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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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Date: FEB 02 2012 Office: CALIFORNIA SERVICE CENTER

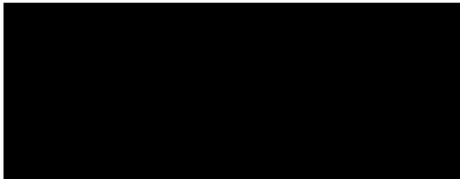
FILE:

IN RE: Petitioner:
Beneficiary:



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 claims to be a healthcare facility with 129 employees. It seeks to employ the beneficiary as a sub acute nurse as case 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 has not established that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Petition for a Nonimmigrant Worker (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 decision; and (5) the Notice of Appeal or Motion (Form I-290B). The AAO reviewed the record in its entirety before issuing its decision.

The primary issue before the AAO 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 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 [(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 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 (5th 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 sub acute nurse as case manager. The petitioner’s support letter dated March 15, 2010 indicates that the proffered position would require the beneficiary to perform the following duties:

In particular, she will be responsible for arranging, coordinating, and . . . monitoring patient care services in order to reach good quality of nursing as well as improve the facility's financial structure. Sub Acute Nurse is tasked with the organization of the sub acute rehabilitation care management services. This include[s] setting up ad[sic] effective and accurate data collection and retrieval system, undertaking the documenting and reporting requirements conf[or]ming to federal, state, and county regulations. The sub acute nurse will conduct a thorough assessment of the health[,] behavioral, vocational and social areas affected by the degenerative disease or impaired physical mobility. This involves working closely with the resident[s]' healthcare professional (physician, physical therapist, RN) to set [up] the support mechanism for . . . timely treatment planning, implementation and follow through of the rehabilitation plan for the resident.

Should the resident require specialized services, such as occupational therapy, physical therapy, speech therapy, behavior management or psychiatric counseling and evaluation, the sub acute nurse, as a case manager, is responsible for determining resources for this purpose, and presenting to the resident, family members, healthcare professionals and social worker the available service providers within the community. To this end, she is expected to establish a professional rapport with [the] resident, family members, healthcare professional[s], medical providers such as [an] insurance company, and Medicaid, and referral source to produce responsive and cost effective solutions to achieve maximum physical/health improvement of the resident.

The support letter goes on to state that the petitioner is well aware that most general registered nurse positions do not qualify as specialty occupations. However, the petitioner believes that certified advanced practice registered nurse positions such as a sub acute nursing specialist position may qualify as an H-1B specialty occupation. The petitioner further stated that in order to be a sub acute nurse in its industry, the candidate must have a bachelor's degree in nursing. The petitioner further asserts that the subject occupation requires theoretical and practical application of a body of highly specialized knowledge gained through completion of a bachelor's degree in nursing and that this degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted a general evaluation report dated April 2, 2009, from [REDACTED] Certificate of Graduation and transcripts from [REDACTED] National University as evidence of the beneficiary's bachelor of nursing degree, the beneficiary's registered professional nurse licenses for the Republic of Korea, New York, and Illinois, and the beneficiary's CGFNS certificate.

The petitioner also attached a more detailed description of the duties for a sub acute nursing specialist. According to the description, the duties of a sub acute nursing specialist include:

- (a) Plan, assist, organize and direct the company's rehabilitation care management data and collection for assigned patients, especially those with kidney ailments or requiring renal procedures (Approximately 35% of work hours allocated)[:]

- ...
- (b) Monitor use of available health care services, including but not limited to referral patterns, use of rehabilitation and specialty services and claims review in an objective and systematic manner that promotes the appropriateness and quality of care. (Approximately 25% of work hours allocated);

...

 - (c) Assess assigned patient's needs and coordinate potential resources in the continuum of care which promotes quality and cost effectiveness within the patient's health care plan. (Approximately 7.5% of work hours allocated);

...

 - (d) Handle patient/family education of related therapies, including coordinating medical team conferences and family conference, including information sharing, reporting to patient/family and referring physician. (Approximately 7.5% of work hours allocated);

...

 - (e) Coordinate treatment plan while maintaining communication with patient's representatives by providing patient progress reports, estimated length of rehabilitation/treatment, therapy intensities and resource planning. All services will be appropriate to patient's age. (Approximately 10% of work hours allocated); and

...

 - (f) Perform administrative requirements in compliance with federal, state and county regulations, such as completion and review of necessary forms, reports, etc., and submitting the pertinent documents and reports to the administrator and/or referring physician as required. (Approximately 15% of work hours allocated)

The submitted Labor Condition Application (LCA) was certified for a "Sub-Acute Nurse as Case Manager" to work on a full-time basis at the petitioner's office at [REDACTED] at a wage of \$25.00 per hour.

On May 26, 2010, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation.

In response to the director's RFE, counsel for the petitioner stated that the petitioner seeks the temporary employment of the beneficiary in the professional position of Sub Acute Nursing Specialist (Sub Acute Nurse for short) and reiterated the duties described by the petitioner for the sub acute nurse position and submitted with the initial filing. Counsel also stated that the beneficiary is an advanced practice registered nurse and has completed bloodborne pathogens trainings implying that the petitioner is seeking to employ the beneficiary in an advanced practice registered nurse position.

Counsel submitted a copy of an internal posting by the petitioner for a sub acute nurse-case manager position dated April 1, 2010, which states that the minimum requirement for the position is a bachelor's degree in nursing or a related field.

In response, counsel also submitted a certification of employment dated June 28, 2010 from the petitioner's administrator and director of nursing certifying that the petitioner is currently employing three sub acute nurses and a rehab case manager as well as their educational backgrounds as evidence that the petitioner normally requires a degree for the proffered position. Counsel also states that the petitioner normally requires a bachelor's degree for the sub acute nurse position.

The director determined that while the proffered position appears to resemble a nursing position beyond the entry-level registered nurse, it does not appear to be analogous to an administrative nursing position. Accordingly, the director concluded that the petitioner did not establish that the proffered position qualifies for classification as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner reiterated that the petitioner normally requires a bachelor's degree for the position. Counsel requests that the proffered position be classified as an "upper-level nurse manager" position based on the specialized and complex nature of the specific duties and a USCIS memo dated November 27, 2003 which acknowledges that increasing number of nursing specialties, such as critical care and operating room care, requires a higher degree of knowledge and skill than a typical RN or staff nurse position.

To determine whether the proffered position, as described in the initial petition and in the petitioner's response to the RFE, qualifies as a specialty occupation, 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 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 U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that 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)).

On appeal, counsel for the petitioner admits that the proffered position does not supervise other registered nurses and therefore, it is not a conventional administrative nursing position which often requires bachelor's degree holder. However, counsel asserts that the proffered position should be classified as an upper-level nurse manager.

The *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos083.htm> (last accessed January 17, 2012) describes "Registered Nurses" as follows in pertinent parts:

Registered nurses (RNs), regardless of specialty or work setting, treat patients, educate patients and the public about various medical conditions, and provide advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

RNs teach patients and their families how to manage their illnesses or injuries, explaining post-treatment home care needs; diet, nutrition, and exercise programs; and self-administration of medication and physical therapy. Some RNs may work to promote general health by educating the public on warning signs and symptoms of disease. RNs also might run general health screening or immunization clinics, blood drives, and public seminars on various conditions.

When caring for patients, RNs establish a care plan or contribute to an existing plan. Plans may include numerous activities, such as administering medication, including careful checking of dosages and avoiding interactions; starting, maintaining, and discontinuing intravenous (IV) lines for fluid, medication, blood, and blood products; administering therapies and treatments; observing the patient and recording those observations; and consulting with physicians and other healthcare clinicians. Some RNs provide direction to licensed practical nurses and nursing aides regarding patient care. RNs with advanced educational preparation and training may perform diagnostic and therapeutic procedures and may have prescriptive authority.

Most RNs work as staff nurses as members of a team providing critical healthcare. However, some RNs choose to become advanced practice nurses, who work independently or in collaboration with physicians, and may focus on the provision of primary care services. *Clinical nurse specialists* provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health. *Nurse anesthetists* provide anesthesia and related care before and after surgical, therapeutic, diagnostic and obstetrical procedures. They also provide pain management and emergency services, such as airway management. *Nurse-midwives* provide primary care to women, including gynecological exams, family planning advice, prenatal care, assistance in labor and delivery, and neonatal care. *Nurse practitioners* serve as primary and specialty care providers, providing a blend of nursing and healthcare services to patients and families. The most common specialty areas for nurse practitioners are family practice, adult practice, women's health, pediatrics, acute care, and geriatrics. However, there are a variety of other specialties that nurse practitioners can choose, including neonatology and mental health. Advanced practice nurses can prescribe medications in all States and in the District of Columbia.

Based on the duties as described by the petitioner, it does not appear that the beneficiary would perform the duties as quoted above and described in the *Handbook* for nurse practitioners because

the beneficiary would not prescribe medications to the residents of the facility. The beneficiary would not perform the duties of clinical nurse specialists because the proposed duties of the proffered position includes that of providing expert consultations in one of many nursing specialties, such as psychiatric-mental health, as well as prescribing medications.

As noted above, the petitioner obtained the LCA certificate for the proffered position under OES/SOC Code: 29-1111, Registered Nurses. Furthermore, the LCA shows that the petitioner obtained the prevailing wage of a Level I registered nurse for the position of sub acute nurse as case manager, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (Rev. Nov. 2009). Therefore, they do not demonstrate that the proffered position is an upper-level nurse manager or an advanced practice nurse and, in fact, they support the opposite conclusion.

Although the job description includes non-nursing duties, the AAO finds that the evidence in the record indicates that (1) the petitioner is seeking to employ the beneficiary in an entry-level registered nurse position, instead of an upper-level nurse manager position or an advanced practice nurse position, and (2) the duties of the proffered position proposed by the petitioner most closely resemble that of the registered nurses as covered in the *Handbook's* chapter on Registered Nurses.

With respect to education and training requirements for "Registered Nurses," the *Handbook* states as follows:

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.*

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.

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.

Id. (emphasis added).

The petitioner has set forth the duties for the proffered position and categorized the position as an entry-level registered nurse by having the underlying LCA certified under SOC Code: 29-1111 Registered Nurses and obtaining the prevailing wage for a Level I registered nurse position. In short, the descriptions provided in the *Handbook* do not clearly show that registered nurses are positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement. While the *Handbook* states that advanced practice nurses need a master's degree, it clearly indicates that completing an associate degree program and obtaining a nursing license by passing a national licensing examination is the minimum requirement to enter the occupation of registered nurses.

The record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by registered nurses pursuant to descriptions in the *Handbook*, and based on the fact that the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this occupation, it cannot be found that the petitioner has satisfied 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.

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).

As already discussed, 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, and the petitioner failed to demonstrate that parallel registered nurse positions for organizations that are similar to the petitioner require a college degree in a specific specialty for entry into the occupation. Therefore, the petitioner failed to demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has 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 is not required in a specific specialty. Neither the petitioner nor its counsel has provided evidence to distinguish the proffered position as unique from or more complex than registered nurse positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent.

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 provided a copy of the posting for the proffered position which indicates that the proffered position requires a bachelor’s degree in nursing or a “related field.” The petitioner also provided certification of employment for four individuals who are currently employed in the same or similar positions to the proffered position and their background documents showing that all four possess bachelor’s degrees in nursing. However, the fact that the petitioner may state that it requires a bachelor’s degree in nursing for this particular position does not automatically establish that the petitioner normally requires a bachelor’s degree in nursing for its registered nurse positions. Further, as previously discussed, the proffered position is reasonably categorized into the registered nurse occupational group and the petitioner did not provide information about its total number of employees in registered nursing positions and requirements for all of them. Therefore, the fact that four of the petitioner’s registered nurses hold a bachelor’s degree in nursing cannot be considered and accepted as evidence that the employer normally requires a bachelor’s degree in nursing or its equivalent for the proffered position at the petitioner’s business location or, more importantly, that the proffered position meets the statutory and regulatory definition of specialty occupation by requiring in part a bachelor’s or higher degree in a specific specialty or its equivalent to actually perform its duties. As the petitioner failed to establish that it has hired 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).¹

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. While the petitioner and its counsel contend that the nature of the proffered position’s duties are so specialized and complex that the proffered position must be

¹ 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 claimed 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 artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”).

classified as a specialty occupation, relative complexity is not sufficiently developed by the petitioner and, absent evidence to the contrary, the duties of the proposed position are not 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.² The AAO, therefore, concludes that the proffered position does not meet 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.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.

² It is further noted that any claims of specialization and complexity are simply not credible given the Level I designation on the supporting LCA. If the proffered position did in fact involve some level of complexity relative to other registered nurses, the petitioner would have to have submitted an LCA certified for at least a Level III, and more likely a Level IV, position.