

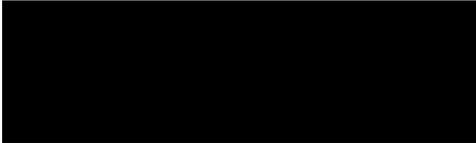
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



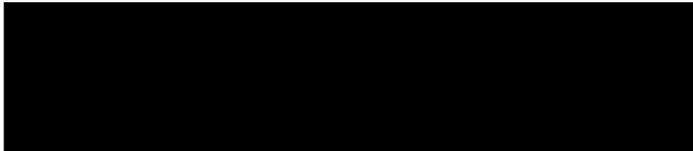
D2

Date: JUL 30 2012 Office: VERMONT 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:



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 service center director revoked the approval of the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The approval of the petition will be revoked.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a healthcare business with 125 employees. It seeks to employ the beneficiary in what it designates as a director of quality assurance position and 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 director revoked the approval of the petition on the grounds that the petitioner failed to establish that the duties of the proffered position qualify as a specialty occupation and that the petitioner failed to establish that the beneficiary has the educational background to perform the job duties as described by the petitioner.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the approval notice; (5) the director's notice of intent to revoke (NOIR); (6) the petitioner's response to the NOIR; (7) the notice of decision; and (8) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On May 4, 2009, the petitioner filed an H-1B petition with USCIS. In support of the Form I-129, prior counsel for the petitioner submitted, *inter alia*, the following documents: (1) a copy of a certified Labor Condition Application (LCA); (2) a support letter by the petitioner; (3) copies of the beneficiary's foreign diplomas and transcripts; (4) a copy of a certificate issued by the [REDACTED], a division of the Commission on Graduates of Foreign Nursing Schools (CGFNS), certifying that the beneficiary meets the requirements of section 212(a)(5)(C) of the INA, as specified in 8 C.F.R. § 212.15(f) for the profession of "Registered Nurse"; (5) a copy of an International English Language Testing System Test Report Form for the beneficiary; (6) a copy of a letter notifying the beneficiary that she passed the NCLEX-RN examination; and (7) the beneficiary's resume.

In its letter dated April 22, 2009, the petitioner claimed to be an intermediate care facility that specializes in "providing comprehensive services and excellent care for individuals who require occupational therapy, mental health services, speech/language pathology services, and orthopedic and rehabilitation services." It further claimed to provide services including long-term skilled nursing care and rehabilitative services.

Regarding the proffered position, the petitioner claimed to require the services of the beneficiary as a director of quality assurance and asserted that her duties would be as follows:

[The beneficiary] will be responsible for investigating, examining, collecting and reporting all quality assurance issues to all staff at the facility. As Director of Quality Assurance, [the beneficiary] will work with the propriety healthcare software, Minimum Data Set ("MDS"), to ensure that the facility's MDS 2.0s are

correctly coded. She will assist with the implementation of programs to improve quality care. She will develop and implement on quality initiatives. She will identify facility issues and provide guidelines in accordance with facility process/resolution. She will managing [sic] relationships with medical professional staff to ensure timely and accurate responses to inquiries are [sic] based upon defensible and documented rationale. In addition to the above duties, [the beneficiary] will identify and recommend corrective action plans and training of processes or techniques to meet accuracy requirements.

The petitioner further stated that the position requires a bachelor's degree in nursing or a related discipline, or its foreign equivalent. With respect to the beneficiary's qualifications, the petitioner stated that the beneficiary possessed the U.S. equivalent of a bachelor's degree in nursing and has "significant nursing and healthcare experience that parallels the responsibilities to be undertaken at the petitioner's nursing facility.

On July 19, 2009, the director issued an RFE which requested more information regarding licensure requirements for the position. The director stated that if the position does not require a license from the state licensing office, the petitioner should establish how the position qualifies as a specialty occupation as well as evidence pertaining to the qualifications of the beneficiary. The director also requested that the petitioner provide evidence of how many other individuals are employed in similar positions and of these, how many hold at least a bachelor's degree as well as evidence of the fields of study the degrees are in.

In response, prior counsel for the petitioner submitted a letter dated August 17, 2009, which addressed the director's questions, and submitted several additional documents in response to the director's requests. Counsel stated that **"the beneficiary has applied for a license, and has passed the NCLEX-RN examination, and she has met all other licensing requirements except for submitting a valid U.S. Social Security Number (SSN) . . . .** The beneficiary will obtain a SSN as soon as she enters the United States with a valid H-1B visa; and then she will be able to obtain her Nursing License."

Counsel also stated that a bachelor's or higher degree or its equivalent is normally the minimum requirement for the proffered position and that its degree requirement is common in the industry in parallel positions among similar organizations. Counsel also stated that the proffered position is a new position, and, therefore, "no one has ever held this position in the past." Counsel also contended that the beneficiary is qualified for a specialty occupation.

Counsel also submitted the following documents, *inter alia*: (1) an evaluation from [redacted] of (a) the proffered position's duties and educational requirements and (b) the beneficiary's qualifications; (2) copies of four job advertisements; (3) a print-out of the O\*Net Summary Report for 11-9111.00 – Medical and Health Service Managers; (4) a copy of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* chapter on Medical and Health Services Managers (2008-09 Edition); (5) a letter from the petitioner dated

August 13, 2009, stating that the proffered position is new and that the minimum educational requirement for the position is a bachelor's degree in nursing, physical therapy, rehabilitation medicine or related field of study; and (6) a credential evaluation from Worldwide Education Evaluators, Inc. finding that the beneficiary's foreign education is equivalent to a U.S. Bachelor of Arts degree in Communications and a U.S. Bachelor of Science degree in Nursing.

The petition was approved on September 22, 2009. Following the approval of the H-1B petition, the director was notified that the beneficiary stated during an interview by a Consular Officer that she would be working for the petitioner as a registered nurse. Consequently, the director issued an NOIR on March 30, 2010, notifying the petitioner of his intent to revoke the approval of the petition because the beneficiary will not be employed as a director of quality assurance as specified in the petition and the LCA.

On May 3, 2010, in response to the director's NOIR, the petitioner's prior counsel submitted the following, *inter alia*: (1) a letter from the petitioner dated April 29, 2010; (2) an affidavit by the beneficiary dated April 21, 2010; (3) copies of three job vacancy advertisements, two of which were previously submitted; (4) a print-out from the Online Wage Library; and (5) a print-out from the website [www.occupationalinfo.org](http://www.occupationalinfo.org) with information regarding registered nurses.

In its letter, the petitioner contended that the beneficiary will perform the duties of a director of quality assurance and that the proffered position is not a registered nurse position. The petitioner also contended that the beneficiary never stated during her consular interview that she would be employed as a registered nurse. The petitioner also stated that the "minimum educational requirements for the [proffered position] is a Bachelor [sic] Degree (or foreign equivalent) in Physical Therapy, Rehabilitation Medicine, Nursing or closely related field."

The petitioner also provided the following duties of the proffered position:

[The beneficiary] will be responsible for investigating, examining, collecting and reporting all quality assurance issues to all staff at the facility. As the Director of Quality Assurance, [the beneficiary] will work with propriety healthcare software, Minimum Data Set ("MDS"), to ensure that the facility's MDS 2.0s are correctly coded. She will assist with the implementation of programs to improve quality care. She will develop and implement protocol on quality initiatives, and she will identify facility issues and provide guidelines in accordance with facility process/resolution. Her assignment will also involve managing relationships with medical professional staff to ensure timely and accurate responses to inquiries based upon defensible and documented rationale. In addition to the above duties, the Director of Quality Assurance will identify and recommend corrective action plans and training of processes or techniques to meet accuracy requirements. As described above, the Director of Quality Assurance's primary job duties are in quality assurance and maintenance, NOT bedside nursing.

The director revoked the petition on September 17, 2010.

On appeal, the petitioner's counsel contends that "it was an arbitrary exercise of the consul's duties to adjudicate that grant of duties, to infer in a hastily made judgment that [the beneficiary] was limited in her professional abilities and could not perform the supervisory responsibilities of the position as Quality Assurance Director." Referring to [REDACTED] evaluation, counsel contends that the petitioner's requirement of "a Bachelors [sic] degree for the [proffered position] is fully justified." Counsel further contends that the petitioner submitted "credible and probative evidence that it had satisfied the H1B petition approval criteria, and its Beneficiary qualified there under [sic], as set forth in Beneficiary's Affidavit, and its Expert Opinion Letter, especially since he first approved this petition, before revoking it." Counsel resubmits documentation included in the record prior to adjudication in support of this contention.

USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). Therefore, the AAO will first determine whether the proffered position is a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*Specialty occupation* means 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The *Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, describes the occupation of medical and health services manager in relevant part as follows:

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.

Medical and health services managers' titles depend on the facility or area of expertise in which they work. The following are some examples of types of medical and health services managers:

***Nursing home administrators*** manage staff, admissions, finances, and care of the building, as well as care of the residents in nursing homes. All states require them to be licensed; licensing requirements vary by state.

***Clinical managers*** manage a specific department, such as nursing, surgery, or physical therapy and have responsibilities based on that specialty. Clinical managers set and carry out policies, goals, and procedures for their departments; evaluate the quality of the staff's work; and develop reports and budgets.

***Health information managers*** are responsible for the maintenance and security of all patient records. They must stay up to date with evolving information technology and current or proposed laws about health information systems. Health information managers must ensure that databases are complete, accurate, and accessible only to authorized personnel.

***Assistant administrators*** work under the top administrator in larger facilities and often handle daily decisions. Assistants might direct activities in clinical areas, such as nursing, surgery, therapy, medical records, or health information.

U.S. Dep't 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> (last visited July 26, 2012).

Upon review, the AAO finds that the proffered position as described by the petitioner could be classified as a clinical manager within the occupation of medical and health services manager. It must also be noted however that, while the petitioner claims that the beneficiary will not provide "bedside nursing," the absence of direct patient care does not distinguish such a position from registered nurse positions. On the contrary, the *Handbook* indicates that "[s]ome 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 . . . hospital administrators . . ." See *Handbook*, 2012-13 ed., "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-2> (last visited July 26, 2012). Therefore, the proffered position, as described by the petitioner could also be classified as a registered nurse.

Nevertheless and despite the beneficiary's admission to a U.S. consular officer that she would work as a registered nurse, the petitioner's claims that the proffered position is a medical and health services manager, and not a nurse, do not save this petition. Specifically, a review of the *Handbook's* education and training requirements for the occupation of medical and health

services manager indicates that it also does not categorically require a bachelor's degree in a specific specialty or its equivalent for entry into the position:

Most medical and health services managers have at least a bachelor's degree before entering the field; however, master's degrees also are common. Requirements vary by facility.

### **Education**

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.

### **Work Experience**

Although bachelor's and master's degrees are the most common educational pathways to work in this field, some facilities may hire those with on-the-job experience instead of formal education.

### **Important Qualities**

**Analytical skills.** Medical and health services managers must be able to understand and follow current regulations and be able to adapt to new laws.

**Communication skills.** These managers must be able to communicate effectively with other health professionals.

**Detail oriented.** Medical and health services managers must pay attention to detail. They might be required to organize and maintain scheduling and billing information for very large facilities, such as hospitals.

**Interpersonal skills.** Medical and health services managers need to be able to discuss staffing problems and patient information with other professionals, such as physicians and health insurance representatives. They must be able to motivate and lead staff.

**Problem-solving skills.** These managers are often responsible for finding creative solutions to staffing or other administrative problems.

**Technical skills.** Medical and health services managers must be able to follow advances in health care technology. For example, they may need to use coding and classification software and electronic health record (EHR) systems as their facility adopts these technologies

### **Advancement**

Medical and health services managers advance by moving into more responsible and higher paying positions. In large hospitals, graduates of health administration programs usually begin as administrative assistants or assistant department heads. In small hospitals or nursing care facilities, they may begin as department heads or assistant administrators. Some experienced managers also may become consultants or professors of healthcare management. The level of the starting position varies with the experience of the applicant and the size of the organization.

For those already in a different healthcare occupation, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration. For more information, see the profile on registered nurses.

### **Licenses**

All states require nursing care facility administrators to be licensed; requirements vary by state. In most states, these administrators must have a bachelor's degree, pass a licensing exam, and complete a state-approved training program. Some states also require administrators in assisted-living facilities to be licensed. A license is not required in other areas of medical and health services management.

*Id.* at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited July 26, 2012). The *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty. While it indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, it also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, it also indicates that a degree in a general field, such as business administration, is

common.<sup>1</sup> Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education.

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 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.

As stated earlier, 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

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<sup>1</sup> 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).

Again, the *Handbook* indicates that most generalist positions in this field can be performed by an individual with only a general-purpose degree, i.e., a degree in "business administration," or on-the-job experience. This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree *in a specific specialty* or its equivalent for entry into the occupation.

Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner on appeal submitted copies of four advertisements for the following positions: (1) Quality Assurance Utility Coordinator / Trauma Registrar; (2) Quality Assurance Nurse; (3) Behavioral Health Quality Assurance Manager; and (4) Director of Quality Assurance/Licensed RN Risk Manager. The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree or the equivalent in a *specific specialty* is not. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent was required, the petitioner fails to establish that the submitted advertisements are relevant as the record does not indicate that the posted job announcements are for parallel positions in similar organizations in the same industry.

Specifically, the first advertisement states that it requires a current RN license in California and a minimum of one year's experience in quality management with demonstrated knowledge of quality improvement, statistical analysis, accreditation and licensing processes. Furthermore, the advertising entity, Kaiser Permanente, is a well-known, large managed care organization with thousands of employees; thus, it cannot be found to be similar to the petitioner in terms of its size and the type and level of services provided such that they could be found to be similar organizations.

The second advertisement only states that a bachelor's degree without any specialty is required. The third advertisement states that it requires a "Master's Degree in Behavioral Health or RN with Psychiatric experience" and "Two (2) years of quality assurance/quality management experience." An individual can become an RN, however, with only associate degree, indicating that a bachelor's degree is not a minimum entry requirement for this position. *See* U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited July 26, 2012). The fourth advertisement only states that a Bachelor of Science degree in nursing is preferred, not required. Furthermore, there is no information in the record indicating that the advertising entity is a similar organization. Also, the advertisement states that "[p]revious experience in quality assurance, education/risk management" is required. 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.<sup>2</sup>

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<sup>2</sup> 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 four job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* [REDACTED], *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." Here, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of director of quality assurance.

Specifically, the petitioner failed to demonstrate how the director of quality assurance's duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While courses in nursing may be beneficial in performing or, even required to perform the duties of a director of quality assurance position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to at least a baccalaureate or higher degree in nursing or its equivalent are required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other medical and health service manager positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than director of quality assurance or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of director of quality assurance is so complex or unique relative to other medical and health service manager positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Both counsel and the petitioner claim that the proffered position requires the

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"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 director of quality assurance in an intermediate care facility required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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

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. Again, relative specialization and complexity have not been 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 director of quality assurance positions that are not usually associated with a degree in a specific specialty.

Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the evidence does not establish that the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has been met.

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 approval of the petition revoked for this reason.

Beyond the decision of the director, even if the petitioner overcame the director's stated grounds for revocation, the petition would have to be remanded to the director for issuance of a new notice of intent to revoke relative to whether approval of the petition violated 8 C.F.R. § 214.2(h) or involved gross error. *See* 8 C.F.R. § 214.2(h)(11)(iii)(A)(5). It is clear that the petitioner failed to submit an LCA that corresponds to the petition. Specifically, on the Form I-129 H-1B Data Collection Supplement, the petitioner identified the proffered position as falling under the occupational code 079, which, the AAO notes, is assigned by DOL to the category "Other Occupations in Medicine and Health."<sup>3</sup> The petitioner's representative signed the Form I-129

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<sup>3</sup> *See* U.S. Department of Labor, Employment and Training Administration, *Form ETA 9035CP*,

under penalty of perjury that the information supplied to U.S. Citizenship and Immigration Services (USCIS) on the petition and the evidence submitted with it is true and correct.

However, on the LCA, the petitioner specified that the occupational classification for the proffered position falls under occupational code 007, which is assigned by DOL to the category "Mechanical Engineers." The AAO notes that by completing and submitting the LCA, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

Given that the LCA submitted in support of the petition is certified for an occupational code that is not that of the position described in the petition, it must be concluded that the LCA does not correspond to the petition. In other words, even if it were determined that the petitioner overcame the director's grounds for revoking the approval of the petition (which it has not), the approval of the petition would have to be revoked on notice due to the petitioner's failure to submit an LCA that corresponds to the position.

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:

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.

(emphasis added). 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, it appears that the petitioner has failed to submit a certified LCA that corresponds to the claimed duties of the proffered position. It is further noted that the petitioner provided no explanation for the inconsistencies. 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). 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.*

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*Appendix 1*, which provides a list of the "Three-Digit Occupational Groups." The form is accessible on the Internet at [http://www.lca.doleta.gov/h1bcl\\_oc.pdf](http://www.lca.doleta.gov/h1bcl_oc.pdf) (last visited July 26, 2012).

The next issue is whether the beneficiary is qualified to perform the duties of the proffered position.

Absent a determination that the proffered position is in fact a specialty occupation, there is no basis on which the director could have determined whether the beneficiary is qualified or unqualified to perform the duties of the claimed specialty occupation. Thus, the AAO need not and will not address the beneficiary's qualifications further.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The approval of the petition is revoked.