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



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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Date: DEC 01 2011 Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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, with a fee of [REDACTED]. 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

- (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 at 387. 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.

A review of the occupational category of medical and health services manager, to which both counsel and the director compared the proffered position, reveals similarities to the proffered position. According to the *Handbook*, this occupational category is described as follows:

Healthcare is a business and, like every business, it needs good management to keep the business running smoothly. *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.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2010-11 ed., "Medical and Health Services Managers," (accessed Nov. 30, 2011). According to the *Handbook*, medical and health services managers plan, direct, coordinate, and supervise the delivery of healthcare, and are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system. In this matter, the description of the proffered position indicates that the position of hospice regional nurse manager is most akin to that of a medical and health services manager, since the beneficiary will be tasked to coordinate and oversee the hospice services of the petitioner. Moreover, the subheading of clinical manager in this section also applies to the proffered position, since such employees are responsible for establishing and implementing policies, objectives, and procedures for their departments as well as coordinating activities with other managers.

Consequently, the AAO concurs with the finding that the proffered position encompasses the duties of a medical and health services manager. A review of the *Handbook's* education and training requirements for this occupation, however, indicates that it does not require a bachelor's degree in a specific specialty or its equivalent for entry into the position in the United States. Therefore, despite the classification of the proffered position into this occupational category as contended by the director and counsel, this classification, contrary to counsel's claims and contrary to the director's findings, does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. According to the *Handbook*, the educational requirements of a medical and health services manager are as follows:

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.

Contrary to the director's findings, the *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty. While it indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, it also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, the *Handbook* indicates that some physician's offices and facilities hire individuals who possess on-the-job training in lieu of formal education.

Therefore, regardless of USCIS's classification of the proffered position as a medical and health services manager, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position under 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 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.

In support of the petition, the petitioner submitted an expert opinion evaluation from Professor [REDACTED], Associate Professor of [REDACTED], in support of the contention that a bachelor's degree in a specific specialty is common to the petitioner's industry. Professor [REDACTED] claims that the "skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree or its equivalent, with a concentration in Nursing, or a related field, is considered necessary by people in the industry seeking to hire a Hospice Regional Nurse Manager. . . ." and concluded that such a degree is considered an industry standard.

The AAO finds Professor [REDACTED]'s evaluation insufficient to establish an industry-wide standard in this matter. While Professor [REDACTED]'s evaluation claims that individuals employed in the position of hospice services manager are routinely required to have a minimum of a bachelor's degree in nursing, the basis upon which she rests this assertion is unclear. Although she claims that, based on her position as an Associate Professor of Nursing, she is qualified to render an expert opinion on this subject, she provides no independent evidence to support her conclusion that a bachelor's degree in nursing is a degree that is routinely required by employers similar to the petitioner for entry into the position of hospice services manager. Rather, she simply restates the proffered position description as provided by counsel. Going on record without supporting documentary evidence is not sufficient for purposes of

meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). In this matter, the evaluation by Professor [REDACTED] is not supported by objective evidence demonstrating that a bachelor's degree in nursing is routinely required within the petitioner's industry for entry into the proffered position.

The petitioner also submitted two job postings for positions it claims are similar to that of the proffered position in this matter. The AAO, however, does not find these postings sufficient to meet the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Again, the petitioner submits two job postings. The first, advertised by Northridge Hospital Medical Center, is for a position entitled "Program Manager (Nurse) Palliative." The second, posted by careerbuilder.com, is for an unidentified client and advertises the position of "RN Hospice Branch Manager." While both of these advertisements state that the positions require the incumbent to hold at least a bachelor's degree in nursing, the postings are insufficient to establish eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Specifically, the posting by careerbuilder.com does not identify the entity for whom the services are required; therefore, the AAO cannot determine whether the organization is similar in size and scope to the petitioner, which operates one facility and employs a staff of 74. The posting for [REDACTED] Hospital, while similar in details to that of the proffered position, is likewise not a parallel position in an organization similar to the petitioner. Specifically, the minimal information contained in the posting indicates that [REDACTED] Hospital is a hospital offering a "full spectrum of healthcare programs and Centers of Excellence," which is not akin to the petitioner's hospice care facility. Consequently, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).<sup>2</sup>

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<sup>2</sup> According to the *Handbook's* detailed statistics on medical and health services managers, there were approximately 14,000 persons employed as medical and health services managers by home health care service firms in 2008. *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos014.htm> (last accessed Nov. 30, 2011). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just two job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the home health care service industry. See generally [REDACTED], *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner did not claim at any time during the adjudication process to employ other persons in the position of hospice regional nurse manager. Since the record is devoid of evidence that the petitioner previously hired degreed individuals to fill the proffered position in the past, the petitioner has failed to satisfy this criterion.

Although the petitioner claims that the proffered position requires the incumbent to possess a bachelor's degree in nursing or a closely related field, this claim is not persuasive, since the record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

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As such, even if the job announcements supported the finding that the job of hospice regional nurse manager for a 74-person hospice firm required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Aside from the letter from Professor [REDACTED] evidentiary weight of which has been discounted, the petitioner has submitted no independent documentation in support of the contention that specialized and complex knowledge is required to perform the duties of the proffered position. Instead, the petitioner and counsel simply provide their own unsupported opinions with regard to the qualifications necessary for a hospice regional nurse manager to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them. *Relative specialization and complexity have not been developed for the proffered position and, as such, the evidence of record does not establish that this position is significantly different from other medical and health service manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).*

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

Although the director found that the beneficiary was not qualified to perform the duties of the proffered position, a 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 proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, if the proffered position did require at least a bachelor's degree for entry into the occupation and that degree had to be in one of the general majors identified by the *Handbook*, i.e., health services administration, long-term care administration, health sciences, public health, public administration, or business administration, the beneficiary would not be qualified for the position, as the petitioner failed to demonstrate he has a degree in one of these majors. In other words, even if the position were established as being a specialty occupation, the director correctly concluded that the beneficiary would not be qualified to perform the duties of that occupation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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