



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JAN 24 2014

OFFICE: VERMONT 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.

On the Form I-129 visa petition, the petitioner describes itself as an employment/staffing agency established in 2003. In order to employ the beneficiary in what it designates as a healthcare quality assurance manager position, the petitioner seeks to continue 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 the AAO 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. 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's decision. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement

in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In the petition signed on August 1, 2012, the petitioner indicates that it is seeking to continue the beneficiary's services as a healthcare quality assurance manager on a full-time basis at the rate of pay of \$48,500 per year. In addition, the petitioner states that the beneficiary will work at [REDACTED]

In the August 1, 2012 letter of support, the petitioner states that the beneficiary will serve "as an H-1B nonimmigrant of distinguished merit and ability."¹ Further, the petitioner claims that "the beneficiary will work at the Company's client, [REDACTED] for [a] duration of three years." In addition, the petitioner indicates that the beneficiary will be responsible for the following duties:

The primary role of the beneficiary in the position of Healthcare Quality Assurance Manager involves planning, designing, implementing, and managing quality assurance programs for the healthcare services provided by the Care Center. The

¹ The petitioner states that the beneficiary will serve "as a person of distinguished merit and ability." However, to clarify, the AAO notes that the term "distinguished merit and ability" was defined in the regulations as "one who is a member of the professions . . . or who is prominent in his or her field." *See* 8 C.F.R. § 214.2(h)(4) (1991). The *Immigration Act of 1990* ("IMMACT 90") deleted the term "distinguished merit and ability" from the general H-1B description and replaced it with the requirement that the position be a "specialty occupation." Pub. L. No. 101-649, 104 Stat. 4978, 5020. The implementation of this change occurred on April 1, 1992. The *Miscellaneous and Technical Immigration and Naturalization Amendments of 1991* ("MTINA"), which was enacted on December 2, 1991, modified the H-1B definition to include fashion models of distinguished merit and ability. Pub. L. No. 102-232, 105 Stat. 1733. While the term "distinguished merit and ability" is still used with regard to fashion models, it must be noted that the term has not been applicable to the general H-1B classification ("specialty occupations") for over 20 years.

beneficiary will continue to research quality assurance initiatives in the healthcare field, design quality improvement programs, and develop quality assurance programs for implementation at the Care Center. She will direct the implementation of healthcare quality assurance programs and procedures, manage the execution of quality assurance plans, and implement required changes to healthcare quality plans. The beneficiary will manage healthcare quality programs to ensure a high level of quality of clinical care, the utilization of sterile techniques to prevent infection, the implementation of advanced technologies, medical and therapy equipments [sic], the implementation of emergency medical procedures, and adherence to quality improvement guidelines. Moreover, her responsibilities will include testing healthcare quality procedures, analyzing data on current procedures, determining required changes, and modifying healthcare quality assurance programs. Further, she must ensure that all personnel are trained in healthcare quality techniques, emergency medicine procedures, advanced medical technologies, and quality assurance methodologies.

The job duties of the beneficiary will include assessing current clinical systems and quality standards, researching clinical quality care standards, planning and devising healthcare quality assurance systems and plans, establishing healthcare procedures and quality assurance policies, implementing healthcare quality assurance plans, devising systems to measure healthcare quality services, and implementing and managing healthcare quality assurance plans. Additionally, the beneficiary will conduct observations and record data on clinical care and compliance with quality standards and programs and modify healthcare quality assurance plans, as required.

In this position, the beneficiary will be responsible for managing the quality of patient care and communications, ensuring quality improvement for medical service procedures, training medical staff in quality improvement and assurance policies and procedures, and directing the continued quality improvement of healthcare programs. The beneficiary will work closely with department managers and various healthcare personnel to address quality patient care issues with a goal of implementing and maintaining quality improvement activities.

The beneficiary will also be responsible for reviewing charts and files of Medicare patients to assure that there is proper documentation to maximize reimbursement, including performing verification checks of appropriate documentation; ensuring that the utmost quality of care is provided; establishing recommendations to improve the quality of care standards; and reviewing visit utilization to ensure that the appropriate orders of physicians and therapists are followed and ensuring adherence to healthcare plans. The beneficiary's job duties will also consist of serving as a resource and support system to professional healthcare personnel, including nurses, therapists and support staff, in matters of patient care and other issues that require comprehensive care. Further, the job duties of the proffered position will encompass working closely with all members of interdisciplinary teams and community

agencies; promoting public relations with patients, families, physicians, therapists and referring individuals and organization; and reviewing initial and recertification plans of care, therapy and rehabilitation and other documentation as required to assure that accuracy and appropriateness of care is rendered.

The beneficiary will arrange and perform annual assessments of clinical skills for all field staff, ensuring the completion of quality evaluations on an annual basis. [The beneficiary] will also oversee quality with respect to medical staff services including the credentialing of licensed medical staff and therapists to ensure compliance with regulatory agencies. In addition, she will be responsible for the Care Center's preparation for [REDACTED] and other accreditation processes necessary for continued compliance.

In addition, [the beneficiary] will be in charge of conferring with staff on a regularly scheduled basis to review the appropriateness of care for recertification in order to assist staff in fulfilling responsibilities and to assure that standards of care are maintained. The beneficiary will supervise the completion of documentation deficiencies and coordinate the assignment of appropriate clinicians to cases. Further, she will oversee records supervision and manage audits of charts to ensure completeness and compliance with Medicare guidelines. [The beneficiary] will also direct the orientation of new field staff; plan, implement and evaluate in-service and continuing education programs; and conduct scheduled staff meetings, in-service education programs, care conferences and care review.

Further, [the beneficiary] will manage the quality assurance program activities of the Care Center. In this role, she will provide medical and clinical expertise in the development of assessment tools; conduct on-site assessments of prepaid health plan management to assure compliance with federal and state laws and regulations and contractual standards and provisions; and implement current practices with respect to medical services delivery trends, clinical practices and standards, comparable medical practices and policies in other states, medical programs and policies of third party payers within the state and nationally, and statewide and national medical issues that may impact the Care Center and current standards and techniques for quality improvement processes.

Further, the petitioner states, "It is essential that the candidate for the proffered position of Healthcare Quality Assurance Manager have, at minimum, a Bachelor of Science Degree in Healthcare Management or Healthcare Administration, or the equivalent thereof."

With the initial petition, the petitioner submitted a copy of the beneficiary's foreign diploma and transcript, as well as a credential evaluation from [REDACTED]. The evaluation states that the beneficiary's foreign education is "the equivalent of a four-year Bachelor of Science Degree, with a dual major in Healthcare Administration and Nursing, from an accredited college or university in the United States."

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The petitioner indicated that the occupational classification for the proffered position is "Occupational Health and Safety Specialists" – SOC (ONET/OES Code) 29-9011, at a Level I (entry level) wage. The beneficiary's place of employment is listed as [REDACTED]

Furthermore, in support of the petition, the petitioner submitted: (1) copies of the beneficiary's Form W-2, Wage and Tax Statement, for 2011 and pay statements; (2) a contract between the petitioner and [REDACTED] effective December 28, 2009; (3) a work order between the petitioner and [REDACTED] effective May 14, 2012; and (4) an Employment Agreement between the petitioner and the beneficiary, effective April 12, 2012.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on November 20, 2012. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On February 13, 2013, the petitioner responded to the RFE. In a letter dated February 7, 2013, the petitioner provided additional information regarding the proffered position, along with the percentage of time the beneficiary would spend performing the duties of the position, as follows:

- 12% research and analysis** conduct research into best methods of healthcare delivery; research and analyze products, procedures, services, quality requirements; research and analyze health care requirements; assess health care needs; analyze results of health care performance and staff performance; determine optimal means of assisting patients; analyze procedures implemented by the client-facility; study existing policies and procedures; identify and analyze problems, plan tasks, implement solutions[.]
- 25% devise and implement plans for delivery and management of health care services** develop quantitative and analytical studies of operational data to assess the success of quality assurance programs; analyze statistical data on quality control initiatives; use quantitative analyses to modify and improve quality control programs; determine optimal plans and procedures for health care service delivery; plan delivery and management of health care services; create plans for delivery of health care services; research and analyze health care requirements, analyze health care needs, determine the most suitable means of assisting patients; implement health care service plans; provide data analysis, trending, reporting and presentation on individual and departmental statistics relating to the identification of areas requiring improvement; recommend and implement changes to improve efficiency and effectiveness of healthcare services; devise and implement healthcare services plans and quality improvement plans; participate in and organize site surveys and

management assessments of managed healthcare plans; develop corrective actions plans to comply with federal requirements for the improvement of managed care systems; design and conduct focused studies to monitor outcomes of specific care or services provided by managed care plans[.]

- 13% manage healthcare quality assurance programs** implement and manage healthcare quality assurance programs; coordinate healthcare quality work of work of Health Services Manager, Clinical Coordinator, Registered Nurses, License Practical Nurses, Physical Therapists, Occupational Therapists, Dietitians and other medical professionals; record observations; prepare statistical surveys of medical/data; implement changes to healthcare quality assurance programs; ensure quality levels of healthcare[.]
- 12% review and analyze actions taken** interview personnel and patients to evaluate effectiveness of quality assurance programs; prepare statistical studies of healthcare quality services; conduct analyses of operational data; analyze statistical data on quality control initiatives; conduct analyses of healthcare service delivery; prepare analytical reports assessing quality of client-facility's medical services; suggest improvements to healthcare service delivery; revise health care standards and procedures; develop training and related reward systems; develop systematic approaches for assuring high quality services; provide guidance on development, performance, and productivity issues; analyze effectiveness of new healthcare assurance programs[.]
- 12% health care quality assurance policies and procedures** review and analyze quality assurance standards; establish and implement standards for the delivery and management of health care services; interview personnel to evaluate the effectiveness of quality assurance programs; write quality assurance policies and procedures; develop and monitor detailed continuous quality improvement and action plans for prepaid health plans; develop, monitor, plan, execute, work with plans to achieve defined action targets; direct plans in achieving set long-term and short-term Quality Goals; use CQI process and on-going frequent monitoring to achieve targeted results[.]
- 13% education and training** determine personnel requirements; train personnel; implement personnel training programs; train staff in health care quality assurance issues and procedures; conduct programs geared to new staff members and advanced classes in quality assurance matters; attend seminars and conferences in healthcare quality assurance; keep apprised of developments in the field of quality assurance management to maintain current; work in conjunction with Education Department to develop and present training programs and resource materials for staff development, provider education, and client awareness[.]

13% manage development of specialized quality control programs research, analyze, develop healthcare quality control programs; implement healthcare quality control programs; devise and implement training and quality requires [sic] in areas of emergency medicines, sterile techniques, dialysis, new medical procedures and equipment; review and revise healthcare quality control programs and procedures; review and approve Validation Protocols and Reports; prepare annual service reviews; approve company SOPs, Master Batch Records, Stability Protocols and Reports, Test Methods and Specifications; develop Quality Process specifications and Quality Standard Reference inspection criteria[.]

In response to the RFE, the petitioner also submitted: (1) job vacancy announcements; (2) an H-1B approval notice for [REDACTED] along with a copy of her foreign academic credentials and pay statements; (3) an H-1B approval notice for [REDACTED] and (4) printouts from the National Association for Healthcare Quality (NAHQ) website.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on June 4, 2013. Counsel submitted an appeal of the denial of the H-1B petition. With the appeal, counsel submitted a brief. In the brief, counsel references the preponderance of the evidence standard.

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; 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.

The issue before the AAO 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, the AAO turns 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."

Upon a review of the record of proceeding, the AAO finds that there are discrepancies and inconsistencies with regard to the proffered position. For instance, there are discrepancies between what the petitioner claims about the occupational classification and level of responsibility inherent in the proffered position set against the contrary occupational classification and level of responsibility conveyed by the wage level indicated on the LCA submitted in support of the petition.²

² To promote the U.S. worker protection goals of a statutory and regulatory scheme that allocates responsibilities sequentially between DOL and the U.S. Department of Homeland Security (DHS), a prospective employer must file an LCA and receive certification from DOL before an H-1B petition may be submitted to the U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 214.2(h)(4)(i)(B)(1); 20 C.F.R. § 655.700(b)(2). Upon receiving DOL's certification, the prospective employer then submits the certified LCA to USCIS with an H-1B petition on behalf of a specific worker. 8 C.F.R. § 214.2(h)(2)(i)(A), (2)(i)(E), (4)(iii)(B)(1). DOL reviews LCAs "for completeness and obvious inaccuracies," and will certify the LCA absent a determination that the application is incomplete or obviously inaccurate. Section

As previously discussed, the petitioner submitted an LCA in support of the petition that designated the proffered position to the corresponding occupational category of "Occupational Health and Safety Specialists" - SOC (ONET/OES) code 29-9011.³ The wage level for the proffered position in the LCA corresponds to a Level I (entry). The prevailing wage source is listed in the LCA as the OES (Occupational Employment Statistics) OFLC (Office of Foreign Labor Certification) Online Data Center.⁴ The LCA was certified on July 26, 2012. The AAO notes that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.⁵

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job

212(n)(1)(G)(ii) of the Act. In contrast, USCIS must determine whether the attestations and content of an LCA correspond to and support the H-1B visa petition. 20 C.F.R. § 655.705(b); *see generally* 8 C.F.R. § 214.2(h)(4)(i)(B).

³ Later in this decision, the AAO will discuss the petitioner's claim that the proffered position falls under the occupational category "Occupational Health and Safety Specialists."

⁴ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. *See* Bureau of Labor Statistics, U.S. Dep't of Labor, on the Internet at <http://www.bls.gov/oes/>. The OES All Industries Database is available at the Foreign Labor Certification (OFLC) Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatacenter.com/>.

⁵ For additional information regarding prevailing wage determinations, *see* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

duties.⁶ The U.S. Department of Labor (DOL) emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

In the instant case, the petitioner claims that the duties of the proffered position are complex, unique and/or specialized. For instance, in the August 1, 2012 letter of support, the petitioner stated that "the proffered position of Healthcare Quality Assurance Manager is complex and specialized." In addition, the petitioner stated that the beneficiary will be responsible for "managing quality assurance programs for the healthcare services provided by the Care Center" and "managing the quality of patient care and communications." Further, the petitioner claimed that the beneficiary will "supervise the completion of documentation deficiencies" and "oversee records supervision and manage audits of charts." The petitioner also indicated that the beneficiary will "direct the orientation of new field staff."

In the February 7, 2013 letter, submitted in response to the director's RFE, the petitioner referenced the "highly analytical, quantitative, and technical nature of the professional job duties of the position." In addition, the petitioner stated that the position "involves the analysis and application

⁶ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

of advanced technical, quantitative, and analytical concepts arising from a bachelor's-level educational foundation in healthcare administration, healthcare management, medical science, clinical healthcare services, operations management, health information management, clinical healthcare program management, quality control, and related areas." Moreover, the petitioner asserted that "the beneficiary will continue to play a leadership role to ensure quality management within the client-facility." The petitioner also claimed that "[t]he job duties of the proffered position are highly technical." In addition, the petitioner stated that the position is "complex." The petitioner continued by stating that "a review of the proposed job duties for the instant position clearly confirms that the job duties required for the instant position are highly specialized and complex." According to the petitioner, the job duties are "highly complex and specialized and require a professional with expertise in healthcare services management, healthcare program planning, healthcare quality control, clinical medical care, health education, discharge planning, and the review and analysis of medical records and insurance requirements."

The AAO notes that this characterization of the position and the claimed duties, responsibilities and requirements conflict with the wage-rate element of the LCA, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

The AAO notes that the prevailing wage of \$48,381 per year on the LCA corresponds to a Level I for the occupational category of "Occupational Health and Safety Specialists" for Kings County (Brooklyn, New York).⁷ The petitioner stated in the Form I-129 petition and LCA that the offered salary for the proffered position was \$48,500 per year. Notably, if the proffered position were designated as a higher level position, the prevailing wage at that time would have been \$60,694 per year for a Level II position, \$72,987 per year for a Level III position, and \$85,301 per year for a Level IV position.

⁷ For additional information regarding the prevailing wage for occupational health and safety specialists in Kings County, see the All Industries Database for 7/2012 - 6/2013 for Occupational Health and Safety Specialists at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatabase.com/OesQuickResults.aspx?code=29-9011&area=35644&year=13&source=1> (last visited January 6, 2014).

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. As such, the petitioner has failed to establish that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted.

The AAO also notes that this aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. 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. 591-92.

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the

petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and knowledge required for the proffered position, along with the petitioner's claimed academic requirements, are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

For the foregoing reasons, a review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved for this reason.

The AAO will now address the director's basis for denial of the petition, namely 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 efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the inconsistencies and discrepancies in the record of proceeding regarding the beneficiary's proposed employment.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 the normal minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a healthcare quality assurance position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation, as required by the Act.

As recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

In the support letter dated August 1, 2012, the petitioner stated that it enclosed "a copy of a contract executed by and between the Company and its client, [REDACTED] specifying the beneficiary's work location." The AAO reviewed the document, but with regard to the beneficiary, it simply provides her name, job title, term and rate. The document lacks information regarding the duties and requirements for the position. Moreover, the petitioner claimed that the beneficiary has served in the proffered position for approximately three years. However, while the description of the proffered position provided by the petitioner contains a lengthy list of general duties, it fails to convey specific information regarding the beneficiary's actual daily duties. The duties of the position as provided by the petitioner fail to adequately describe the substantive nature of the work that the beneficiary performs within the client's business operations. It fails to provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position, so as to persuasively support the claim that the beneficiary is employed in the capacity specified in the petition. Further, the petitioner did not submit a written statement or other documentation from the client's authorized official regarding the functions of the proffered position. The petitioner failed to submit documentary evidence to establish the actual day-to-day duties performed by the beneficiary.

Here, the record of proceeding in this case is devoid of sufficient information from the end-client, regarding the specific job duties to be performed by the beneficiary for that company. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary, therefore, precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Accordingly, the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Although the record of proceeding lacks documentation establishing the substantive nature of the work to be performed, the AAO will nevertheless continue its discussion with regard to whether the proffered position as described would qualify as a specialty occupation under the applicable statutory and regulatory provisions.

The AAO recognizes DOL's *Occupational Outlook Handbook* (hereinafter the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸ As previously noted, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Occupational Health and Safety Specialists." When reviewing the *Handbook*, the AAO must note again that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁹ That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation should be considered for positions in which the employee will serve as a research fellow, worker in training, or an intern.

The AAO reviewed the chapter of the *Handbook* entitled "Occupational Health and Safety Specialists" but is not persuaded that the duties of the proffered position are encompassed by the duties of this occupational classification. The *Handbook* describes the duties of "Occupational Health and Safety Specialists" in the subsection entitled "What Occupational Health and Safety Specialists Do" and states the following about the duties of this occupation:

Occupational health and safety specialists analyze many types of work environments and work procedures. Specialists inspect workplaces for adherence to regulations on safety, health, and the environment. They also design programs to prevent disease or injury to workers and damage to the environment.

Duties

Occupational health and safety specialists typically do the following:

- Identify chemical, physical, radiological, and biological hazards in the workplace
- Collect samples of potentially toxic materials for analysis
- Inspect and evaluate workplace environments, equipment, and practices to ensure that safety standards and government regulations are being followed
- Recommend measures to help protect workers from potentially hazardous work conditions

⁸ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

⁹ For additional information, see DOL's guidance entitled "Prevailing Wage Determination Policy Guidance" regarding a Level I wage rate. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

- Investigate accidents to identify their causes and to determine how they might be prevented in the future

Occupational health and safety specialists, also known as occupational safety and health inspectors, examine lighting, equipment, ventilation, and other conditions that could affect employee health, safety, comfort, and performance. Workers usually are more alert and productive in environments that have specific levels of lighting or temperature.

Specialists seek to increase worker productivity by reducing absenteeism and equipment downtime. They also seek to save money by lowering insurance premiums and workers' compensation payments and by preventing government fines. Some specialists develop and conduct employee safety and training programs. These programs cover a range of topics, such as how to use safety equipment correctly and how to respond in an emergency.

Specialists work to prevent harm not only to workers but also to property, the environment, and the public by inspecting workplaces for chemical, radiological, and biological hazards. Specialists who work for governments conduct safety inspections and can impose fines.

Occupational health and safety specialists work with engineers and physicians to control or fix potentially hazardous conditions or equipment. They also work closely with occupational health and safety technicians to collect and analyze data in the workplace. For more information, see the profile on occupational health and safety technicians.

The tasks of occupational health and safety specialists vary by industry, workplace, and types of hazards affecting employees.

Environmental protection officers evaluate and coordinate storing and handling hazardous waste, cleaning up contaminated soil or water, and other activities that affect the environment.

Ergonomists consider the design of industrial, office, and other equipment to maximize workers' comfort, safety, and productivity.

Health physicists work in locations that use radiation and radioactive material, helping to protect people and the environment from hazardous radiation exposure.

Industrial hygienists identify workplace health hazards, such as lead, asbestos, noise, pesticides, and communicable diseases.

Loss prevention specialists work for insurance companies. They inspect the facilities that are insured and suggest improvements to prevent losses.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Occupational Health and Safety Specialists, on the Internet at <http://www.bls.gov/ooh/healthcare/occupational-health-and-safety-specialists.htm#tab-2> (last visited January 6, 2014).

In the section of the *Handbook* entitled "Work Environment," the *Handbook* states that occupational health and safety specialists work in the following industries:

Occupational health and safety specialists held about 58,700 jobs in 2010. They work in a variety of settings, such as offices, factories, and mines. Their jobs often involve considerable fieldwork and travel.

Thirty eight percent of occupational health and safety specialists worked for federal, state, and local governments in 2010. In the federal government, specialists are employed by various agencies, including the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor. Most large government agencies employ specialists to protect agency employees. In addition to working for governments, occupational safety and health specialists worked in management, scientific, and technical consulting services; education services; hospitals; and chemical manufacturing.

Occupational health and safety specialists may be exposed to strenuous, dangerous, or stressful conditions. Specialists use gloves, helmets, and other safety equipment to minimize injury.

Handbook, 2012-13 ed., Occupational Health and Safety Specialists, on the Internet at <http://www.bls.gov/ooh/healthcare/occupational-health-and-safety-specialists.htm#tab-3> (last visited January 6, 2014).

In the Form I-129 petition, the petitioner describes itself as an employment/staffing agency with 74 employees. The AAO notes that in the Form I-129 the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 561310.¹⁰ Notably, the U.S. Department of Commerce, Census Bureau website states that "561310 is not a valid 2012 NAICS code." See U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 561310, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited January 6, 2014).

¹⁰ 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 U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited January 6, 2014).

The petitioner did not submit documentation regarding the business operations of its client, [REDACTED] the location where the beneficiary will actually be employed.

The AAO reviewed the record of proceeding, but is not persuaded by the petitioner's claim that the proffered position falls under the occupational category for occupational health and safety specialist positions. The *Handbook* indicates that the academic background for this occupation is in occupational health, safety, or a related scientific or technical field, such as engineering, biology, or chemistry. Although a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation, the AAO notes that the beneficiary does not possess a degree in one of the fields listed in the *Handbook* as typically needed or required for this occupation.¹¹

In the instant case, the petitioner submitted a broad description of the proffered position, but the statements do not include information regarding the day-to-day tasks of the position and do not delineate the actual work that the beneficiary will perform. Nevertheless, upon review of the record of proceeding and the chapter regarding "Occupational Health and Safety Specialists" in the *Handbook*, the AAO finds that the petitioner has not provided sufficient evidence to demonstrate that its healthcare quality assurance manager position has the same or similar duties, tasks, knowledge, work activities, requirements, etc. that are generally associated with "Occupational Health and Safety Specialists." For example, the petitioner does not claim that the beneficiary will identify chemical, physical, radiological, and biological hazards in the workplace. In addition, the petitioner does not claim that the beneficiary will collect samples of potentially toxic materials for analysis.

Further, the petitioner does not assert that the beneficiary will inspect and evaluate workplace environments, equipment, and practices to ensure that safety standards and government regulations are being followed. The record of proceeding does not establish that the beneficiary will recommend measures to help protect workers from potentially hazardous work conditions. Moreover, the petitioner does not claim that the beneficiary will investigate accidents to identify their causes and to determine how they might be prevented in the future. Additionally, the duties of the proffered position do not indicate that the beneficiary will examine lighting, equipment, ventilation, and other conditions that could affect employee health, safety, comfort, and performance.

¹¹ Within the record of proceeding, the petitioner indicated that a degree in healthcare management or healthcare administration is acceptable for the proffered position. Furthermore, the petitioner claims the beneficiary is qualified to serve in the proffered position because her foreign education is equivalent to a degree in healthcare administration and nursing. The narrative of the *Handbook* does not report that a degree in healthcare administration and/or nursing prepares an individual for entry into the occupational category "Occupational Health and Safety Specialists." Rather, the *Handbook* states that a degree in occupational health, safety, engineering, biology, or chemistry are typically needed for this occupational category, and that a degree in industrial hygiene, health physics, or a related subject may be required for some positions. The *Handbook* continues by stating that preparation for this occupation typically includes courses in radiation science, hazardous material management and control, risk communications, and respiratory protection.

The duties of the proffered position, to the extent that they are depicted in the record of proceeding, indicate that the beneficiary may, at best, perform a few tasks in common with this occupational group, but not that the beneficiary's duties would constitute an occupational health and safety specialist position, and not that they would require the range of specialized knowledge that characterizes this occupational category.¹² As the petitioner has not demonstrated that the proffered position falls under the occupational category of "Occupational Health and Safety Specialists," the AAO will not further address this occupational category as it is not relevant to this proceeding.¹³

The director reviewed the job description provided by the petitioner and found that the proffered position falls under the occupational classification of "Registered Nurses." The *Handbook* states, in part, the following about this occupational category:

¹² DOL provides guidance for selecting the most relevant occupational classification. The "Prevailing Wage Determination Policy Guidance" issued by DOL, states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification. . . .

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

¹³ 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.

There are 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, an example of a residual category is: "Managers, All Other" – SOC Code 11-9199. 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*, 2012-13 ed., on the Internet at <http://www.bls.gov/home.htm> (last visited January 6, 2014). Thus, 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.

Registered nurses (RNs) provide and coordinate patient care, educate patients and the public about various health conditions, and provide advice and emotional support to patients and their family members.

Duties

Registered nurses typically do the following:

- Record patients' medical histories and symptoms
- Give patients medicines and treatments
- Set up plans for patients' care or contribute to existing plans
- Observe patients and record the observations
- Consult with doctors and other healthcare professionals
- Operate and monitor medical equipment
- Help perform diagnostic tests and analyze results
- Teach patients and their families how to manage their illnesses or injuries
- Explain what to do at home after treatment

Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides. For more information, see the profiles on licensed practical and licensed vocational nurses; nursing aides, orderlies, and attendants; and home health and personal care aides.

Registered nurses sometimes work to promote general health by educating the public on warning signs and symptoms of disease. They might also run general health screenings or immunization clinics, blood drives, or other outreach programs. Most registered nurses work as part of a team with physicians and other healthcare specialists.

Some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as nurse educators, healthcare consultants, public policy advisors, researchers, hospital administrators, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

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

- A specific health condition, such as a diabetes management nurse who helps patients with diabetes or an oncology nurse who helps cancer patients
- A specific part of the body, such as a dermatology nurse working with patients who have skin problems
- A specific group of people, such as a geriatric nurse who works with the elderly or a pediatric nurse who works with children and teens

- A specific workplace, such as an emergency or trauma nurse who works in a hospital or stand-alone emergency department or a school nurse working in an elementary, middle, or high school rather than in a hospital or doctor's office.

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

Handbook, 2012-13 ed., Registered Nurses, on the Internet at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-2> (last visited January 6, 2014).

The subchapter of the *Handbook* entitled "How to Become a Registered Nurse" states, in part, 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 must also be licensed.

Education

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

Bachelor's degree programs usually include more training in the physical and social sciences, communication, leadership, and critical thinking, which is becoming more important as nursing practice becomes more complex. They 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.

Many registered nurses with an ADN or diploma find an entry-level position and then take advantage of tuition reimbursement benefits to work toward a BSN by completing 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.

Handbook, 2012-13 ed., Registered Nurses, on the Internet at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-2> (last visited January 6, 2014).

The *Handbook* does not report that, as an occupational group, "Registered Nurses" require at least a bachelor's degree in a specific specialty, or its equivalent.¹⁴ More specifically, the *Handbook* 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. Thus, for this occupation, a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry.

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, as described in the record of proceeding, is one that meets the statutory and regulatory provisions of a specialty occupation. As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or its equivalent, 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.¹⁵ 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." 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

¹⁴ According to the *Handbook*, some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as nurse educators, healthcare consultants, public policy advisors, researchers, hospital administrators, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

¹⁵ 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 authoritative 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 petitioner has established eligibility for the benefit sought. Upon review of the record, the petitioner has failed to meet its burden in this regard.

The AAO observes that in the February 7, 2013 letter, submitted in response to the RFE, the petitioner claims that USCIS has previously approved H-1B cases for the proffered position of healthcare quality assurance manager. In response to the RFE, the petitioner submitted copies of H-1B approval notices as evidence that USCIS has previously approved H-1B cases submitted by the petitioner. However, the petitioner did not submit copies of the petitions and supporting documents. The documentation provided by the petitioner does not contain key information regarding the referenced positions, including the job titles, day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received to make a legitimate comparison of the referenced positions to the proffered position.

If a petitioner wishes to have unpublished service center or AAO decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

As the record of proceeding does not contain copies of the petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was not required to request and/or obtain a copy of the petitions cited by the petitioner.

Nevertheless, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition, the AAO would not be bound to follow the contradictory decision of a

service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 into the occupation. 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 failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record of proceeding 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 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 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, the AAO incorporates by reference its previous discussion on the matter. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry into those positions.

In response to the director's RFE, the petitioner submitted copies of job advertisements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

In the Form I-129 petition, the petitioner describes itself as an employment/staffing agency established in 2003, with 74 employees. The petitioner claims that it has a gross annual income of \$5.8 million. Although requested in the Form I-129 petition, the petitioner did not state its net annual income.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation 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 advertising 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.

The AAO reviewed the job advertisements submitted by the petitioner. The petitioner 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 documentation, the petitioner fails 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.

For instance, the advertisements include positions with [REDACTED] ("a world renowned organization dedicated to the progressive control and cure of cancer through programs of patient care, research, and education") and [REDACTED] ("a substance abuse treatment AND mental health milieu"). Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner also submitted a job posting for [REDACTED] (for which no information was provided). Consequently, the record does not contain sufficient information regarding the advertising organization to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organization is similar to it. Upon review, the AAO finds that the petitioner has not provided any information regarding which aspects or traits (if any) it shares with these advertising organizations.

Moreover, some of the advertisements do not appear to be for parallel positions. More specifically, the petitioner submitted a posting for a quality assurance manager with [REDACTED] which requires a degree and "five years [of] experience in quality assessment or research." The petitioner also provided a posting for a quality assurance specialist position with [REDACTED] which requires a degree and "[f]our (4) years [of] professional level experience in a medical or mental health setting or equivalent experience and abilities." As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I (entry level) position. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, 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 instance, the posting for a quality assurance manager with [REDACTED] indicates that a "Bachelor's degree in a health-related field" is required. 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. In addition, the petitioner submitted a posting for a quality coordinator with [REDACTED] which indicates "Bachelor degree in healthcare or business administration preferred." Obviously, a *preference* for a degree in healthcare or business administration is not an indication of a minimum *requirement*. Thus, the qualifications listed in the postings do not support a finding that the advertised positions require at least a bachelor's degree in a *specific specialty*, or its equivalent.

The AAO reviewed all of the advertisements submitted in support of the petition.¹⁶ However, as discussed, 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 for parallel positions in organizations similar to the petitioner.

It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty 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 the 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").

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, 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.

¹⁶ 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.

In the instant case, the AAO acknowledges that the petitioner may believe that the duties of the proffered position are complex or unique. However, the AAO reviewed the record in its entirety and finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. That is, 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.

More specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even essential, in performing certain duties of a healthcare quality assurance manager 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.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, the wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; her work will be closely supervised and monitored; she will receive specific instructions on required tasks and expected results; and her work will be reviewed for accuracy.

Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁷

¹⁷ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Moreover, 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. The record lacks sufficient probative evidence to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational 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 requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not sufficiently explain or clarify at any time in the record 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 failed to establish the proffered position as satisfying this 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. The AAO usually reviews 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 establish that the imposition of a degree requirement by the petitioner (or, in this case, by the client) 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.

While a petitioner (or client) may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the 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").

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.

As previously noted, the petitioner claims that USCIS has previously approved H-1B cases for the petitioner for the same or similar position. However, the petitioner did not submit copies of the prior H-1B petitions and the respective supporting documents. As the record of proceeding does not contain sufficient evidence of the prior petitions to determine whether they are the same or similar positions, there are no underlying facts to be analyzed and, therefore, no prior, substantive reasons could have been provided to explain why deference to the approval of the prior H-1B petitions were not warranted. Again, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act.

In response to the director's RFE, the petitioner states that "the Company consistently has hired Healthcare Quality Assurance Managers with the minimum educational prerequisite of a bachelor's degree in Healthcare Administration, Healthcare Management, or a related field." In support of this assertion, the petitioner submitted the foreign academic credentials and pay statements of [REDACTED]. [REDACTED] foreign diploma indicates that she was granted a degree in nursing.¹⁹ Notably, the petitioner did not submit the academic credential evaluation for [REDACTED] to establish that her foreign education is equivalent to a U.S. bachelor's degree in a specific specialty.

¹⁸ The petitioner also provided an H-1B approval notice for [REDACTED]. However, the petitioner did not submit documentation to establish her employment with the petitioner (such as pay records and/or Form W-2s) and her credentials (e.g., copies of transcripts, diplomas).

¹⁹ In response to the RFE, the petitioner claimed that "the subject position of Healthcare Quality Assurance Manager cannot be satisfied by a licensed Registered Nurse without a bachelor's degree in healthcare administration or healthcare management." The evidence provided indicates that [REDACTED] possesses a degree in nursing. No explanation was provided by the petitioner or its counsel.

Further, the AAO observes that the pay statements indicate that [REDACTED] is being paid at the rate of \$32.00 per hour (\$66,560 per year). The rate of pay for [REDACTED] is significantly higher than the offered salary to the beneficiary of \$48,500 per year. Based upon the rate of pay, it appears that [REDACTED] is employed in a more senior or different position. The petitioner failed to provide the job duties and day-to-day responsibilities of the [REDACTED] position. Further, the petitioner did not submit information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, it is unclear whether the duties and responsibilities of this individual are the same or similar to the proffered position.

Moreover, the petitioner stated in the Form I-129 petition that it has 74 employees and that it was established in 2003 (approximately nine 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. Consequently, it cannot be determined how representative the petitioner's claim regarding *one or two individuals over a nine year period* is of the petitioner's normal recruiting and hiring practices. It must be noted that without further information, the submission of *the educational credentials of one individual* is not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

The AAO reviewed the record of proceeding but finds that 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.

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, 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 positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Further, there is a lack of evidence substantiating the petitioner's assertions.

Moreover, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupational category. The petitioner designated the position as a Level I position (the lowest of four assignable wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered

position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

Upon review of the record, the AAO finds that the petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. 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. 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.

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

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.²⁰ 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; *see e.g., Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

²⁰ As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, the AAO will not address and will instead reserve its determination on the additional issues and deficiencies that it observes in the record of proceeding with regard to the approval of the H-1B petition, including (but not limited to) the lack of evidence establishing that the petitioner will have and maintain the requisite employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker).