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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

B2

[Redacted]

Date: **JUL 03 2012** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

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

If you believe the 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
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.

A Form G-28 Notice of Entry of Appearance that accompanied the Form I-129 visa petition indicates that the petitioner was then represented by a Maryland attorney, who prepared the visa petition. Another Form G-28, submitted on appeal, shows that the petitioner is now represented by an Illinois attorney. All representations will be considered, but the decision will be furnished only to the petitioner and the petitioner's current counsel of record.

On the Form I-129 visa petition the petitioner stated that it is a nursing care facility. To employ the beneficiary in what it designates as a Rehabilitation Case Manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

The director denied the visa petition based on the finding that the petitioner had failed to demonstrate that the proffered position is a specialty occupation position. The AAO will therefore consider that issue. 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a

specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, the petitioner's previous counsel submitted evidence to show that the beneficiary has a bachelor's degree in medical technology from the University of Santo Tomas in the Philippines and a bachelor's degree in nursing from Laguna Northwestern College, also in the Philippines. Counsel also provided an evaluation of the beneficiary's education that states that her degrees are equivalent to a bachelor's degree in medical technology and a bachelor's degree in nursing earned in the United States.

The visa petition was also accompanied by a letter, dated July 29, 2009, from the petitioner's vice president for operations, who gave the following description of the duties of the proffered position:

- (a) Plan, assist, organize and direct the company's rehabilitation case management data and collection for assigned sub acute patients/residents, particularly those requiring specialized rehabilitation treatment procedures and protocols such as hemodialysis;
- (b) Monitor use of available health care services, including but not limited to referral patterns, use of rehabilitation and specialty services and claims review in an objective and systematic manner that promotes the appropriateness and quality of care;
- (c) Assess assigned patient/resident's needs and coordinate potential resources in the continuum of care which promotes quality and cost effectiveness within the resident's health care plan;
- (d) Handle patient/family education of related therapies, including coordinating medical team conferences and family conferences, including information sharing, reporting to resident/family and referring physician;
- (e) Coordinate treatment plan while maintaining communication with patient/resident's representatives by providing progress reports, estimated length of rehabilitation treatment, therapy intensities and resource planning. All services will be appropriate to patient/resident's age and physical condition;
- (f) Perform administrative requirements such as completion of necessary forms, reports, etc., and submitting the documents to the Administrator and/or referring physician as required.

The letter further states that the proffered position requires a bachelor's degree in nursing, physical therapy or another health-related discipline.

On September 3, 2009, the service center issued an RFE in this matter, requesting, inter alia, additional evidence to establish that the proffered position is a specialty occupation position.

Previous counsel's response to the RFE included (1) a posting of the proffered position; (2) a letter, dated October 9, 2009, from the petitioner's vice president; (3) 12 letters from others in the

petitioner's industry; (4) an evaluation of the proffered position; and (5) six vacancy announcements pertinent to positions with other organizations.

The posting of the proffered position restates the duties included in the petitioner's vice president's July 29, 2009 letter.

The October 9, 2009 letter from the petitioner's vice president contains a more detailed description of the duties of the proffered position. Although it contains more detail, that description does not make any clearer why the duties of the proffered position, or any one of them, would require a minimum of a bachelor's degree or the equivalent in a specific specialty.¹ The petitioner's vice president also stated that this is the first time the petitioner has sought to employ a Rehabilitation Case Manager, and that the position requires "a bachelor's level of training and coursework in Nursing, Physical Therapy, Rehabilitation Medicine, or relevant health[-]related disciplines."

Of the 12 letters from others in the petitioner's industry, six pertain to a position entitled Restorative Program Development Specialist, which position is concerned with the restoration of a patient's mobility. The AAO sees no basis in the evidentiary record here to find that such positions are parallel to the position proffered in the instant case, or that they are otherwise relevant to this

¹ For instance, the first duty described was

Plan, assist, organize and direct the company's rehabilitation case management data and collection for assigned sub[-]acute residents, especially those requiring specialized rehabilitation treatment procedures and protocols.

In response to the RFE, the petitioner's vice president added the following additional descriptions of that duty:

- Identifies opportunities for improvement of existing system, participates in data collection and analysis, contributes to problem solving and identification of actions to be taken and effectiveness of those actions
- Utilizes evidence-based tools to analyze and identify trends/patterns of performances through variance reporting to improve quality and satisfaction and decrease variation and cost
- Works collaboratively with other departments to define and study areas of hospital inefficiency and participants in improvement projects
- Develops understanding of responsibilities for participation in QI (Quality Improvement) activities. Participates in QI teams as requested
- Assist in the development and implementation of best practices to optimize resource management to achieve desired outcomes
- Prepares statistical reports on department services and patient needs, participates in the billing procedures for services rendered as required.

Although the additional descriptions add detail, they do not make any clearer why the proffered position, or its duties, would require a minimum of a bachelor's degree or the equivalent in any specific specialty. The additional detail pertinent to the other duties of the proffered position similarly fails to clarify that need.

proceeding. Those six letters will not be considered further, therefore, as they have no probative value.

The remaining six letters pertain to Rehabilitation Case Manager or Rehabilitation Case Management Specialist positions. Those letters state, in the aggregate, that nursing and assisted living facilities may hire such employees, and the minimum qualification for such a position is a bachelor's degree in nursing, physical therapy, rehabilitation medicine, or a related field. None of those letter writers indicates that their facility has ever hired such an employee, and none of them identify any such facility that has. Further, the AAO finds that the letters do not provide an adequate factual basis for the opinions that they express.

The position evaluation is dated September 8, 2008 and was prepared by an associate professor of nursing at the University of Rochester School of Nursing. It contains a list of duties. Although that evaluation appears to have been prepared for a different position, the duties it describes are substantially similar to those described in the petitioner's vice president's July 29, 2009 letter. The evaluation states, "The skills required for the position are developed in the junior and senior years of an undergraduate program in Nursing, Physical Therapy, or a health[-]related field," but does not indicate which of those duties could not be performed without such academic preparation. The evaluation concludes that the proffered position "requires the services of someone with the minimum of a Bachelor's degree in Nursing, Physical Therapy, or a health[-]related field."

The director denied the visa petition on November 6, 2009, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation position. In that decision, the director analyzed the duties of the proffered position as a combination of the duties of a Medical and Health Services Manager position and those of an Administrative Service Manager as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel submitted a brief and six additional vacancy announcements. The vacancy announcements will be addressed below, along with the vacancy announcements previously submitted.

In the appeal brief, counsel asserted that proffered position is most similar to positions described in the *Handbook* chapter entitled Medical and Health Service Managers. Counsel cited the *Handbook* for the proposition that such positions require a bachelor's degree.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook*, supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The *Handbook* provides the following description of the duties of medical and health services administrators:

- 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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Medical and Health Services Administrators," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited June 4, 2012).

The high level of administrative duties required of medical and health services administrator positions as described in the *Handbook* does not seem to parallel the case management duties to be performed in the proffered position. The duties of the proffered position indicate that the beneficiary would manage the cases of individual patients, rather than being in charge of the efficiency of the entire facility and its finances, representing the petitioner at investor meetings, etc.

Another chapter of the *Handbook* describes the duties of registered nurses. It states that, in general:

Registered nurses (RNs) provide and *coordinate patient care, educate patients and the public about various health conditions, and provide advice* and emotional support to patients and their family members.

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

[Emphasis provided.]

It further states:

Registered nurses typically do the following:

- Record patients' medical histories and symptoms
- Give patients medicines and treatments
- *Set up plans for patients' care* or contribute to existing plans
- Observe patients and record the observations
- Consult with doctors and other healthcare professionals
- Operate and monitor medical equipment
- Help perform diagnostic tests and analyze results
- *Teach patients and their families how to manage their illnesses or injuries*
- *Explain what to do at home after treatment*

[Emphasis provided.]

In addition to the usual duties of a registered nurse, the *Handbook* states:

Some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as *nurse educators*, healthcare consultants, public policy advisors, researchers, *hospital administrators*, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

[Emphasis provided.]

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-2> (last visited June 4, 2012).

Most of the duties the petitioner's vice president attributed to the proffered position are consistent with the duties of registered nurses in an administrative position as generally described in the *Handbook*. Assessing patients' needs; providing health education to patients and their families; coordinating the treatment plan while communicating with the patient's representatives; performing administrative requirements such as completion of necessary forms, reports,; submitting documents to the Administrator and/or referring physician as required, etc., contain no indication that they might not be performed by a registered nurse. Further, that one of the duties refers to "submitting documents to the Administrator" suggests that the facility employs a Medical and Health Services Administrator to whom the beneficiary would report. On the balance, the AAO finds that the

proffered position is not a medical health services administrator position, but a registered nursing position.

The *Handbook* describes that education requisite to a registered nurse position as follows:

Registered nurses usually take one of three education paths: a bachelor's of science degree in nursing (BSN), an associate's degree in nursing (ADN), or a diploma from an approved nursing program.

It further states:

BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

The *Handbook* thereby makes clear that a registered nurse position does not categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of healthcare and healthcare administration, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The record contains no submissions from professional associations in the petitioner's industry attesting that a degree is a minimum entry requirement.

However, the AAO finds that the Association of Rehabilitation Nurses (ARN) has developed a role description of rehabilitation nurse case managers. See <http://www.rehabnurse.org> (last accessed June 4, 2012). According to its website, the ARN was established in 1974 and formally recognized as a specialty nursing organization by the American Nurses Association in 1976. The ARN membership includes more than 5,600 professional nurses. The ARN's developed role description states that the functions of the rehabilitation nurse case manager include data collection and assessment, data analysis and formulation of nursing diagnosis, establishment of goals and plan of care, implementation, collaboration, documentation, evaluation, and quality assurance. These functions cover all the duties described by the petitioner for the proffered position – Rehabilitation Case Manager at its nursing care facility. For qualifications, the ARN indicates that a rehabilitation nurse case manager requires *licensure as a registered nurse, preferably with a degree in nursing (BSN) from an accredited school or equivalent work experience*. *Id.* (emphasis added). As the *Handbook* indicates, licensure as a registered nurse in the United States does not require a bachelor's degree in nursing. Therefore, the ARN establishes a standard or normal practice in this industry or profession that a rehabilitation nurse case manager does not require a U.S. bachelor's degree in a specific specialty.

The petitioner did submit the letters, described above, from individuals in the petitioner's industry. As was noted, however, half of those letters do not pertain to the proffered position. The other half, although they abstractly state that rehabilitation case manager or rehabilitation case management specialist positions require a minimum of a bachelor's degree in nursing, physical therapy, rehabilitation medicine, or a related field, do not explicitly state that they are familiar with any facility that ever employed anyone in such a position. Without a concrete statement of the basis for their statements pertinent to the requirements of the proffered position, those letters are insufficient support for the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The position evaluation is dated September 8, 2008 and provided a list of duties. Although that evaluation appears to have been prepared for a position with a different facility, the duties it describes are substantially similar to those described in the petitioner's vice president's July 29, 2009 letter. The evaluation states, "The skills required for the position are developed in the junior and senior years of an undergraduate program in Nursing, Physical Therapy, or a health[-]related field." The evaluation concludes that the proffered position "requires the services of someone with the minimum of a Bachelor's degree in Nursing, Physical Therapy, or a health[-]related field."

The position evaluation prepared by the associate professor of nursing is not probative.

First, although the letter concludes that the proffered position cannot be performed by a person with less than a bachelor's degree in nursing, physical therapy, or another health-related field, it did not state which of the duties of the position could not be adequately performed without such academic preparation, or why.

Second, despite her self-endorsement as qualified to comment on the requirements of Rehabilitation Case Management Specialist positions, neither the associate professor's letter, nor her résumé, nor any other evidence of record substantiates that she is qualified as an expert on recruiting and hiring practices of nursing facilities seeking to fill such a position. There is no extrinsic evidence of expertise in the area, such as scholarly research conducted by the professor on the specific area upon which she is opining; books, articles, or treatises authored by her in the area of claimed expertise; or recognition by professional organizations as an authority on nursing facilities' practices regarding recruitment and hiring of rehabilitation case managers or administrative nurses. As the associate professor has not established her credentials as an expert on industry hiring standards, her opinion in this area merits no special weight and is not persuasive.

Third, given that the position evaluation was prepared in reference to a position at another institution, rather than a position at the petitioner's facility, there is no indication that the evaluator had any insight into the particular requirements of the position of rehabilitation case manager within the petitioner's operations.

Fourth, the evaluator's opinions are conclusory; she does not cite studies, treatises, surveys, or any other factual basis for them. Further, neither her letter nor any other evidence of record indicates that she has observed or otherwise obtained substantive personal knowledge of what the beneficiary's specific duties would entail as performed day-to-day at the petitioner's facility.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where, as here, an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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The 12 vacancy announcements submitted are for positions entitled, Case Manager, Clinical Case Manager, DOC Co-Occurring Case Manager,³ Director of Case Management, Nurse Case Manager, and Medical Case Manager.

Two vacancy announcements state that their positions require a bachelor's degree, but not that the degrees must be in any specific specialty.

One vacancy announcement states that the position requires a bachelor's degree in a related field, but subsequently that a degree in speech therapy, physical therapy, or occupational therapy is preferred.

³ The AAO believes that this title signifies that the cases to be managed would be those of dual diagnosis mental illness/substance abuse patients within the Department of Corrections, although that is not entirely clear.

Although the position announced may be a specialty occupation position, given the subjects listed as preferred, it is apparently not parallel to the proffered position.

Another vacancy announcement states, "Bachelors or masters degree in social work, rehabilitation or related allied health field or a degree in nursing (BSN preferred)" That announcement makes clear that, although a BSN is preferred, a degree in nursing less than a bachelor's degree is acceptable. As such, it does not require a minimum of a bachelor's degree or the equivalent. Further, it does not require a degree in any specific specialty.

Another announcement states that the position requires a Maryland RN license and a bachelor's degree. As was amply explained above, a registered nurse does not necessarily possess a BSN. An applicant could qualify for that position with, for instance, an associate's degree in nursing and a bachelor's degree in any subject. As such, that announcement does not require a minimum of a bachelor's degree or the equivalent *in any specific specialty*.

Another vacancy announcement is open to RNs with master's degrees. An RN might, of course, have a master's degree in any number of subjects. That vacancy announcement does not require a minimum of a bachelor's degree or the equivalent *in a specific specialty*.

One announcement requires a bachelor's degree in social work, counseling, psychology, or a closely-related field, or at least four years of qualifying experience. As four years of experience is not equivalent to a bachelor's degree, that announcement does not require a minimum of a bachelor's degree.

One vacancy announcement requires a bachelor's degree, and states that a degree in business or life sciences is preferred. That announcement prefers, rather than requires, a bachelor's degree in a range of specialties. A preference is not a minimum requirement. As such, it does not require a bachelor's degree in any specific subject or even in any range of subjects. Further, business and life sciences do not delineate a specific specialty. As such, the vacancy announcement *does not even prefer* a minimum of a bachelor's degree or the equivalent *in a specific specialty*. For both reasons, that vacancy announcement does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Similarly, another announcement states that the position requires a "Bachelor's Degree (BA) or equivalent, or Associates degree in Human Services field." That announcement does not require a minimum of a bachelor's degree or the equivalent.

One vacancy announcement requires a "BSN or Bachelor's in a related field." What fields would be considered sufficiently closely-related, and whether the acceptable fields would delineate a specific specialty, are unknown to the AAO. As such, that vacancy announcement has not been shown to require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Finally, two vacancy announcements state that a BSN is required for their positions. The AAO observes that those vacancy announcements require a minimum of a bachelor's degree in a specific specialty.

Although most of the vacancy announcements appear to have been placed by companies in the petitioner's industry, they contain insufficient information regarding the advertising organizations to conduct a legitimate comparison of their business operations with the petitioner's. The advertising organizations have not, therefore, been shown to be similar to the petitioner. Moreover, the descriptions of the positions offered do not demonstrate that the positions are parallel to the proffered position.⁴ The burden of proof remains with the 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.

Further, only two of the 12 vacancy announcements provided state that they require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further still, even if all of the vacancy announcements indicated a bachelor's degree or the equivalent in a specific specialty to be a prerequisite for the vacancies they announce -- which they do not -- the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from four advertisements with regard to determining that the common educational requirements for entry into parallel positions in similar organizations.⁵

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

⁴ The DOC Co-Occurring Case Manager position, for instance, appears to entail psychological counseling, rather than case management in the same sense as the proffered position.

⁵ 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 a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar nursing facilities. *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 case manager for a nursing care facility, as a subset of registered nurse positions, required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may 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 may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next review the record regarding 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 minimum of a bachelor's degree or the equivalent in a specific specialty is not required for a registered nurse position.

The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than registered nurse or case manager positions that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty. Given the generalized and generic extent to which they are all described, the proposed duties (such as, for instance, planning, assisting, organizing and directing the company's rehabilitation case management data; and monitoring the use of available health care services) have not been shown to be so complex or unique as to require a specialized degree.

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition. While related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform in the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁶

⁶ 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

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty. Again, however, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than case management oriented registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Assessing a patient's needs and coordinating care, educating the patient and patient's family with respect to treatment and maintaining communication with them, completing forms and reports for submission to the petitioner's administrator or the referring physician, for instance, do not convey the relative degree of specialization and complexity required to satisfy this criterion. Also, as described in this record of proceeding, the duties do not reveal complexity and specialization above those of positions in the occupation that are not usually associated with knowledge that requires at least a bachelor's or higher degree in a specific specialty. For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. *The appeal will be dismissed and the petition denied for this reason.*

The record suggests an additional issue that was not addressed in the decision of denial. Specifically, the petitioner offered a lower wage to the beneficiary than that specified in the LCA submitted in support of the instant petition.

Section 101(a)(15)(H)(i)(b) of the Act provides in pertinent part that:

an alien ... who is coming temporarily to the United States to perform services ... in a specialty occupation described in section 214(i)(1) ... with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) ...

The petitioner requirements set forth under criteria for H-1B petitions involving a specialty occupation are set forth at 8 C.F.R. § 214.2(h)(4)(iii)(B) which provides in pertinent part that:

The petitioner shall submit the following with an H-1B petition involving a specialty occupation:

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").

- (1) A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary.
- (2) A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

... ..

DOL regulations at 20 C.F.R. § 655.730(d) also states in pertinent part regarding attestations contained in the LCA:

An employer's LCA shall contain the labor condition statements referenced in §§ 655.731 through 655.734, and §§ 655.736 through 655.739 (if applicable), which provide that no individual may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary an application stating that:

- (1) The employer is offering and will offer during the period of authorized employment to H-1B nonimmigrants no less than the greater of the following wages:
 - (i) The actual wage paid to the employer's other employees at the worksite with similar experience and qualifications for the specific employment in questions; or
 - (ii) The prevailing wage level for the occupational classification in the area of intended employment;

... ..

In the instant matter, the attached certified LCA indicates that the Level I prevailing wage for Rehabilitation Case Manager in Wauconda, Illinois is \$31.04 per hour and the petitioner offers to pay the beneficiary at the rate of \$31.04 per hour on a part-time basis. However, on the petition, the petitioner checked "yes" to the question "Is this a full-time position?" in Part 5, item 6 and indicates that it would pay the beneficiary at the level of \$1,055.36 per week. DOL precedent establishes that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994). The weekly prevailing wage at the rate of \$31.04 per hour must be at least \$1,086.40 instead of \$1,055.36. The petitioner's July 29, 2009 supporting letter from Cheryl Morris, Vice President for Operations states that the beneficiary "will be compensated at \$31 per hour, based on a 34-hour work schedule, from Monday through Friday." (emphasis added). The petitioner submitted a copy of a posting of the proffered position and claimed that this notice was posted from August 5 through August 22, 2009. The submitted notice of job opportunity clearly indicates "\$31 per hour" for salary. The petitioner offered a wage lower than the prevailing wage on this petition and thus, the petitioner has indicated that it would not, if the petition were approved, comply with the terms and conditions of the LCA. Therefore, the petition must be denied for this additional reason.

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).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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.