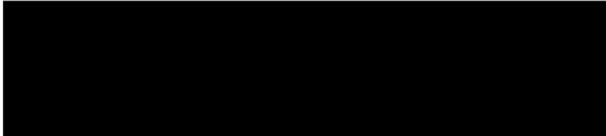


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D<sub>2</sub>

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2010

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, submitted July 22, 2009, the petitioner stated that it is a "Provider of healthcare services" with 65 employees. To employ the beneficiary in what it designates as a quality improvements manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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, the position must also meet one of the following criteria:

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

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

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. 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 professions.

These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

With the petition, counsel provided a letter from the petitioner's president. As to the duties and educational requirements of the proffered position, the petitioner's president stated:

[The beneficiary] is being offered a full-time employment [sic] as Quality Improvements Manager. Specifically, she will coordinate quality activities for more than 100 patients, i.e., staff education, clinical risk management/patient satisfaction, analyze outcome reports, determine areas for improvement, track trends and compile information for management, prepare/review procedural manual.

The normal minimum requirements for the performance of the above job duties are a bachelor's degree in Nursing or related field. These minimum prerequisites [sic] for the offered position clearly mark it as a specialty occupation, one requiring a person who has at least a bachelor's degree.

In providing for the minimum requirements for the above position, Petitioner has relief [sic] on the [U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*] discussion on Health and Medical Managers (11-9111.00). According to the [*Handbook*], "A bachelor's degree is the minimum formal education required for these occupations. x x x" [sic] The Quality Assurance Manager will be responsible for overseeing a company with more than 100 patients. The duties of the proffered position are so specialized and complex that knowledge gained from a bachelor's education is the only measure of whether the employee will be able to perform the duties of the job.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

Because the evidence in the record was insufficient to demonstrate that the visa petition was approvable, the service center, on July 29, 2009 issued a RFE in this matter. The service center stated that the duties of the proffered position appear to be more consistent with the duties of a nurse manager than a quality improvements manager. The service center requested, *inter alia*, that the petitioner provide a more detailed description of the duties of the proffered position, and that the petitioner explain "in layman's terms . . . what differentiates the proffered position from other related 'non-specialty occupation' positions" and describe the duties of the proffered position that are so "discretionary, demanding, complex, highly advanced, specialized, or sophisticated" such that they require a bachelor's degree.

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online, accessed December 20, 2010.

In response, counsel provided copies of the petitioner's Form UI-3/40 Employer's Contribution and Wage Reports for all four quarters of 2008. Those quarterly reports show that the petitioner employed 54 people during the first quarter, 58 during the second quarter, 36 during the third quarter, and 31 during the fourth quarter of 2008. The AAO notes that those numbers and the general decline do not support the assertion on the visa petition, filed on July 22, 2009, that the petitioner then had 65 employees.

Counsel also provided his own letter, in which he stated that the *Handbook* supports the position that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Counsel cited the *Handbook* section pertinent to Medical and Health Services Managers in support of that proposition.

Counsel also provided his own much longer description of the duties of the proffered position, but did not explain why those duties, or any of them, require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, counsel provided printouts of vacancy announcements taken from popular on-line job search websites and asserted that they, too, demonstrate that the proffered position qualifies as a specialty occupation.

The director denied the visa petition on September 23, 2009, finding, as was noted above, that the petitioner failed to demonstrate that it would employ the beneficiary in a specialty occupation.

On appeal, counsel asserted that the proffered position was correctly characterized as a Medical and Health Service Manager position and that the *Handbook* shows that entry into such a position normally requires a minimum of a bachelor's degree. Counsel cited to the *Merriam-Webster* Online dictionary for a definition of quality assurance and web content of QAPROJECT.ORG for a discussion of the focus of quality assurance.

Counsel stated that the beneficiary would "rely on knowledge and skills obtained through her baccalaureate education (BS Nursing) and work experience" and added, "One cannot expect to monitor and ensure quality assurance of the services of petitioner and/or deliver the core principles above discussed without the formal training and experience." Counsel did not, however, demonstrate that any of the duties of the proffered position could not be performed adequately without a bachelor's degree in a specific specialty or its equivalent.

Counsel also cited the vacancy announcements provided as evidence that a degree requirement is common to the industry in parallel positions among similar organizations.

This discussion of the vacancy announcements submitted includes those submitted in response to the RFE and those submitted on appeal.

One vacancy announcement was placed by a staffing company to find a Registered Nurse/Quality Improvement Manager to work for its unidentified client in Richmond, Virginia as a consultant. The announcement states that the position requires a registered nurse with a bachelor's degree, but not that the bachelor's degree must be in nursing or any other specific specialty. The AAO notes that a

registered nurse need not necessarily have a bachelor's degree, and that if she has a bachelor's degree it need not necessarily be in nursing. Further, that announcement does not indicate the size of the unidentified client seeking to fill that position and, although it states that the client is in healthcare services, it does not more specifically indicate the industry it is in.

Another vacancy announcement is for a Manager – Quality Improvement for the [REDACTED] in Houston, Texas. Again, that announcement calls for an RN and a bachelor's degree, but does not indicate that the degree must be in any specific specialty. There is no indication that the [REDACTED] is roughly the same size as the petitioner in this case, by any measure.

Another announcement was placed by [REDACTED] of Vineland, New Jersey for a Patient Safety/Quality Outcomes Manager. It states that the position requires a minimum of a bachelor's degree, but it does not state that the degree must be in any specific specialty and contains no indication that [REDACTED] is roughly the same size as the petitioner.

Another announcement was placed by the [REDACTED] the location of which was not provided, and is for a Performance Improvement Liaison. It states that the position requires a minimum of a bachelor's degree in nursing, physical therapy, or occupational therapy. The size of that institution is unknown to the petitioner.

Another announcement was placed by [REDACTED] of San Pablo, California. It states that the position requires a minimum of a bachelor's in nursing. The size of that medical center is unknown.

Another announcement is for a Quality Assurance Manager for [REDACTED] in New York City. That announcement states that the position requires a bachelor's degree in medical technology or a related field. The size of that hospital is not in evidence.

Another announcement is for a Quality & Patient Safety Improvement Manager for the [REDACTED] [REDACTED] also in New York City. That announcement states that a "Bachelor degree with additional formal education preferred," but not that the bachelor's degree is a minimum requirement or that the degree must be in any specific field.

Another announcement was placed by the [REDACTED], of the Tampa Bay area for a Manager, Quality Improvement. It states that the position requires a master's degree "in a related field," but not what it must be related to. The size of [REDACTED] is unstated and is unknown to the AAO.

The final vacancy announcement was placed by [REDACTED] of Framingham, Massachusetts, and is for a Manager of Quality and Performance Improvement. The announcement states that the educational level of the position is "Bachelor's Degree," but does not indicate what subject the degree should be in or related to. That announcement states that [REDACTED] is a "420-bed regional health care system [that] includes [REDACTED]"

██████████ in Natick and the ██████████ This suggests that ██████████ is considerably larger than the petitioner in the instant case.

The *Handbook* section pertinent to Medical and Health Service Manager positions, relied upon by counsel to show that the proffered position qualifies as a specialty occupation, states the following about the educational requirements of such positions:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities, at the departmental level within healthcare organizations, and in health information management. Physicians' offices and some other facilities hire those with on-the-job experience instead of formal education.

Bachelor's, master's, and doctoral degree programs in health administration are offered by colleges; universities; and schools of public health, medicine, allied health, public administration, and business administration. In 2008, according to the Commission on Accreditation of Healthcare Management Education, there were 72 schools that had accredited programs leading to the master's degree in health services administration.

That section does indicate that entry into some positions requires a minimum of a bachelor's degree. It does not, however, indicate that the degree must be in any specific specialty, though it appears to suggest that a bachelor's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is preferred. A preference for a degree in any one of those fields is not a requirement of a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Even if the proffered position specifically required that the bachelor's degree be in business administration, that would not constitute a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.<sup>2</sup> *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

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<sup>2</sup> The AAO further notes that the beneficiary does not have a degree in any one of those fields. If a degree in those fields were a requirement of Medical and Health Service Manager positions, rather than an employer preference, the AAO would likely find the beneficiary unqualified to hold such a position.

<sup>4</sup> To satisfy this criterion, the record must establish 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*

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

None of the vacancy announcements submitted has been demonstrated to have been placed by an organization similar to the petitioner seeking to fill a position that is parallel to the proffered position in the instant case. Further, even if all nine of those announcements had been placed by firms that provide rehabilitation services to health care or elder care facilities, which the record suggests is the petitioner's industry; were of the same approximate size as the petitioner; and were placed for positions monitoring overall quality of services provided, nine vacancy announcements is statistically insufficient to show a industry-wide trend.

For both of those reasons, the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar companies, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>4</sup>

The descriptions of the duties of the proffered position were so abstract that they preclude analysis of whether those duties require a minimum of a bachelor's degree or the equivalent in a specific specialty. Therefore, the petitioner has not demonstrated that the proffered position or its duties are

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*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.

so complex, unique, or specialized that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or the equivalent or that performance of the duties is usually associated with a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the criteria of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO finds, therefore, that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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