

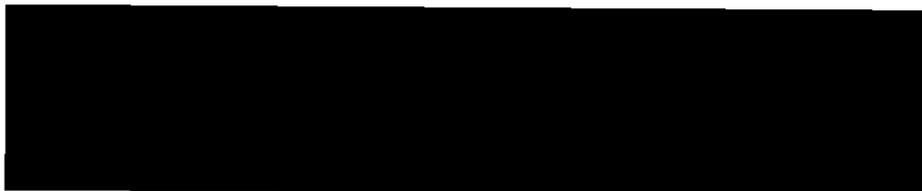
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



*De*

FILE: WAC 09 144 51491 Office: CALIFORNIA SERVICE CENTER

Date: APR 01 2011

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 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 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 skilled nursing facility and rehabilitation center with 132 employees. It seeks to employ the beneficiary as a Quality Assurance Director 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. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue in this matter is whether the 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 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 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 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, fairly represent the types of specialty occupations 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 Director. The petitioner describes the position's duties as follows:

- Plan, coordinate, and implement the quality management and facility improvement program.
- Write the quality assurance policies and procedures.
- Interpret and implement quality assurance standards.
- *Oversee compliance with agency regulatory and accreditation standards.*

- Participate in state surveys as well as other industry surveys to ensure compliance, maintain and upgrade quality care programs in the facility.
- Serve as a resource to administrators, directors, physicians, and staff on quality assurance standard policies and programs.

The petitioner also states that the proffered position requires a bachelor's degree in nursing.

The petitioner submitted copies of the beneficiary's foreign education documents, which were evaluated as equivalent to a U.S. Master of Arts degree in Nursing with a major in Nursing Service Administration and a Bachelor of Science degree in Nursing with a specialization in nursing education and administration.

On May 7, 2009, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation.

In response to the RFE, the petitioner stated that the beneficiary would spend 80% of her time planning, organizing, and directing quality assurance programs as well as the quality management and facility improvement program, writing the quality assurance policies and procedures, interpreting and implementing quality assurance standards, and overseeing compliance with agency regulatory and accreditation standards. The petitioner also stated that the beneficiary would spend 20% of her time participating in state surveys, evaluating programs, communicating plans to facility management, and serving as a resource person.

Further, the petitioner stated that in performing these duties, the beneficiary would participate in the daily morning stand up meeting with all department managers, administer orientation and training for new employees, provide training in continuing education for all employees and managers, perform daily walking rounds to evaluate programs, conduct field assessments, and meet with patients and family members regarding quality of care matters, conduct documentation and chart audits for each patient, and conduct a quality assurance meeting with all department managers.

The petitioner stated that it previously employed someone in the proffered position and that this person had a bachelor's degree and a Nursing Home Administrator's License. However, the petitioner did not state in what field the prior employee's bachelor's degree was obtained. The documentation from the person previously employed in the proffered position consists of verification of her Nursing Home Administrator's license, her Occupational Therapist license, and her Veterinary Medicine license.

The petitioner submitted a copy of its minimum job requirements, which states that the proffered position requires at least a Bachelor of Science degree in Nursing along with a nursing license, even though it does not appear that the person who previously held this position had either a bachelor's degree or the equivalent in nursing or held a nursing license. Additionally, the petitioner submitted copies of advertisements for Directors of Quality Assurance placed by other employers. However, a number of these were not placed by employers that are parallel to the petitioner. Moreover, the advertisements indicate that a wide range of degrees or other backgrounds are acceptable for Quality Assurance positions, including a bachelor's degree in

any health-related field, a mere preference for a bachelor's degree in nursing or health care, a four-year degree generally, or licensure as a Registered Nurse.

The organization chart submitted by the petitioner indicates that the petitioner employs an Administrator and an Assistant Administrator. The Assistant Administrator, to whom the beneficiary would directly report, is an RN, but does not appear to hold at least a bachelor's degree. Contrary to the petitioner's assertion, according to the chart, the person who held the position prior to the beneficiary did not have at least a bachelor's degree, but was a Registered Occupational Therapist (OTR) with National Healthcareer Association (NHA) certification.

On July 16, 2009, the director denied the petition, finding that the proffered position's duties as described fall under the section on Administrative Services Managers as defined in the U.S. Department of Labor's Occupational Outlook Handbook (*Handbook*).

On appeal, counsel for the petitioner argues that the proffered position falls under the *Handbook's* section on Medical and Health Services Managers rather than Administrative Services Managers and is therefore a specialty occupation. Counsel further argues that all of the advertisements submitted require at least a bachelor's degree as a minimum. As discussed previously, this is not the case. Counsel notes that only a few of the advertisements submitted, those of Nexus Specialty Hospice and Kentfield Rehab, were placed by employers parallel to the petitioner. First, the advertisement placed by Nexus Specialty Hospital (not Hospice as stated by counsel) appears to be a large hospital with two campuses and therefore is not parallel to the petitioner. Moreover, the Nexus Specialty Hospital advertisement states that a four year degree is required, but does not indicate that the degree must be in a specific specialty. Further, it appears from the advertisement that Kentfield Rehab is an acute care hospital, not merely a rehab center. Therefore, Kentfield Rehab is also not parallel to the petitioner. Additionally, the ad placed by Kentfield Rehab does not indicate that its degree requirement is in a specific specialty.

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 agrees with counsel that the *Handbook's* description of

Medical and Health Services Managers is a suitable approximation of the proffered position. The *Handbook*, 2010-11 edition, provides as follows:

Medical and health services managers, also referred to as healthcare executives or healthcare administrators, plan, direct, coordinate, and supervise the delivery of healthcare. These workers are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system.

The structure and financing of healthcare are changing rapidly. Future medical and health services managers must be prepared to deal with the integration of healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called on to improve efficiency in healthcare facilities and the quality of the care provided.

Large facilities usually have several assistant administrators who aid the top administrator and handle daily decisions. Assistant administrators direct activities in clinical areas, such as nursing, surgery, therapy, medical records, and health information.

*In smaller facilities, top administrators handle more of the details of daily operations.* For example, many nursing home administrators manage personnel, finances, facility operations, and admissions, while also providing resident care.

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work quality; develop reports and budgets; and coordinate activities with other managers.

Health information managers are responsible for the maintenance and security of all patient records. Recent regulations enacted by the Federal Government require that all healthcare providers maintain electronic patient records and that these records be secure. As a result, health information managers must keep up with current computer and software technology, as well as with legislative requirements. In addition, as patient data become more frequently used for quality management and in medical research, health information managers must ensure that databases are complete, accurate, and available only to authorized personnel.

In group medical practices, managers work closely with physicians. Whereas an office manager might handle business affairs in small medical groups, leaving policy decisions to the physicians themselves, larger groups usually employ a full-time administrator to help formulate business strategies and coordinate day-to-day business.

A small group of 10 to 15 physicians might employ 1 administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays, and patient flow. A large practice of 40 to 50 physicians might have a chief administrator and several assistants, each responsible for a different area of expertise.

Medical and health services managers in managed care settings perform functions similar to those of their counterparts in large group practices, except that they could have larger staffs to manage. In addition, they might do more community outreach and preventive care than do managers of a group practice.

Some medical and health services managers oversee the activities of a number of facilities in health systems. Such systems might contain both inpatient and outpatient facilities and offer a wide range of patient services.

(Emphasis added.)

With respect to education and training requirements for medical and health services managers, the *Handbook* states:

A master's degree in one of a number of fields is the standard credential for most generalist positions as a medical or healthcare manager. A bachelor's degree is sometimes adequate for entry-level positions in smaller facilities and departments. In physicians' offices and some other facilities, on-the-job experience may substitute for formal education.

***Education and training.*** 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. . . .*

\* \* \*

***Licensure.*** All States and the District of Columbia require nursing care facility administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved training program, and pursue continuing education. Some States also require licenses for administrators in assisted-living facilities. A license is not required in other areas of medical and health services management.

(Emphasis added.) In other words, according to the *Handbook*, although a bachelor's degree is often obtained by people in smaller facilities and departments, a bachelor's degree in a *specific specialty* is not required.

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.

As the *Handbook* indicates that a bachelor's degree in a wide range of fields is acceptable for employment as medical and health services managers, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a *specific specialty*.

Accordingly, the AAO finds that the petitioner has failed to establish its proffered position as a specialty occupation under the requirements of the first criterion at 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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. As discussed previously, the petitioner failed to demonstrate that the advertisements submitted are from employers that are parallel to the petitioner. Moreover, the advertisements indicate that a wide variety of degrees and fields are acceptable for quality assurance directors. As a result, the petitioner has not established a degree requirement 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. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than

quality assurance director positions that can be performed by persons without a specialty degree or its equivalent.

As discussed previously, the petitioner failed to demonstrate that the person who held the position previously had at least a bachelor's degree or the equivalent in a specific specialty. Further, the petitioner has indicated in the organizational chart that the beneficiary would report directly to someone who does not hold at least a bachelor's degree. 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 or its equivalent, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>1</sup>

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 or its equivalent in a specific specialty. The AAO does not find that sufficient evidence was provided to demonstrate that the proffered duties, as described by the petitioner, reflect a higher degree of knowledge and skill than would normally be required of quality assurance directors performing the vague and generic duties described by the petitioner. The AAO, therefore, finds that the petitioner has also 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).

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine

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<sup>1</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 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.

that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not establish that the beneficiary either holds a license to work as a Quality Assurance Director for the petitioner pursuant to 8 C.F.R. § 214.2(h)(4)(v)(A) or is not required to hold a license.<sup>2</sup> As such, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The petition will be denied and the appeal dismissed. 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.

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<sup>2</sup> The AAO notes that the *Handbook's* section on Medical and Health Services Managers states that all States and the District of Columbia require nursing care facility administrators to pass a licensing examination.