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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

D2



Date: **JUL 03 2012** Office: CALIFORNIA SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 physical therapy services provider with three employees. It seeks to employ the beneficiary as a rehabilitation coordinator pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE) dated June 11, 2009; (3) the petitioner's response to the director's June 11, 2009 RFE; (4) the director's second RFE dated September 16, 2009; (5) the petitioner's response to the director's second RFE; (6) the director's denial decision; and (7) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The issue on appeal 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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, a proposed 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 rehabilitation coordinator. In the April 4, 2009, letter of support, the petitioner states that the beneficiary will:

be coordinating the delivery of rehabilitation services [for the petitioner] including physical, occupational, recreational, and speech therapies. [The beneficiary] will be involved in researching new approaches to rehabilitative services; consulting with medical and professional staff and health care professionals regarding rehabilitative techniques and approaches used; planning and coordinating staff conferences and training programs to maintain proficiency of staff in therapy techniques and use of new methods and equipment to meet patients' needs; auditing the delivery of rehabilitative care to maintain and promote quality; coordinating expansion of department and allocation of personnel; analyze operating costs and prepare department budget; [and] recommending patient fees for therapy based on use of equipment and therapy and staff. [The beneficiary] will also be involved in overseeing orderly growth of our rehabilitation services, including determining when it is cost effective to expand, what additional services are required, interviewing and recruiting quality personnel including part-time contract employees.

In addition, the petitioner broke down the day-to-day responsibilities of the proffered position as follows:

- 15% Researching new approaches to rehabilitative services;
- 15% Consulting with medical and professional staff and health care professionals regarding rehabilitative techniques and approaches used;
- 20% Planning and coordinating staff conferences and training programs to maintain proficiency or staff in therapy techniques and use of new methods and equipment to meet patients' needs;
- 20% Auditing and reviewing the delivery of rehabilitative care to maintain and promote quality, effectiveness and efficiency;
- 10% Coordinating expansion of department and allocation of personnel;
- 10% Analyze operating costs and prepare department budget; [and]
- 10% Recommend patient fees for therapy based on use of equipment and therapy and staff.

The letter goes on to state that the minimum qualification for this position is a bachelor's degree in physical therapy or its equivalent, or a closely related field. The petitioner also submitted the

beneficiary's Provisional Degree Certificate,¹ his Bachelor of Physiotherapy (BPT) Course Certificate and Statement of Marks from the Institute of Advanced Studies in Education Deemed University, and documents evidencing the completion of internship and research programs in physiotherapy.

The submitted Labor Condition Application (LCA) was certified for a "Rehab Coordinator" to work at the petitioner's facility in Lathrup Village, Michigan at an annual salary of \$50,000.

On June 11, 2009, the director issued an RFE (the first RFE) requesting a clinical health care worker certification for physical therapists for the beneficiary. In response to the director's first RFE, counsel for the petitioner asserted that the proffered position is not a physical therapy position and that the beneficiary would not perform physical therapy duties or perform direct/indirect individual patient care. Therefore, the clinical health care worker certification for physical therapists is not required.

On September 16, 2009, the director issued another RFE (the second RFE), requesting additional information from the petitioner to establish that the proffered position is a specialty occupation.

On October 28, 2009, in response to the director's RFE, the petitioner provided a more detailed job description for the proffered position as follows:

- 15% Researching new approaches to rehabilitative services; [a]ttending seminars, conferences, CME programs, workshops to research new rehabilitative techniques, services, and equipment; reading rehabilitative therapy journals to remain abreast of new and cutting edge therapy techniques and technologies[;]
- 15% Consulting with medical and professional staff and health care professionals regarding rehabilitative techniques and approaches used; [i]nterviewing medical staff and therapists on techniques and approaches currently used and not used; analyzing the efficiency and success of the techniques currently used[;]
- 20% Planning and coordinating staff conferences and training programs to maintain proficiency of staff in therapy techniques and use of new methods and equipment to meet patients' needs;
- 20% Auditing and reviewing the delivery of rehabilitative care to maintain and promote quality, effectiveness and efficiency; reviewing patients records

¹ It is noted that this document is not a bachelor's degree itself, only a certificate stating that the beneficiary is "provisionally held eligible for the award of the B.P.T. (Bachelor of Physiotherapy) degree." In addition, while the date on this provisional certificate is illegible, it can be deduced that it was not issued until on or after June 2008.

and Plans of Care to determine the outcomes of techniques used – in general, not for specific patient recommendation; recommending the purchase of new equipment within budgetary constraints[;]

- 10% Coordinating expansion of department and allocation of personnel; reviewing resumes and making recommendations on hiring[;]
- 10% Analyze operating costs and prepare department budget; [and]
- 10% Recommend patient fees for therapy based on use of equipment and therapy and staff.

The petitioner also states in the letter that the proffered position will be coordinating the delivery of rehabilitation services at the company during its expansion, and, on a contract basis, at its sister companies, including Community Rehab Services Inc. and that as the proffered position will essentially be hierarchically “above” the physical therapists and other occupational therapists at the petitioner and sister companies, it would logically follow that the proffered position would require at least a bachelor’s degree in physical therapy or some other closely related field.

In addition, in response to the RFE, counsel submitted ten advertisements placed by some health care entities at their own website, monster.com, careerbuilder.com and other online job posting sites for rehabilitation program coordinator, rehabilitation director, rehabilitation manager, supervisor – physical therapy rehabilitative services, physical therapist clinical coordinator, rehabilitation coordinator, rehab team coordinator, rehab services clinical coordinator, and clinical coordinator rehab.

Counsel also submitted an expert opinion letter dated July 23, 2009 from [REDACTED] East Carolina University (Prof. [REDACTED] July 23, 2009 expert opinion letter). After providing a description of the duties for a rehabilitation coordinator position, which is exactly the same as the description proposed by the instant petitioner for the proffered position in this matter, Prof. [REDACTED] states “according to the in-house quality assurance standards, and in order to main accreditation, it is important to have at least one Rehabilitation Coordinator per three rehab therapist.” At the end of the letter, Prof. [REDACTED] concludes that “[i]t is my opinion that the position of Rehabilitation Coordinator is clearly a specialty position, and requires the services of someone with the minimum of a Bachelor’s degree in Physical Therapy or a related field.”

Additionally, counsel submitted three letters from other companies. The first letter, dated July 28, 2009 from Ace Home Care, Inc., states that the company provides skilled nursing, physical and occupational therapy, and speech pathology to their homebound patients, and that it has 25 employees with over six individuals in the rehab department. The letter goes on to describe the duties of the rehabilitation coordinator at that company with exactly the same language as the proposed duties for the proffered position and then the letter concludes that due to the complexity of the duties for the position, they are requiring their rehabilitation coordinator to have at a minimum a

bachelor's degree in physical therapy or its equivalent, or a closely related field. The letter also indicates that this is the standard requirement for a rehabilitation coordinator in the industry. The second letter is dated July 30, 2009 and is from Expedia Home Care, Inc. The third letter is dated July 22, 2009 and is from Genesis Home Care, Inc. Both the second and third letters provide the same description of the duties for a rehabilitation coordinator and also state the same conclusion as the first letter.

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. In the denial, the director stated that an analysis of the proposed duties reveals that the position described by the petitioner reflect the duties of a social and human services assistant as listed under the title "Social and Human Services Assistants" in the U.S. Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, 2008-09 Edition, and that according to the *Handbook*, a position of social and human services assistant is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation.

On appeal, counsel contends in the Form I-290B that the director erred in determining that the position was that of a social and human services assistant. Counsel asserts that the position is more appropriately classified under the *Handbook's* job title of "Medical and Health Services Managers."

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 turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The *Handbook's* description of medical and health services managers provides in pertinent part:

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

Medical and health services managers, also called healthcare executives or healthcare administrators, plan, direct, and coordinate medical and health services. They might manage an entire facility or specialize in managing a specific clinical area or department, or manage a medical practice for a group of physicians. As healthcare changes, medical and health services managers must be able to adapt to changes in laws, regulations, and technology.

Duties

Medical and health services managers typically do the following:

- Work to improve efficiency and quality in delivering healthcare services
- Keep up to date on new laws and regulations so the facility complies with them
- Supervise assistant administrators in facilities that are large enough to need them
- Manage finances of the facility, such as patient fees and billing
- Create work schedules
- Represent the facility at investor meetings or on governing boards
- Keep and organize records of the facility's services, such as the number of inpatient beds used
- Communicate with members of the medical staff and department heads

In group medical practices, managers work closely with physicians, nurses, laboratory technicians, and other healthcare employees. For more information, see the profiles on physicians and surgeons, registered nurses, and medical and clinical laboratory technologists and technicians.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (accessed June 27, 2012).

The *Handbook's* description of social and human services assistant provides in pertinent part:

Social and human service assistants help people get through difficult times or get additional support. They help other workers, such as social workers, and they help clients find benefits or community services.

Duties

Social and human service assistants typically do the following:

- Work under the direction of social workers, psychologists, or others who have more education or experience
- Help determine what type of help their clients need
- Work with clients and other professionals, such as social workers, to develop a treatment plan
- Help clients get help with daily activities, such as eating and bathing

- Coordinate services provided to clients by their or other organizations
- Research services available to their clients in their communities
- Determine clients' eligibility for services such as food stamps and Medicaid
- Help clients complete paperwork to apply for assistance programs
- Monitor clients to ensure services are provided appropriately

Social and human service assistants have many job titles, including case work aide, clinical social work aide, family service assistant, social work assistant, addictions counselor assistant, and human service worker. They serve diverse populations with a range of problems. Their work varies, depending on the clients they serve.

Handbook, 2012-13 ed., "Social and Human Service Assistants," <http://www.bls.gov/ooh/community-and-social-service/social-and-human-service-assistants.htm#tab-2> (accessed June 27, 2012).

According to the *Handbook*, social and human services assistants' major responsibilities are to help social workers, healthcare workers, and other professionals to provide services to clients to help them improve their quality of life and obtain benefits and services such as food stamps, Medicaid and welfare. However, medical and health services managers focus on keeping the business running smoothly through planning, directing, coordinating, and supervising the delivery of healthcare, especially in smaller facilities, they handle more of the details of daily operations such as personnel, finances, facility operations, and admissions.

In the instant case, the record shows that the proffered position's main duties do not include the broad range of social and human service assistance with clients. Instead, the main and most duties the petitioner proposed for the proffered position relate to management of the petitioner's physical therapy facility via planning, directing and coordinating the activities of medical and health care services provided by the facility and its professional workers rather than directly providing any services to the patients. Therefore, the AAO finds that according to the description provided by the petitioner in the record, the duties proposed by the petitioner for the proffered position are more closely akin to that of medical and health services managers than social and human services assistants as described in the *Handbook*. Accordingly, the portion of the director's decision regarding analyzing the duties of the proffered position as that of Social and Human Services Assistants in the *Handbook* must be withdrawn.

While the AAO acknowledges that the petitioner provides a duty description for the proffered position which closely resembles the duties as described in the section of Medical and Health Services Managers in the *Handbook*, as a preliminary matter, it must be noted that the fact that the description of duties for the proffered position closely resemble the duties described in the *Handbook* does not automatically establish that the proffered position is a specialty occupation. In fact, in the instant matter, as to be discussed in greater detail later in this decision, the *Handbook* does not demonstrate that medical and health services managers categorically qualify as specialty occupations which normally require a bachelor's degree in a specific specialty as minimum entry requirement. Furthermore, in order to establish that the proffered position is a specialty occupation,

the petitioner must establish that the proffered position actually exists and that the beneficiary would be employed in a specialty occupation at the petitioner's location to perform the proposed duties, and therefore, there is a bona fide job offer in a specialty occupation from the petitioner to the beneficiary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 (9th 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).

In the instant matter, the petitioner filed the instant petition seeking to employ the beneficiary in the proffered position on the full-time basis at the petitioner's office. The petitioner claims that it has three employees. The record does not contain the petitioner's organizational chart or any other documents showing titles and positions of the three employees of the petitioner except for the president of the petitioner. The underlying LCA shows that the petitioner attests that it will employ the beneficiary as a full-time rehab coordinator at the petitioner's facility in ██████████ Village, Michigan. In the support letter dated April 4, 2009 and submitted with the initial filing, the petitioner stated that there is also a sister company, Exceptional Home Health Care,³ located nearby and the beneficiary might also be contracted to the petitioner's sister company to assist in setting up and auditing their rehabilitation quality assurance program. The April 4, 2009 letter explained that the petitioner needs to employ a rehabilitation coordinator, because they are looking to expand and therefore require the services of a rehabilitation coordinator to ensure the quality and comprehensiveness of their services and to oversee orderly growth.

In response to the director's second RFE, counsel submitted another supporting letter dated October 27, 2009 from the petitioner. In this letter, the petitioner stated that the petitioner hopes to open a few more clinics over the next few years, (one recently incorporated clinic being Community Rehab Services Inc.⁴), and will need the rehabilitation coordinator to assist, on a contract basis, with these sister companies in the hiring of physical therapists, P.T. assistants, and other support staff, and in setting up and auditing their rehabilitation quality assurance program.

³ The Michigan's official website for business database shows that Exceptional Home Health Care, Inc. is an independent Michigan domestic profit corporation incorporated on January 15, 2003 with resident agent of ██████████ and registered office at ██████████ *See* http://www.dleg.state.mi.us/bcs_corp/dt_corp.asp (last accessed June 27, 2012).

⁴ The Michigan's official website for business database shows that Community Rehab Services, Inc. is an independent Michigan domestic profit corporation incorporated on October 26, 2009 with resident agent of ██████████ and registered office at ██████████ *See* http://www.dleg.state.mi.us/bcs_corp/dt_corp.asp (last accessed June 27, 2012).

The petitioner's third support letter dated December 19, 2009 and submitted on appeal states that the petitioner currently has four employees, including two physical therapists, a physical therapist assistant, and an office assistant. This letter repeatedly states that the petitioner hopes to open a few more clinics over the next few years including the newly started Community Rehab Services, Inc. and the beneficiary would assist, on a contract basis, with these sister companies. The record also contains copies of the petitioner's federal income tax returns for 2006 through 2008.

These tax returns show that the petitioner had gross receipts or sales of \$104,576 and net income of \$8,632 after paying compensation of officers of \$3,846 and salaries and wages of \$29,791 in 2006; gross receipts or sales of \$83,744, and net income of \$20,840 after paying salaries and wages of \$1,933 in 2007; and gross receipts or sales of \$134,582, and net income of (\$5,573) without paying any compensation of officers and salaries in 2008.

The petitioner's tax returns show that while the petitioner's gross sales increased 29% from 2006 to 2008, its net income decreased from \$20,840 in 2007 to (\$5,573) in 2008. While the petitioner paid salaries and wages of \$29,791 in 2006 (still not sufficient for one full-time employee), it did not pay any compensation of officers and salaries in 2008. Therefore, the evidence in the record does not support the petitioner's assertion that it needs to employ the beneficiary in the proffered position due to its business expansion. The record does not contain any documentary evidence showing that the petitioner employed three employees on or before the date of filing the instant petition. 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)).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain any independent objective evidence to resolve these inconsistencies. The petitioner did not provide any evidence in support of its claim on appeal that it currently employs four workers. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Therefore, there is insufficient evidence in the record to support a finding that there exists a bona fide offer of employment for the beneficiary to be employed by the petitioner in the position offered and at the location attested in the petition.

Further, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). In this case, the petitioner is trying to establish eligibility for this H-1B petition based on future expansion of its business. Without solid evidence to prove the petitioner's business necessity for expansion and employment of a rehabilitation coordinator at the time of filing, the visa petition cannot be approved.

As the record shows, despite the petitioner's claim that these corporations are sister companies of the petitioner based on their common ownership by ██████████, Exceptional Home Health Care, Inc. and Community Rehab Services, Inc. are independent corporations under Michigan law and, thus, they are separate and distinct entities from ██████████ and the petitioning corporation. However, the petitioner claims that the beneficiary would also work, on a contract basis, at two other corporations. While the petitioner is petitioning the beneficiary to work on a full-time basis as a rehabilitation coordinator at the petitioner's office, its tax returns do not demonstrate that the petitioner has sufficient work for the beneficiary and funds to pay the beneficiary the proffered wage set forth on the LCA. Therefore, the AAO will quickly address the issue of whether or not the petitioner qualifies as a United States employer.

As detailed above, the record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. Given this specific lack of evidence, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services.⁵ In other words, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As previously discussed, there is insufficient evidence detailing where the beneficiary will work, the specific projects to be performed by the beneficiary, or for which company the beneficiary will ultimately perform these services. Therefore, the director's decision is affirmed, and the petition must be denied for this additional reason.

The AAO will next enter additional bases for denial, beginning with the petitioner's failure to comply with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B).

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the

⁵ The AAO notes that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the legacy Immigration and Naturalization Service (INS) had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 387-388. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations.

Additionally, the DOL regulations governing LCAs states that "[e]ach LCA *shall state . . . [t]he places of intended employment.*" 20 C.F.R. § 655.730(c)(4) (emphasis added). "Place of intended employment" is defined as "the worksite or physical location where the work actually is performed by the H-1B . . . nonimmigrant." 20 C.F.R. § 655.715. Moreover, the instructions for Section G of Form ETA 9035 require that the employer list the place of intended employment "with as much geographic specificity as possible" and notes that the employer may identify up to three physical locations, including street address, city, county, state, and zip code, where work will be performed. Petitioners who know that an employee will be working at additional worksites at the time of filing must include all worksites on Form ETA 9035. Failure to do this will result in a finding that the employer did not file an LCA that supports the H-1B petition.

In this case, Form I-129 lists the work location as [REDACTED]. In letters submitted with the initial filing and submitted subsequently, the petitioner also states that the beneficiary will work for the petitioner's sister companies at [REDACTED]. The petitioner, however, failed to submit an itinerary including both the dates and locations of the services to be provided. In addition, section E of ETA Form 9035E (Labor Condition Application) states that the beneficiary's intended work site is Lathrup Village, MI, and fails to mention any other worksite locations indicated in the petitioner's letter. Therefore, the petitioner has also failed to submit a valid LCA that corresponds to all of the proposed work locations.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit the

required itinerary as well as a valid LCA that corresponds to all of the proposed work locations, and the petition must also be denied for these additional reasons.

Even though the petitioner claims that the duties the beneficiary would perform in the position of rehabilitation coordinator are most akin to that of medical and health services managers as described in the *Handbook* and the beneficiary would consult with medical and professional staff and health care professionals, interview medical staff and therapists, plan and coordinate staff conference and training programs, audit and review the delivery of rehabilitative care, coordinate expansion of department and allocation of personnel, and analyze operating costs and prepare department budget, it does not provide any evidence such as the petitioner's organizational chart to show how many medical and professional staff, health care professionals, and medical staff and therapists the beneficiary can consult with, interview, plan and coordinate staff conference and training for. The petitioner's tax returns do not support that the petitioner had any employees in 2007 and 2008 and the record does not contain any documentary evidence in support of the petitioner's assertion that it employed four employees in addition to its president, including two physical therapists, one physical therapist assistant, and one office assistant.

Thus, the AAO is left to question the validity of the petitioner's claim and the remainder of the beneficiary's claimed duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. If the beneficiary would be performing the coordinating and management functions as claimed, the AAO notes that an employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial capacity. *Cf. Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm'r 1988). In other words, absent adequate staff to relieve the beneficiary from having to perform non-managerial, administrative, and rehabilitative care duties, it is simply not credible that the beneficiary would primarily perform managerial duties as claimed by the petitioner. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. *See* section 214(c)(1) of the Act, 8 U.S.C. § 1184(c)(1); *cf. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001); *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988).

Having identified the credibility issues with regard to the claimed duties of the proffered position, the AAO will nevertheless discuss the issue whether the petitioner meets the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), i.e. whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As discussed in detail below, the AAO finds that the *Handbook* does not indicate that a bachelor's degree in a specific specialty or its equivalent is a categorical minimum entry requirement for this occupation and, therefore, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), even if it was determined that (1) the proffered position should be classified as a medical and health services manager, (2) the petitioner had established that it made a bona fide job offer to the beneficiary to perform the duties on a full-time basis in a specialty occupation in such a small physical therapy facility, and (3) the petitioner submitted an itinerary and a valid LCA certified for that occupation for all locations intended for the beneficiary to work.

For the description of education and training for medical and health services managers, the *Handbook* states:

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees in health services, long-term care administration, public health, public administration, or business administration also are common.

Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

Handbook, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (accessed June 27, 2012).

While the *Handbook* indicates that medical and health services managers typically need at least bachelor's degree to enter the occupation, it does not, however, indicate that a bachelor's degree *in a specific specialty* is the normal minimum entry requirement for this occupation.

In addition, the *Handbook* states that a master's degree in health services, long-term care administration, public health, public administration, or business administration are also common for most generalist positions but it does not indicate that all generalist positions of medical and health services managers normally require such a degree in a specific specialty as a minimum entry requirement.

Further, the *Handbook* lists business administration as one of the majors sufficient for entry into medical and health services manager positions. As a preliminary matter, it must be noted that the *Handbook's* recognition that a degree in "business administration" is sufficient to perform the duties of medical and health services managers is inadequate to establish that the position qualifies as a specialty occupation. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position

requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).⁶

Because the *Handbook* indicates that entry into a medical and health services manager occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation. Further, there is nothing in the evidence of record that otherwise establishes that the duties described for the proffered position would require the application of at least a bachelor's degree level of highly specialized knowledge in any specialty.

The AAO will now address *Matter of [name not provided]*, Case No. WAC 02 198 51280 (AAO April 25, 2005), cited by counsel on appeal, submitted as evidence that a rehabilitation coordinator position is a specialty occupation. The AAO notes that the facts in that decision are not analogous to the instant petition. For instance, in *Matter of [name not provided]*, the petitioner was a nursing services provider and, more importantly, it was found that the proffered position was akin to that of a medical and health services manager and a physical or occupational therapist, which is not the case in this matter. Regardless, even if the facts of that case were analogous to those in this matter, it is an unpublished decision and, as such, is not binding on the AAO. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

⁶ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

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 medical and health services manager positions for a small physical therapy facility requires a college degree in physical therapy or its equivalent, or a closely related field for entry into the occupation.

Counsel submitted an expert opinion letter dated July 23, 2009 from Prof. Brunt, in response to the second RFE, as evidence that the petitioner has satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). However, Prof. Brunt does not list the reference materials on which he relies as a basis for his conclusion that the proffered position is a specialty occupation that requires at a minimum a bachelor's degree in physical therapy or a related field. It appears that Prof. Brunt did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. It is also noted that the expert opinion letter was prepared for another organization and the record does not contain any evidence showing that the organization is similar to the petitioner. 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). Therefore, the AAO finds that the letter from Prof. Brunt does not establish that the petitioner has satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel also submitted three letters from Ace Home Care, Inc., Expedia Home Care, Inc., and Genesis Home Care, Inc. in response to the director's second RFE. All three letters provide exactly the same descriptions of the duties for the rehabilitation coordinator positions as the one proposed by the petitioner for the proffered position and described in Prof. Brunt July 23, 2009 expert opinion letter. The exact same formatting for the duty description in the five documents raises doubts as to the reliability and authenticity of these letters. These letters do not list the reference materials on which they rely as a basis for the conclusion that, at a minimum, a bachelor's degree in physical therapy or its equivalent, or a closely related field is the standard requirement for a rehabilitation coordinator in the industry for small physical therapy service providers. It appears that the conclusion is not based on any objective evidence, but instead restates the author's individual opinion based on their companies own practice. Further, while the letter from Ace Home Care, Inc. states that the company provides skilled nursing, physical and occupational therapy, and speech

pathology to their homebound patients, and that it has 25 employees with over six individuals in the rehab department, the other two letters do not provide any information about the companies' size or organizational structures. In either event, the petitioner failed to demonstrate that the positions described in these letters are located in organizations that are similar to the petitioner. Thus, the AAO finds that the three letters from other organizations do not establish that the petitioner has satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted copies of ten advertisements in response to the director's second RFE. Counsel submitted ten advertisements placed by some health care entities at their own website, monster.com, careerbuilder.com and other online job posting sites for rehabilitation program coordinator, rehabilitation director, rehabilitation manager, supervisor – physical therapy rehabilitative services, physical therapist clinical coordinator, rehabilitation coordinator, rehab team coordinator, rehab services clinical coordinator, and clinical coordinator rehab.

All of the advertisements provided, however, cannot be considered as parallel positions because they are clinical service positions. Therefore, the position candidates are required to provide clinical services to patients and the positions require licenses or at least clinical experience in physical therapy, occupational therapy or nursing while the instant petitioner confirmed in response to the director's first RFE that the proffered position does not require any license because it would not provide any physical therapy services to the patients and the petitioner repeatedly asserts that the proffered position most closely resembles that of medical and health services managers as described in the *Handbook* that focuses on managing the facility and coordinating the delivery of physical therapist services instead of providing physical therapist services directly to patients. In addition, even if all of the job postings were parallel positions, the petitioner fails to establish that those parallel positions were located in similar organizations in the same industry since none of these advertisements provide information about whether the companies are similar in size, structure, or in the number of employees as the petitioner.

As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁷

⁷ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just ten job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar physical therapy services companies. See generally Earl Babbie, *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").

As such, even if the job announcements supported the finding that the position of rehabilitation coordinator for a small physical therapy services company required a bachelor's or higher degree in a specific specialty or

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 have provided evidence to distinguish the proffered position as unique from or more complex than medical and health services manager 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. In response to the director's second RFE, the petitioner claimed that it petitioned for a rehabilitation coordinator in the past and the petition was approved; however, the beneficiary was unable to join the company. Therefore, the instant beneficiary would be the first rehabilitation coordinator. Although the petitioner claimed that it petitioned for a rehabilitation coordinator position which was approved for the previous beneficiary who holds a degree in medicine, the submitted copy of the RFE issued by the Nebraska Service Center director on November 8, 2008 for the petition LIN0523053231 shows that the proffered position in that case was an administrator of rehabilitation services.

Nevertheless, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The fact that the beneficiary in the prior approved petition held a degree in medicine is not sufficient to establish that the petitioner normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position.

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.

The petitioner provided no information about its normal education requirements for the position except for the previously approved petition for an administrator of rehabilitation services. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁸

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. As discussed *supra*, a review of the *Handbook* reveals that the description of the duties of the proffered position is analogous to that of a medical and health services manager occupation that does not require a bachelor's degree in a specific specialty. There is no evidence in the record that shows that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. For this reason, the appeal must be dismissed and the petition denied.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of the beneficiary's foreign degree as evidence that he has the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree in a specific specialty or the equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.⁹

⁸ 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").

⁹ It is further noted that, as indicated above, a copy of the beneficiary's foreign Bachelor of Physiotherapy

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

degree was never submitted; only a copy of the provisional degree certificate was provided. As such, it is unclear whether a bachelor's degree was ever conferred.