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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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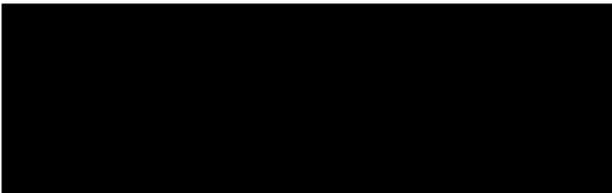
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Date: **JAN 09 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE:

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, 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 remain denied.

The petitioner provides home health care. It was established in 1995, employed 150 personnel and had earned a gross annual income of \$4,500,000 when the petition was filed. It seeks to employ the beneficiary as a home health services quality improvement manager pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129, Petition for Nonimmigrant Worker, 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, Notice of Appeal or Motion, with counsel's supplemental brief. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue in this matter is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Further, section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), specifies, "[f]or purposes of section 101(a)(15)(H)(i)(b) of this title," the "requirements of this paragraph, with respect to a specialty occupation" include "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation."

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 [1] 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 [2] 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 (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.

Counsel for the petitioner initially noted that the petitioner had obtained an approved immigrant petition for the beneficiary [REDACTED] for an EB-3 Schedule A Registered Nurse. Counsel indicated that as employment-based visas for the Philippines are backlogged, the petitioner was offering a temporary position of a home health services quality improvement manager to the beneficiary. In the September 30, 2009 letter appended to the petition, the petitioner noted that the beneficiary had been trained as both a physician and a nurse but stated that she would not perform any patient care and that her duties would not involve any hands-on patient care. The petitioner indicated the beneficiary would focus on evaluating and improving the quality of home care services being performed by the petitioner's staff. In that regard, the petitioner stated the beneficiary would:

- Develop, implement and evaluate the quality management program and activities that support the home health care agency objectives and expectations;
- Monitor the quality management program and ongoing activities to ensure that the desired outcomes are achieved and maintained;
- Perform ongoing utilization review for all clinical services;
- Review for updates to change of plan of care;
- Review all newly opened patient records to identify errors ensure accuracy of information, identify proper treatment plans, and ensure adequate documentation of skilled care;
- Plan, implement and administer quality improvement programs including training of clinical and administrative staff to ensure delivery of safe and cost-effective home care services;
- Maintain continuous communication between department heads, professional advisory committee (PAC) by attending PAC meetings and coordinating interdisciplinary functions;
- Maintain awareness of advances in medicine, computerized diagnostic and treatment equipment, home care regulations, and health insurance changes;
- Review and analyze home care agency activities and data to aid in planning and cash and risk management to improve service utilization;
- Responsible for collaborating with the nursing staff, admission nurse and other disciplines involved in patient care;
- Review ongoing quality documentation by writing updates as they relate to patient care;
- Prepare and submit audits of patient records as requested by intermediaries;
- Participate in the planning and developing of departmental in-service based on needs of clinical services identified through Quality Assurance and Utilization Review audits;
- Review certification and re-certification of patient needs with clinical staff;
- Maintain the reporting and documentation process through medical records and billing purposes to promote efficiency in audit and clinical record review;
- Recommend copies for in-services to the Director of Clinical Services to promote quality management of care;
- Maintain active knowledge of home care regulations and share this information with management personnel in clinical services; and

- Perform clinical supervision as required for evaluation of quality issues.

The petitioner stated that the proffered position required, at a minimum, a bachelor's degree in medicine, nursing, or physical therapy.

On October 28, 2009, the director requested a more detailed description of the work to be performed including specific job duties and an allocation of the percentage of time spent on the duties, among other items.

In response to the director's RFE, the petitioner added that the responsibilities of the proffered position are directly tied to the implementation of mandatory electronic medical records and that the accuracy and integrity of the records will be of utmost importance for converting paper records to electronic records and maintaining the system. The petitioner also noted that it currently did not have a physician on staff or on call with whom to confer regarding specific health care and treatment issues concerning home health service patients. The petitioner stated that the individual in the proffered position must have foundational and theoretical understanding of the nature of the patient's condition, prognosis, prescribed treatment, and drugs being administered, as well as the type and level of nursing or physical therapy treatment being provided in order to make a proper assessment as to the quality and effectiveness of care. The petitioner indicated that its ability to compete in the marketplace dictated that it offer error-free, high quality in-home care and that having a trained physician on staff to review all medical records and initiate continuous improvement programs will allow for expansion and improvement on current processes and procedures. The petitioner also provided a list of the beneficiary's duties grouped into four areas of responsibility: quality improvement, quality review, health information management, and regulatory standards. The petitioner also listed a number of areas of medical studies that it claimed were necessary to perform the duties of the proffered position. The petitioner did not correlate or otherwise explain why the courses listed were necessary to perform the duties of the proffered position.

The petitioner also provided over 35 advertisements for positions with titles such as: director of quality and risk management, clinical quality director, senior quality improvement specialist, quality management manager, compliance specialist, continuous quality improvement manager, among similar titles. Some advertisements included a few of the duties that were listed in the petitioner's description of duties. The companies advertising ranged from undefined health care organizations to hospitals to placement agencies. The advertisements listed a range of educational requirements from a registered nurse, to a bachelor's degree either preferred or required in unspecified disciplines, to a bachelor's degree in nursing or a related health care field, to a bachelor's degree in health care. Some advertisers indicated a bachelor's degree was required but a master's degree was preferred. Three of the advertisements which listed some of the duties of the petitioner's proffered position were for a compliance specialist which required a registered nursing degree or a bachelor's in nursing degree or other qualification commensurate with a healthcare degree; a quality improvement nurse which required a registered nursing degree and a bachelor's degree in a healthcare related field; and a director of operations – home healthcare which indicated a bachelor's degree in health care management or nursing was preferred. The petitioner also provided a December 4, 2009 letter signed by the director of operations from a company the petitioner identified as a competitor who

indicated that their “current Home Health Services – Quality Improvement Program Manager is a graduate of Doctor of Medicine.” The petitioner further provided the admissions and occupational descriptions relating to health care from several colleges and universities.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel for the petitioner asserts that the proffered position is most appropriately classified as a medical and health services manager. Counsel asserts that the director’s classification of the proffered position as a medical records and health information technician is in error and references the disparity in wages of a technician and the proffered position as set out in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*. Counsel notes that in response to the director’s RFE, the petitioner indicated that the beneficiary would spend 60 percent of her time on quality improvement and review duties. Counsel states: “[t]he duties involve use of advanced medical knowledge to ensure that the right diagnosis and the right selection of treatment for patients,” and as a physician is not making rounds, the quality improvement manager “is making vital medical decisions concerning patients’ plan of care; analyzing the attending physician’s diagnosis, and the physical therapists findings as well as the effectiveness of the care being provided to the patient.” Counsel points out that USCIS “did not acknowledge or discuss the evidence presented concerning the advanced medical knowledge required for decisions concerning care of patients.” Counsel references the 25 percent of time the beneficiary will spend on health information management duties and contends that these duties are not record keeping duties but rather that the “trained physician in this position is looking for errors in medical diagnosis, treatment, harmful effects of medications or combinations of medications, among others.” Counsel avers that the duties related to the regulatory standards portion of the position require medical knowledge to continuously monitor changes in standards of practice and that no one with less than a bachelor’s degree or higher is qualified to make the required assessment. Counsel notes that a registered nurse simply implements the plan of care set forth by the physician and is not trained or authorized to render a medical opinion, but that the individual in this position may call into question medical conclusions previously reached.

Counsel references the Department of Labor’s *Online Summary Report (O*NET)* for a medical health services manager position (SOC Code 11-9111) and notes that it carries a Job Zone 5 rating. Counsel notes that the director did not acknowledge the information provided in response to the RFE regarding the Department of Labor’s *Handbook’s* chapter on medical and health services managers and the educational requirements set out therein. Counsel concedes that the petitioner is not privy to the sort of information regarding similar organizations that would assist in establishing a degree requirement among similar organizations but asserts that the petitioner has provided evidence that the duties of its position are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Counsel concludes: the petitioner’s proffered position is properly classified as a medical and healthcare services manager and that the industry standard for such a position is a graduate degree in a business administration or health care field but that a bachelor’s degree is also accepted; the salary offered by the petitioner is commensurate with what other health care management professionals are paid; and the

nature of the 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 in a specific specialty.

Upon review of the petitioner's response to the director's RFE and counsel's assertions on appeal regarding the director's failure to consider that "[t]he duties involve use of advanced medical knowledge to ensure that the right diagnosis and the right selection of treatment for patients," and that the duties required "the advanced medical knowledge required for decisions concerning care of patients" we question the petitioner's claim that the beneficiary will not be directly involved in patient care. We observe that it appears that the petitioner will rely on the beneficiary's qualifications and training to perform duties that require licensing in the State of Michigan.

Chapter 333.17011 of the Michigan State Law states in pertinent part:

Sec. 17011.

(1) An individual shall not engage in the practice of medicine or practice as a physician's assistant unless licensed or otherwise authorized by this article. An individual shall not engage in teaching or research that requires the practice of medicine unless the individual is licensed or otherwise authorized by this article.

Chapter 333.17001 of the Michigan State Law provides:

Definitions; principles of construction

(1) As used in this part:

(f) "Practice of medicine" means the *diagnosis*, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by *attendance, advice, device, diagnostic test, or other means*, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts.

[Emphasis added.]

It thus appears that the petitioner in an effort to make the initial description of duties conform to USCIS requirements for a specialty occupation, added duties that require licensing. First, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Second, if the petitioner's attempt is to add duties that do not require licensing, the proffered position is not what the petitioner claims it to be. However, questioning a medical diagnosis and offering advice on the issue even if only to improve a patient's care involves the practice of medicine. Upon review of the record, eliminating those duties that counsel and the petitioner assert require advanced medical knowledge and appear to involve some medical diagnosis and decision

making at a physician's or nursing level, the petitioner has not established the proffered position is a specialty occupation.

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 *Occupational Outlook Handbook (Handbook)*,¹ 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)).

In addition, 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. Similarly, the educational credentials of a proposed beneficiary do not establish that a proffered position is a specialty occupation.

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. The *Handbook* does not specifically identify a position titled home health services quality improvement manager. The petitioner has however, listed some duties that appear in the *O*NET*'s description of the duties of a medical and health services manager. The petitioner states that the beneficiary will be required to:

- Plan, implement and administer quality improvement programs including training of clinical and administrative staff to ensure delivery of safe and cost-effective home care services;
- Maintain continuous communication between department heads, professional

¹ Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed December 2011).

advisory committee (PAC) by attending PAC meetings and coordinating interdisciplinary functions;

- Maintain awareness of advances in medicine, computerized diagnostic and treatment equipment, home care regulations, and health insurance changes;
- Review and analyze home care agency activities and data to aid in planning and cash and risk management to improve service utilization

Although these duties incorporate some of the broadly outlined *O*NET* duties and the petitioner added tasks associated with each duty in response to the director's RFE, the petitioner did not correlate the specific tasks to specific courses² required to obtain an health care administration degree. Of more importance, however, is that the petitioner does not include the duties associated with a medical and health services manager that require advanced knowledge in health care administration and thus fall within the purview of the *Handbook's* chapter on medical and health services managers' duties. The petitioner does not indicate that the beneficiary will be conducting and administering the petitioner's fiscal operations, directing or supervising medical, nursing, technical, clerical, service, maintenance, and other personnel except as restricted to evaluation of quality issues, or directing or conducting recruitment, hiring, training of personnel and establishing work schedules and assignment of staff according to workload. These are duties essential to a medical and health services managerial position that require the knowledge of health administration as discussed in the *Handbook*. As the petitioner in this matter does not require the individual in the proffered position to perform such duties, the record does not support counsel's claim that the position is a medical and health services manager occupation that requires a bachelor's level education in a specific discipline.

The *Handbook's* section on Medical and Health Services Managers states:

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.

* * *

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

² The petitioner listed a number of courses regarding human anatomy, pharmacology, pathophysiology, theories and process of examination and diagnosis, patient care and selection of treatment, three courses in principles in clinical management, and four courses in legal, ethical and healthcare policy and claimed that the courses provided the knowledge to perform the duties of the proffered position. However, as observed above, the petitioner did not explain why the particular courses were necessary or correlate the courses to specific duties of its home health quality improvement manager.

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.

Again, although the petitioner includes information in its description of duties that the beneficiary would develop, implement and evaluate the quality management program and would collaborate with the nursing staff, admission nurse and other disciplines involved in patient care and further defines those duties in response to the RFE, the petitioner does not detail, explain, or elaborate on why the duties require bachelor's level knowledge in a specific discipline. The record does not include the petitioner's organizational chart, description of the type and number of employees in managerial positions, care giving positions, or other positions. Thus, the record does not include sufficient information to assist in determining the actual level of responsibility and authority assigned to the proffered position. Moreover, it appears that the petitioner is creating a position tailored to the beneficiary's qualifications in order to enter the United States prior to the availability of her immigrant visa. Upon review of the totality of the record, the petitioner has not included the necessary evidence to establish the legitimacy of the proffered position.

The *Handbook*, in the section on education and training for medical and health service managers, states that for: "heads of clinical departments, a degree in the appropriate field and work experience may be sufficient early in their career. However, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are chosen from among supervisory registered nurses with administrative abilities and graduate degrees in nursing or health services administration." In that regard, we observe that the petitioner stated that the proffered position required, at a minimum, a bachelor's degree in medicine, nursing, or physical therapy. Although these fields relate broadly to health care, health care, itself, is a wide-ranging category that covers numerous and various disciplines and includes varying levels of responsibility and authority relating to patient care and the administration of patient care. We observe that the petitioner does not specify that the beneficiary should have a degree in health administration or a specialized degree that relates directly to the duties of a medical and health services manager at a specialty occupation level. The petitioner's stated requirement that a degree in disparate disciplines is acceptable, is tantamount to an acknowledgment that the position is not a specialty occupation. A requirement of a degree in "medicine, nursing or physical therapy," without particular specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. The petitioner has not provided that information.

The petitioner in this matter has not described a position that falls within the duties of a managerial executive who provides administrative services similar to those of a medical and health services manager. Moreover the petitioner also added responsibilities in regards to the maintenance of reporting and documentation records, a duty listed in its initial description. In response to the director's RFE, the petitioner noted that the beneficiary's responsibilities would be directly tied to the implementation of mandatory electronic medical records and that the accuracy and integrity of

the records will be of utmost importance from converting paper records to electronic records and maintaining the system. This additional information implies that the beneficiary will be involved in the technical aspect of converting paper medical records to electronic records, a duty while of utmost importance does not require a bachelor's degree in a specific specialty.

Upon review, again when eliminating the patient care duties referenced by counsel as requiring advanced medical knowledge and thus a license, the proffered position appears in part to resemble an administrative position. However, the record is deficient in establishing that the administrative position is one that requires a bachelor's degree or higher in a specific discipline. 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. In this matter the petitioner has not provided sufficient evidence to establish that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge commensurate with the attainment of a bachelor's or higher degree in a specific specialty. The petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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 discussed above, the petitioner has not established that its proffered position is a health services manager or other position for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. As counsel appears to acknowledge on appeal, it has not established that the home health care industry has made a degree in a specific specialty a minimum entry requirement for a quality improvement manager. The AAO observes that the advertisements submitted in response to the RFE confirm that a variety of degrees in a spectrum of disciplines are acceptable for entry into the proffered position. Upon review of the advertisements submitted and the letter from a claimed competitor, the petitioner has not established that similar organizations

routinely require at least a bachelor's degree in a *specific specialty* for parallel positions. The record does not establish that the petitioner satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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." As referenced above, the petitioner has not demonstrated how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, although the petitioner provided a list of courses and a claim that these courses were necessary, the petitioner did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While two or three courses in "clinical management" may be beneficial in performing certain duties of a quality improvement manager, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific discipline is required to perform the duties of the particular position here proffered. The petitioner's description of the job duties associated with the proffered position is not distinguishable by its unique nature or complexity from similar but non-degree-requiring positions.

The petitioner in this matter has not submitted evidence of its past employment practices as regards to the proffered position; thus, the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, if USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Based on the evidence of record, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that the proffered duties, as described in the record, reflect a higher degree of knowledge and skill than would normally be required of an administrative position that does not require specialty occupation knowledge. The duties as described do not represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a healthcare administrator that does not require the theoretical and practical application of a body of highly specialized knowledge in a specific specialty. Although counsel asserts that the petitioner has substantiated that the nature of the 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 in a specific specialty, the record does not support the assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obuighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The position as described does not represent a position that incorporates duties that are so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Again, we note the petitioner does not provide an analysis of why

coursework in medicine is required of the proffered position, unless as counsel asserted the beneficiary will be diagnosing or offering advice on the diagnosis of patients. The AAO concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.