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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**



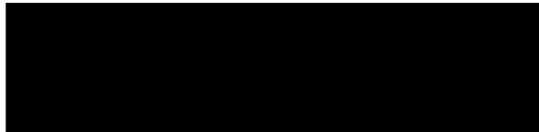
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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 02 2011

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 the petitioner stated that it is a healthcare provider and indicates that it seeks to employ the beneficiary as a registered nurse. The petitioner, therefore, endeavors to classify the beneficiary 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 petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submits a brief and additional evidence.

As will be discussed below, the AAO finds that the director did not err in denying the petition for its failure to establish a specialty occupation. The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the response to the request for evidence; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

The AAO applies the following statutory and regulatory framework in its review of specialty occupation issues.

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.

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 requires [1] 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 [2] 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 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 a March 26, 2009 letter appended to the petition, the petitioner stated that it operated a 213 bed forensic psychiatric/mental hospital and described the occupation of registered nurse as follows:

In this position, [the beneficiary] would provide comprehensive psychiatric and medical nursing care services to male and female residents in a secure forensic psychiatric hospital. She would provide patient assessment, plan nursing care development and implement and evaluate the effectiveness of medical interventions. [The beneficiary] would assess and treat psychiatric emergencies under the direction of a trained psychiatrist, and supervise and administer medications in a timely and safe manner, demonstrating knowledge of pharmacology. In addition, [the beneficiary] would also perform the following duties: (i) perform a complete physical assessment and medical history as required on each patient entering the psychiatric facility; (ii) ensure the implementation of physician's orders and prescribed medications are administered as ordered using the formulary; (iii) make observation rounds on patients, and record in progress notes; (iv) evaluate symptoms, reactions, and progress of patients on periodic basis; chart, and report problems to management; (v) maintain security while dispensing medications cognizant of the potential hazard of drug hoarding and trafficking among patients; (vi) maintain non-involvement in the security aspect of care; (vii) prepare regularly scheduled reports and special reports as necessary; and (viii) document all patient contacts.

The petitioner submitted copies of the beneficiary's foreign degree and transcripts together with her license to practice as a Registered Nurse (RN) in Florida and her CGFNS certification.

On April 14, 2009, the director issued an RFE requesting additional evidence demonstrating that the proffered position was a specialty occupation. In a response dated May 13, 2009, the petitioner addressed the director's queries. The petitioner submitted the following updated description of the duties of the proffered position:

**Summary**

This position uses the nursing process to assess, plan, implement and evaluate the provision of comprehensive psychiatric and medical care for an assigned population. In addition, this position participates in the delivery of program services and supervises appropriate healthcare staff.

**Primary Duties and Responsibilities**

- Demonstrates thorough knowledge and therapeutic intervention skills based on knowledge of psychiatric mental health disorders, human growth and development; principles of psychiatric rehabilitation (role recovery philosophy); Person first language and serves as a resource and role model for supervised staff.

- Provides comprehensive nursing care services, which includes assessment, plan development, implementation of plan of care and evaluation of effectiveness of interventions with revisions as necessary.
- Demonstrates thorough knowledge of all applicable nursing services and related policy and procedures including adequate knowledge of JCAHO standards as related to position. Proper utilization of medical equipment including glucometers.
- Demonstrates thorough understanding of all requirements, practice standards and regulatory requirements relating to the administration of medications; SFETC policy and procedures; documentation requirements; medication education.
- Continues professional development through in-service education, workshops, conferences and self-study necessary to maintain current knowledge applicable to the position.
- Is sensitive to cultural diversity issues, treats patients as an individual, and considers the culture of the patients when providing care and treatment.
- Is knowledgeable about care and treatment needs of patients of different ages. Provides individualized care and treatment that is consistent with /sensitive to the age and life span developmental needs of each patient.
- Ensures the implementation of physician's orders and prescribed medications are administered as ordered using the formulary.
- Makes observation rounds on patients, and record in progress notes.
- Evaluates symptoms, reactions, and progress of patients on periodic basis, chart, and report problems to management.
- Maintains security while dispensing medications cognizant of the potential hazard of drug hoarding and trafficking among patients.
- Oversees the work of LPNs and MHTs and coordinates with RN supervisors, Clinical Coordinators, and Unit Managers to ensure continuity and high quality care expected from [the petitioner], the community and standards of the industry.
- Prepares regularly scheduled reports and special reports as necessary.
- Documents all patient contacts.
- Other related duties.

The petition further indicates that the minimum requirements to fulfill the position are a bachelor's degree in nursing, three years of experience in psychiatric or acute care at an inpatient facility, and a current State of Florida license to practice professional nursing.

The petitioner also submitted a chart outlining the percentage of time the beneficiary would spend on each area of duties, which is reproduced below:

Job Duties	Percentage of time per day
Plan nursing care development	5%
Provide patient assessment	5%

Implement medical interventions	5%
Evaluate the effectiveness of medical interventions	5%
Assess and treat psychiatric emergencies	10%
Supervise and administer medications	10%
Perform a complete physical assessment and medical history	10%
Ensure the implementation of physician's orders and prescribed medications are administered as ordered using the formulary	10%
Make observation rounds on patients, and record in progress notes	10%
Evaluate symptoms, reactions, and progress of patients on periodic basis, chart, and report problems to management	10%
Maintain security while dispensing medications cognizant of the potential hazard of drug hoarding and trafficking among patients	10%
Prepare regularly scheduled reports and special reports as necessary	5%
Document all patient contacts	5%
TOTAL	100%

On July 31, 2009 the director denied the petition, finding that the proffered position was not a specialty occupation.

As will be discussed later in this decision, the RN occupational category typically includes persons with one of three types of educational credentials. These are (1) a bachelor's of science degree in nursing (BSN), (2) an associate degree in nursing (ADN), and (3) a diploma granted by certain hospitals. In this matter, the petitioner contends that performance of the proffered RN position requires at least a bachelor's degree in nursing.

Upon review of the record, the AAO concurs with the director's decision.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement 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.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. Factors often considered by USCIS when determining the

above-referenced criteria 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 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel's assertion that the proffered position is a specialty occupation.

As indicated in the following excerpt from the "Training, Other Qualifications, and Advancement" section of the *Handbook's* "Registered Nurses" chapter, a BSN is neither required for licensure as an RN nor normally required for the general range of RN jobs, regardless of their specialty. In pertinent part, this section reads:

### **Training, Other Qualifications, and Advancement**

The three typical educational paths to registered nursing are a bachelor's degree, an associate degree, and a diploma from an approved nursing program. Nurses most commonly enter the occupation by completing an associate degree or bachelor's degree program. Individuals then must complete a national licensing examination in order to obtain a nursing license. Advanced practice nurses—clinical nurse specialists, nurse anesthetists, nurse-midwives, and nurse practitioners—need a master's degree.

**Education and training.** There are three typical educational paths to registered nursing—a bachelor's of science degree in nursing (BSN), an associate degree in nursing (ADN), and a diploma. BSN programs, offered by colleges and universities, take about 4 years to complete. ADN programs, offered by community and junior colleges, take about 2 to 3 years to complete. Diploma programs, administered in hospitals, last about 3 years. Generally, licensed graduates of any of the three types of educational programs qualify for entry-level positions as a staff nurse. There are hundreds of registered nursing programs that result in an ADN or BSN; however, there are relatively few diploma programs.

Individuals considering a career in nursing should carefully weigh the advantages and disadvantages of enrolling in each type of education program. Advancement opportunities may be more limited for ADN and diploma holders compared to RNs who obtain a BSN or higher. Individuals 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[.]

Many RNs with an ADN or diploma later enter bachelor's degree programs to prepare for a broader scope of nursing practice. Often, they can 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. Accelerated master's degree in nursing (MSN) programs also are available. They typically take 3-4 years to complete full time and result in the award of both the BSN and MSN.

\* \* \*

All nursing education programs include classroom instruction and supervised clinical experience in hospitals and other healthcare facilities. Students take courses in anatomy, physiology, microbiology, chemistry, nutrition, psychology and other behavioral sciences, and nursing. Coursework also includes the liberal arts for ADN and BSN students.

Supervised clinical experience is provided in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in nursing care facilities, public health departments, home health agencies, and ambulatory clinics.

**Licensure and certification.** In all States, the District of Columbia, and U.S. territories, students must graduate from an approved nursing program and pass a national licensing examination, known as the National Council Licensure Examination, or NCLEX-RN, in order to obtain a nursing license. Other eligibility requirements for licensure vary by State. Contact your State's board of nursing for details.

**Other qualifications.** Nurses should be caring, sympathetic, responsible, and detail oriented. They must be able to direct or supervise others, correctly assess patients' conditions, and determine when consultation is required. They need emotional stability to cope with human suffering, emergencies, and other stresses.

RNs should enjoy learning because continuing education credits are required by some States and/or employers at regular intervals. Career-long learning is a distinct reality for RNs.

Some nurses may become credentialed in specialties such as ambulatory care, gerontology, informatics, pediatrics, and many others. Credentialing for RNs is available from the American Nursing Credentialing Center, the National League for Nursing, and many others. Although credentialing is usually voluntary, it demonstrates adherence to a higher standard and some employers may require it.<sup>1</sup>

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<sup>1</sup> All of the AAO's references to the *Handbook* are to the "Registered Nurse" chapter of the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO>.

The *Handbook* indicates that a BSN or BSN equivalency is *not* normally a requirement for serving as a registered nurse or most other nursing specialties in which RNs engage. In fact, the *Handbook* indicates that "licensed graduates of any of the three types of educational programs qualify for entry-level positions as a staff nurse." Therefore, since the *Handbook* does not indicate that a degree in a specific specialty is required for entry into the occupation of registered nurse, and since the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the petitioner has failed to establish the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1).<sup>2</sup>

The AAO notes that counsel relies on the Memorandum from [REDACTED], *Guidance on Adjudication of H-1B Petitions Filed on Behalf of Nurses*, HQISD 70/6.2.8-P (Nov. 27, 2002) (hereinafter referred to as the [REDACTED] Memo) in support of the contention that the proffered position is a specialty occupation. The AAO, however, finds that, as described in the record of proceeding, the proffered position and the duties comprising it do not fit any type of direct-care RN position that the [REDACTED] Memo indicates to be a specialty occupation.<sup>3</sup> Thus, while the [REDACTED] Memo summarizes the statutory and regulatory standards for establishing an H-1B specialty occupation, it is not evidence that the particular position that is the subject of this petition is a specialty occupation.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals

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<sup>2</sup> It is noted that, according to the U.S. Department of Labor, a Level I wage is used for "[b]eginning level employees who have a basic understanding of the occupation through education or experience." See Foreign Labor Certification Data Center Online Wage Library, <http://www.flcdcenter.com/skill.aspx> (last accessed May 24, 2011). As such, based on the "Level 1 Wage" attested to in the Labor Condition Application (LCA) submitted in support of the Form I-129, the proffered position is an entry-level nursing position. Again, the *Handbook* indicates that such an entry-level position is one that does not require at least a bachelor's or higher degree in Nursing or its equivalent. Therefore, even if the proffered position were in fact a more senior-level position with a higher minimum entry standard, the petition could still not be approved as (1) it has still not been established that that higher entry standard would be at least a bachelor's or higher degree in nursing and (2) the Form I-129 would no longer be supported by an LCA that corresponds to the petition as required by 20 C.F.R. § 655.705(b).

<sup>3</sup> The four types of RN positions that the [REDACTED] Memo recognizes as categorically requiring at least a specialty-occupation level of education are Clinical Nurse Specialists; Nurse Practitioners; Certified Registered Nurse Anesthetists; and Certified Nurse-Midwife. The AAO finds these categories to be the same as the four Advanced Practice Nursing (APN) specialties that the *Handbook* identifies as requiring at least a master's degree in nursing. The AAO reiterates that the record of proceeding establishes that the proffered position does not fit within any of these APN specialties.

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. 1095 at 1102). The only evidence submitted by the petitioner that addresses this criterion are two letters; namely, the evaluation prepared by [REDACTED] of Radiation Oncology and Internal Medicine at the [REDACTED] and a letter from [REDACTED] the petitioner's [REDACTED] of nursing.

These letters, however, are not sufficient to establish eligibility in this matter. [REDACTED] evaluation is restricted to evaluating only the educational requirements of the proffered position at the petitioner's facility. While [REDACTED] opinion may be that the proffered position within the petitioner's organization requires a bachelor of science degree in nursing, his evaluation does not address the standards of the industry, and thus cannot be deemed evidence that firms in the petitioner's industry routinely require an individual degree to perform the duties of the position of a registered nurse in a mental health facility.

The letter from [REDACTED] is likewise deficient. Simply claiming that RNs with bachelor's degree perform more advanced nursing duties than RNs with associate's degrees within the petitioner's organization is insufficient to establish that the industry standard requires individuals to possess a BSN for the proffered position. Again, like the evaluation of [REDACTED] this letter simply comments on the position assignments within the petitioner's organization, and cannot be deemed acceptable as evidence that the industry routinely requires BSN degrees for registered nurses in similar positions.<sup>4</sup>

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. According to the position description provided by the petitioner, the duties of the proffered position require the beneficiary to perform a variety of general nursing duties such as administering medications and evaluating symptoms. Nothing in the list of proposed duties is so unique or complex that the AAO would be persuaded that only an individual with a BSN, and not an ADN or diploma in nursing, could perform such work. Although [REDACTED] claims that advanced nursing duties are assigned to individuals who have attained higher educations, this statement alone is insufficient to establish a level of complexity in the proffered position that would satisfy this criterion. Accordingly, the petitioner has also failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>4</sup> The AAO notes that a new letter from [REDACTED] the petitioner's Director of Human Resources, is submitted for the first time on appeal in support of the petitioner's claimed eligibility for the benefit sought in this matter. The petitioner, however, was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, the petitioner has failed to submit evidence pertaining to its past and present nursing staff, and the record contains no evidence of the educational backgrounds or payroll records for any of its employees. Therefore, since the petitioner has not established that it routinely requires a degree or its equivalent for the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has not related the listed duties of its registered nurse position beyond what is normally encountered in the occupational field. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a BSN, and not an individual with an ADN or diploma in nursing. Consequently, the petitioner has failed to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, even if the AAO were to find that the proffered position is in fact an APN specialty and that this position thereby categorically qualifies as a specialty occupation, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of an APN position. More specifically, it has not been established that the beneficiary possesses the additional requirements beyond an RN license that the State of Florida requires for certification to perform the duties of an APN nurse. Consequently, the beneficiary would not be qualified to serve in an APN specialty position. *See* 8 C.F.R. § 214.2(h)(4)(v)(A). For this reason also, the petition must be denied.

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.