter from [REDACTED]. The letter is dated September 5, 2013. In the letter, Ms. [REDACTED] states that the position of ICU/CCU staff nurse requires "the minimum of a Bachelor's Degree in Nursing or a related area, or the equivalent." Upon review of the letter, we are not persuaded by Ms. [REDACTED]'s assertions.

In support of the H-1B petition, the petitioner and counsel submitted a letter from [REDACTED]. The letter is dated September 5, 2013. In her letter, Ms. [REDACTED] 1) describes the credentials that she asserts qualify her to opine upon the nature of the proffered position and claims that she is "eminently qualified" to render an opinion on the matter; (2) lists the duties proposed for the beneficiary; (3) states her belief that the performance of the duties she lists requires at least a bachelor's degree in nursing or a related field, or the equivalent; and (4) claims that these qualifications represent a common standard for parallel positions among similar organizations.

We reviewed the opinion letter in its entirety; however, the letter from Ms. [REDACTED] is not persuasive in establishing the proffered position qualifies as a specialty occupation position. It does not constitute probative evidence of the proffered position satisfying any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As a preliminary matter, Ms. [REDACTED] has not adequately established her expertise to render the opinion made in this matter. For instance, although Ms. [REDACTED] provided a copy of her curriculum vitae, the document provides few details regarding her work and professional activities since 2009 –

⁵ The term "recognized authority" means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). 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. *Id.*

2010, approximately 3 to 4 years prior to the date of the letter. The curriculum vitae provides the following entries: (1) most recent presentation was in 2010; (2) most recent research and reports were in 2009; (3) most recent supervision was in 2009; (4) most recent grant was in 2008; (5) most recent services/committees were in 2009; and (6) most recently served as an invited speaker in 2010.

Further, Ms. [REDACTED]'s opinion letter does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that she is an authority on those specific requirements. Her curriculum vitae does not reflect that she has published any works on the academic requirements for nurses (or related issues).

Based upon a complete review of Ms. [REDACTED]'s letter and curriculum vitae, she has not provided sufficient information regarding the basis of her claimed expertise on this particular issue. The documentation does not establish her expertise pertinent to the current hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. With regard to the opinion letter itself, Ms. [REDACTED] does not reference or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which she may have consulted in the course of whatever evaluative process she may have followed. Ms. [REDACTED] provides a brief, general description of the petitioner's business activities; however, she does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that she has any in-depth knowledge of the petitioner's business operations gained through such means as visiting the petitioner's premises, observing the petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job.

Ms. [REDACTED] does not discuss the duties of the proffered position in any substantive detail. To the contrary, she simply listed the tasks in bullet-point fashion with little discussion. As a result, it is not evident that she analyzed the duties prior to formulating her letter. Furthermore, it must be noted that Ms. [REDACTED]'s letter does not indicate that she was informed as to the percentage of time that the beneficiary would spend performing each job duty (according to the petitioner, the beneficiary will spend 1% or less of her time performing 20 of the job duties, and 5% of her time performing four of the job duties). Thus, it has not been established that Ms. [REDACTED] has a full understanding of the primary duties of the proffered position. It appears that Ms. [REDACTED] would have found this information relevant for her opinion letter. Moreover, without this information, the petitioner has not demonstrated that Ms. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities.

Ms. [REDACTED] does not provide a substantive, analytical basis for her opinion and ultimate conclusion. Her opinion does not relate her conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational

requirements for the particular position here at issue. Moreover, she did not support her conclusions by providing copies or citations of any research material used. She has not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Ms. [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by Ms. [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which she reached such conclusions. Further, the opinion is not in accord with other information in the record.

As such, neither Ms. [REDACTED] findings nor her ultimate conclusions are worthy of deference, and her opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). For efficiency's sake, we hereby incorporate the above discussion regarding Ms. Green's opinion letter into our analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, 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 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 did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, we 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.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we

incorporate by reference the previous discussion on the matter.

We acknowledge that the record of proceeding contains an opinion letter from Ms. [REDACTED]. However, for the reasons previously discussed in detail, the opinion letter does not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as qualifying as a specialty occupation.

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).

We 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.

We reviewed the record in its entirety and find that the petitioner has not developed or established complexity or uniqueness as attributes of the proffered position (through the job duties, the petitioner's business operations or by any other means) that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. In the opinion letter, Ms. [REDACTED] lists several courses required for a nursing major. While related courses may be needed to perform certain duties of a registered nurse/ICU-CCU 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 petitioner's proffered position.

The evidence of record does not establish that this position is significantly different from other registered nurse positions such that it refutes the *Handbook's* information to the effect that an associate's degree or diploma is acceptable for these positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than registered nurse positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner claims that the beneficiary's academic background will assist her in carrying out the duties of the proffered 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 qualifies as a specialty occupation. The petitioner does not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, the petitioner has not established the proffered position as satisfying the second prong of the criterion at 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. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that 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.

While a petitioner may assert that a proffered position requires a specific degree, that statement 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 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 under employ 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner states in the Form I-129 petition that it has 4,800 employees and that it was established in 1963 (approximately 50 years prior to the filing of the H-1B petition). However,

upon review of the record, the petitioner did not provide documentary evidence regarding current or past recruitment efforts for this position. Furthermore, the petitioner did not submit documentation regarding employees who currently or in the past held the position. In a letter dated November 14, 2013, the petitioner acknowledges that an associate's degree in nursing is a pathway into the nursing profession, and that "[it] employs RNs with an associate's degree."

Upon review of the record, the petitioner has not provided probative 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.

The petitioner asserts 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, we note that the petitioner has not provided sufficient 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 (through the job duties, the petitioner's business operations or by any other means). In the appeal brief, counsel relies on Ms. [REDACTED] opinion letter to support the assertion that the proffered position satisfies this criterion of the regulations. However, as previously discussed in detail, the opinion letter does not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as qualifying as a specialty occupation.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are 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, in accordance with 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 not established 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. BEYOND THE DIRECTOR'S DECISION

A. Beneficiary Qualifications

With the initial petition, the petitioner submitted documentation regarding the beneficiary's credentials, including (1) a copy of the beneficiary's foreign diploma; (2) Bachelor of Science in

Liberal Arts and Natural Sciences from [REDACTED] in West Virginia; (3) West Virginia nursing license; (4) [REDACTED] Certificate; and (5) academic transcripts.

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.⁶

B. Itinerary

In the Form I-129, the petitioner indicates that the beneficiary will work at [REDACTED] West Virginia. On the LCA submitted in support of the H-1B petition, the petitioner states that the beneficiary will be employed at the following locations:

- [REDACTED]
- [REDACTED]

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I-129 shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations. Here, given the indications in the record that the beneficiary would work at multiple locations at some point during the requested period of employment and as the petitioner did not provide this initial required evidence when it filed the Form I-129 in this matter, the petition must also be denied on this additional basis.

VI. NURSING SHORTAGE

On a final note, we do not disagree with the petitioner that there may be a professional nursing shortage in the United States. The U.S. Department of Labor's own regulations recognize this shortage by virtue of its inclusion of professional nurses under Group I of Schedule A, which is

⁶ The petitioner submitted a copy of the beneficiary's [REDACTED] Certificate, however, an individual with a foreign associate's degree may obtain [REDACTED] certification. As such, the [REDACTED] certification is insufficient to establish that the beneficiary's credentials are the equivalent to a U.S. bachelor's degree or higher in nursing.

essentially a blanket certification that an alien filling such a position will not adversely affect the U.S. labor force. *See* 20 C.F.R. § 656.15(c)(2). In other words, the labor shortage of professional nurses is recognized, and the law currently provides a means by which an employer may directly petition an alien to permanently fill a professional nursing position without the need to first demonstrate to the U.S. Department of Labor that no U.S. workers are able and/or willing to fill this position. *See id.* In any event, such a determination is irrelevant to the instant temporary H-1B nonimmigrant petition. First, the law does not require that a labor shortage be shown in order to establish eligibility for an H-1B visa. Second, the law does not provide for an exception, such as a labor shortage, to the statutory definition of specialty occupation that requires a petitioner to demonstrate, in part, that "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) [is] a minimum for entry into the occupation in the United States." Section 214(i)(1)(B) of the Act.

Moreover, Congress specifically created two nonimmigrant visa categories for nurses, i.e., the H-1A and H-1C nursing classifications that either no longer exist or have any effect as a matter of law. More specifically, section 101(a)(15)(H)(i)(a) of the Act, relating to H-1A visas, was repealed by Sec. 2(c) of the Nursing Relief for Disadvantaged Areas Act of 1999, Act of Nov. 12, 1999, Pub. L. No. 106-95, 113 Stat. 1312. In addition, the H-1C visa classification, pursuant to section 101(a)(15)(H)(i)(c) of the Act, expired on December 20, 2009 and has not been renewed. Therefore, while certain nursing positions may qualify as H-1B specialty occupations, it is clear based on the foregoing that Congress does not currently intend to specifically provide a means by which temporary, nonimmigrant nurses may enter the United States to perform the duties of this occupation, regardless of any shortages that may exist.

VII. CONCLUSION AND ORDER

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 the AAO conducts 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 our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed 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; *Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.