

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

D2

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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:

[REDACTED]

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 director of the California Service Center 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.

The petitioner is a provider of healthcare services with 22 employees. It seeks to employ the beneficiary as a quality assurance manager 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

The primary issue in this matter is whether the 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 following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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, 8 U.S.C. § 1184(i)(1), 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 (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.

In this matter, the petitioner seeks the beneficiary’s services as a quality assurance manager. The petitioner describes the position as follows:

Responsible for ongoing strategic development, implementation and management of the Agency’s Quality and Regulatory Compliance functions. Her [sic] responsibilities include achieving patient safety goals and quality core measures, developing quality improvement plans and reports, managing the survey process for regulatory agencies and required licensures, and communicating with accrediting and regulatory bodies.

The petitioner also states that the proffered position requires a Bachelor of Science in Nursing or a related field plus two years of experience. The petitioner submitted the beneficiary’s education documents together with an education evaluation, indicating that he received the U.S. equivalent of a Bachelor of Science degree in Nursing.

On April 14, 2009, the director requested additional information from the petitioner. In part, the director requested the following: (1) a more detailed description of the work to be performed, including specific job duties and percentage of time to be spent on each duty; (2) evidence that the proffered position is a specialty occupation; and (3) more information about the petitioner’s business. The director also requested an organizational chart.

Counsel for the petitioner wrote a response and provided an organizational chart for the petitioner along with copies of the petitioner's tax return, quarterly wage reports, lease, and advertisements from other businesses. In addition, counsel stated that the proffered position will be responsible for overseeing a company with a gross annual income of more than \$1 million through development and implementation of plans, programs and budgets. Counsel also stated that the beneficiary will be responsible for on-going strategic development, implementation and management of the petitioner's quality and regulator compliance functions to include:

- Achieving patient safety goals and quality core measures;
- Developing quality improvement plans and reports;
- Managing the survey process for regulatory agencies and required licensures; and
- Communicating with accrediting and regulatory institutions and bodies.

In response to the RFE, counsel argued that the proffered position is a specialty occupation as it is closest to the description of Occupational Health and Safety Specialists in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and falls under the classification of Medical and Health Services Managers in the Occupational Information Network *O\*Net On-line* Summary Report.

The organizational chart provided in response to the RFE indicates that the beneficiary would be directly supervised by the Supervising Nurse who, in turn, is supervised by the petitioner's Agency Supervisor, who in turn is supervised by the petitioner's Administrator. The chart also indicates that, along with the Oasis Coordinator, the beneficiary would directly supervise the petitioner's home health care workers who provide services to patients.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In the decision, the director found that the proffered position is closest to that of an Occupational Health and Safety Specialist as described in the *Handbook*, but that the petitioner did not demonstrate that the proffered position is a specialty occupation requiring at least a bachelor's degree or the equivalent in a specific specialty.

On appeal, counsel for the petitioner argues that the relevant section under the *Handbook* demonstrates that the proffered position is a specialty occupation and that the director mistakenly based her decision on the requirements for Occupational Health and Safety Technicians, rather than for Occupational Health and Safety Specialists. Counsel again cites to the Occupational Information Network *O\*Net On-line* Summary Report on Quality Assurance Managers as he did in response to the RFE as evidence that the proffered position is a specialty occupation. Also, counsel submits additional advertisements on appeal.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO

routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

USCIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In reviewing the duties provided for the proffered position as well as the organizational chart and other supporting documentation, the AAO disagrees with counsel and the director that the *Handbook's* description of Occupational Health and Safety Specialists is the most suitable approximation of the proffered position. The *Handbook*, 2010-11 edition, provides as follows:

Occupational health and safety specialists, also known as safety and health professionals or occupational health and safety inspectors, help prevent harm to workers, property, the environment, and the general public. For example, they may design safe work spaces, inspect machines, or test air quality. In addition to making workers safer, specialists aim to increase worker productivity by reducing absenteeism and equipment downtime—and to save money by lowering insurance premiums and workers' compensation payments, and preventing government fines. Specialists working for governments conduct safety inspections and impose fines. Specialists often work with occupational health and safety technicians to ensure work place safety. (See the statement on occupational health and safety technicians elsewhere in the *Handbook*.)

Occupational health and safety specialists analyze work environments and design programs to control, eliminate, and prevent disease or injury. They look for chemical, physical, radiological, and biological hazards. They also work to make more equipment ergonomic—designed to promote proper body positioning, increase worker comfort, and decrease fatigue. Specialists may conduct inspections and inform an organization's management of areas not in compliance with State and Federal laws or employer policies. They also advise management on the cost and effectiveness of safety and health programs. Some provide training on new regulations and policies or on how to recognize hazards.

Some specialists develop methods to predict hazards from historical data and other information sources. They use these methods and their own knowledge and experience to evaluate current equipment, products, facilities, or processes and those planned for future use. For example, they might uncover patterns in injury data that show that many injuries are caused by a specific type of system failure, human error, or weakness in procedures. They evaluate the probability and severity of accidents and identify where controls need to be implemented to reduce or eliminate risk. If a new program or practice is required, they propose it to management and monitor results if it is implemented. Specialists may also conduct safety training. Training sessions might show how to recognize hazards, for example, or explain new regulations, production processes, and safe work methods. If an injury or illness occurs, occupational health and safety specialists help investigate, studying its causes

and recommending remedial action. Some occupational health and safety specialists help workers to return to work after accidents and injuries.

No objective evidence was provided to demonstrate that the beneficiary would work as an occupational health and safety specialist. Additionally, it would seem to be unusual to hire the beneficiary to improve the petitioner's work environment when the petitioner employs only 22 workers and the majority of the health care staff presumably work in individual patients' homes. The only evidence that was provided regarding the proffered position were the vague and general descriptions of duties provided by the petitioner initially and counsel in response to the RFE and the organization chart. Additionally, counsel's statement in response to the RFE that the beneficiary would be responsible for overseeing a company with a gross annual income of more than \$1 million through development and implementation of plans, programs and budgets is both contradictory to where the proffered position is located on the organizational chart as well as the initial position description, which stated that the beneficiary would be responsible for on-going strategic development, implementation and management of the petitioner's quality and regulator compliance functions, not the entire company.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by counsel in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description. Therefore, the analysis of this criterion will be based on the job description submitted with the initial petition.

Further, counsel argues that under the Occupational Information Network *O\*Net On-line* Summary Report, Quality Assurance Managers in healthcare are classified under Medical and Health Services Managers and therefore the proffered position requires a minimum of a bachelor's degree. On October 27, 2010, the AAO accessed the pertinent section of the *O\*Net Online* Internet site, which addresses Medical and Health Services Managers under the Department of Labor's Standard Occupational Classification code of 11-9111.00.<sup>1</sup> *O\*Net Online* assigns Medical and Health Services Managers a Job Zone "Five" rating, which groups them among occupations of which most employers require a graduate school degree and at least five years of experience. As the petitioner does not require a graduate degree plus extensive experience for the proffered position, this is additional evidence that the proffered position does not fit best under the *O\*Net Online*'s section on Medical and Health Services Managers. Regardless, the *O\*Net Online* does not indicate that degrees required by Job Zone Five occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O\*Net Online* information is not probative of the proffered position being a specialty occupation.

Instead, the proffered duties to be performed by the beneficiary involve areas of quality assurance within the petitioner's business environment, and are essentially those performed by nurses (or other healthcare

---

<sup>1</sup> That site is <http://online.onetcenter.org/link/summary/11-9111.00>.

personnel) who have moved into the business side of healthcare. The *Handbook*, 2010-11 edition, notes the following:

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, *home-based*, and chronic care businesses. Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need RNs for health planning and development, marketing, consulting, policy development, and *quality assurance*. Other nurses work as college and university faculty or conduct research.

(Emphasis added.) As the petitioner states it requires a bachelor's degree in nursing or a related field and as the proffered position entails having responsibility for quality assurance of the petitioner's home healthcare services business, the AAO finds that the proffered position fits under the *Handbook's* section on Registered Nurses.

A review of the *Handbook* section on Registered Nurses finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a registered nurse. The *Handbook* does state, however, that:

[I]ndividuals who complete a bachelor's degree receive more training in areas such as communication, leadership, and critical thinking, all of which are becoming more important as nursing practice becomes more complex. Additionally, bachelor's degree programs offer more clinical experience in nonhospital settings. A bachelor's or higher degree is often necessary for administrative positions, research, consulting, and teaching. . . .

The proffered position appears to resemble a nursing position beyond the entry-level registered nurse, but it is not analogous to an administrative nursing position. A Service policy memo provides the following commentary on administrative nursing positions: "Nursing Services Administrators are generally supervisory level nurses who hold an RN, and a graduate degree in nursing or health administration. (See Bureau of Labor Statistics, U.S. Dept of Labor, Occupational Outlook Handbook at 75.)" See Memorandum from Johnny N. Williams, Executive Associate Commissioner, INS Office of Field Operations, Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses, HQISD 70/6.2.8-P (November 27, 2002). As discussed previously, the proffered position is not supervisory and the petitioner does not require a graduate degree for the proffered position. Moreover, the petitioner has already hired an Administrator who would supervise the Director of Patient Services, who in turn would supervise the beneficiary in the proffered position. Therefore, the proffered position is not that of an administrative nursing position. Even if it were, the *Handbook* only states that a "bachelor's or higher degree is often necessary"; it does not state that such a degree is a prerequisite or even a normal requirement for entry into the position.

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.

A review of the *Handbook* finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in the proffered position. Experience and good performance can lead to promotion for a registered nurse to more responsible positions, such as assistant head nurse or head nurse/nurse supervisor. Likewise, good performance and experience can equip a nurse to perform the duties of a patient care coordinator or quality assurance manager in the healthcare field. There is no requirement, however, that a nurse, or any other healthcare professional performing the duties of a quality assurance manager, have a baccalaureate or higher degree or its equivalent in a specific specialty as a minimum requirement for entry into that position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that 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.

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

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. To establish its degree requirement as an industry norm, the petitioner has submitted advertisements from other companies. None of this evidence, however, establishes the petitioner's degree requirement as the norm within its industry as none of the companies placing the ads are sufficiently similar to the petitioner. In the response to the RFE, the ads submitted for quality assurance managers/coordinators were placed health care companies and hospitals, not small home health care providers. Additionally, another ad for a quality/utilization manager was placed by a hospital. Another advertisement was placed by a company responsible for ten senior living communities and so is also much larger than the petitioner. Two other ads are for care managers, which do not entail duties similar to those proffered in the petition, and the same finding must be made with regard to the advertisement for a Telephonic Regional Operations Manager. On appeal, counsel submits copies of five additional advertisements. Three of the advertisements do not indicate any minimum requirements. The fourth and fifth ads are for companies that appear to be larger than the petitioner and, moreover, they do not require at least a bachelor's degree or the equivalent in a *specific specialty* but only state that a bachelor's degree plus experience is required. As a result, these announcements do not establish a degree requirement in a specific specialty in parallel positions.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty or its equivalent is not required. As evident in the earlier

discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than registered nursing positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, 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 its position's 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. The AAO does not find that the proffered duties, as described by the petitioner in support of the petition, reflect a higher degree of knowledge and skill than would normally be required of registered nurses working in the business side of healthcare. Nor do they represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a registered nurse. The AAO, therefore, concludes that the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements 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 the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of 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. Here, that burden has not been met.

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