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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

[Redacted]

D2

Date: **JUN 12 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:
[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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, Vermont 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 petitioner claims to be a home health company, and it seeks to employ the beneficiary as a clinical health care coordinator. The petitioner, therefore, endeavors to classify the beneficiary 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 denied the petition, finding that (1) the proffered position was not a specialty occupation; and (2) the beneficiary was not qualified to perform the services of the proffered position. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

The first issue before the AAO is 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.

The record of proceeding before the AAO contains: (1) 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 decision denying the petition; and (5) the petitioner’s Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

In a letter dated March 29, 2010, the petitioner claims to be a home health service company “that provides coordinated and comprehensive health care to patients in their homes.” It further claimed to provide services including skilled nursing, medical social services, rehabilitation services and nutritional dietary consultation.

Regarding the proffered position, the petitioner claimed to require the services of the beneficiary as a clinical health care coordinator, and claimed that her duties would be as follows:

“To develop, implement, monitor consistent patient care policies, to conduct quality improvement processes related to patient care, to become familiar with equipments/technology in use and maximize efficiency of these processes. Maintain accurate and timely communications between providers, patients, ancillary services and external customers. Clinical and clerical duties related to health care visits. Will oversee clinical support staff at all locations and assure competence of the same. Perform selected nursing and administrative duties as instructed by administrator. Monitors and evaluates efficiency and effectiveness of clinical programming service delivery methods and procedures within scope of responsibility and identified opportunities for improvement.”

The petitioner further claimed that the proffered position is considered a specialty due to the following:¹

1. A Bachelor’s Degree is normally the minimum requirement for entry into the position. The degree requirement is an industry standard in parallel positions among similar firms;
2. The high level of responsibility in the offered position requires the use of and application of knowledge obtained in a baccalaureate level of university education. We have attached the evaluated educational standards of the beneficiary to support the level of education required for the said position;
3. Also, the job duties are so complex that knowledge and skills normally gained by the attainment of bachelor’s degree are required;
4. To be able to perform each specific job duties and responsibilities in a reasonable manner, the alien must possess the appropriate knowledge, training and experience.

The petitioner concluded by stating that the beneficiary possessed the U.S. equivalent to a bachelor of science degree in nursing and thus was qualified to perform the duties of the proffered position.

¹ It is noted that, when providing the list of requirements above, the petitioner refers to the position as that of a “Medical Case Manager” and not of a “Clinical Health Care Coordinator.”

On June 6, 2009, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary as well as information pertaining to licensing requirements for such positions and the qualifications of the beneficiary.

In response, the petitioner submitted a letter dated July 6, 2010 which addressed the director's questions, and submitted several additional documents in response to the director's requests. The petitioner submitted the following updated description of the proffered position:

Baccalaureate Degree is a standard minimum requirement for the job of Clinical Health Coordinator offered in our company as the work requires that the employee have finished a complete four-year course of study. The job requires possession not only that of basic nursing care skills and knowledge but also critical thinking and leadership qualities. Our company offers a coordinated and comprehensive health care to patients in their homes. The structure and financing of healthcare are changing rapidly. The Clinical Health Coordinator must be prepared to deal with integration of healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work and increased focus on preventive care. They will be called on to improve efficiency in health care facilities and the quality of care provided. The Clinical Health Coordinator will plan, direct and coordinate the delivery of healthcare. They monitor and evaluate efficiency and effectiveness of clinical programming of service delivery methods and procedures within the scope of the responsibility and identified opportunities for improvement. The Medical Case Manager² will also develop, implement and monitor consistent care policies and conduct quality improvement processes related to patient care, become familiar with equipments/technology in use and maximize efficiency of these processes.

The workload of the Clinical Health Coordinator is as follows: Eighty percent (80%) of the time will be spent on the administrative and management duty of planning, directing and coordinating the delivery of healthcare, as well [as] monitoring and evaluating the delivery of clinical programming of service delivery methods as well as conducting quality improvement processes related to patient care as well as improve efficiency in healthcare facility and quality of the care provided. Twenty percent (20%) of the work will be on monitoring the effectiveness of patient care services.

The petitioner also submitted a copy of its organizational chart as well as a letter from counsel, who stated that a license was not required to perform the duties of the proffered position since direct patient care was not required.

² Again, the petitioner refers to the proffered position by a different title.

On November 24, 2010, the director denied the petition. Specifically, the director concluded that the record did not establish that the proffered position met any of the four supplemental criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director found that the petitioner failed to establish that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, counsel contends that the director's findings were erroneous, and asserts that the position's requirements are specialized and complex, thus indicating that the proffered position is a specialty occupation. Counsel resubmits documentation included in the record prior to adjudication in support of this contention.

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (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 May 29, 2012). The AAO agrees with the classification of the proffered position into this occupational category by counsel and the director.

A review of the *Handbook's* education and training requirements for this occupation, however, indicates that it does not 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited May 29, 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.³ Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education.

³ 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.

On appeal, counsel contends that the *Handbook's* discussion of educational requirements is indicative of the proffered position being a specialty occupation, and reiterates that the petitioner requires the incumbent for the proffered position in this matter to possess a four-year degree with only a preference that that degree be in nursing. It must be noted, however, that the petitioner's claimed entry requirement of at least a bachelor's degree absent a specialty-degree requirement does not denote a requirement in a specific specialty.

As noted above, a general four-year degree requirement, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Therefore, regardless of the proffered position's classification as a medical and health services manager, the petitioner has failed to establish that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the proffered position under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Neither the petitioner nor counsel submit evidence that responds to this criterion. The record contains no documentation establishing that a degree requirement is common for parallel positions within the petitioner's industry. Moreover, the record contains no evidence, such as letters from organizations within the petitioner's industry attesting to general hiring standards for registered nurses, to establish that a degree requirement is common in the industry. Therefore, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Counsel

addresses this prong on appeal, arguing that the proffered position is specialized and complex by virtue of the fact that the beneficiary's position will entail "a high level of decision-making, planning, directing, and organizing." However, counsel submits no additional evidence to support this contention. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Neither the petitioner nor counsel explain or clarify at any time in the record which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-specialty-degreed employment. The petitioner has thus failed to establish that it has satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner provides no evidence and makes no claims with regard to its past hiring practices for clinical health care coordinators, but simply repeats on appeal that the company "prefers an employee with a four year degree in nursing" for the position. Although counsel indicates that this criterion is satisfied by virtue of the petitioner's allegation in its petition that it requires someone with at least a baccalaureate degree to perform the duties of the position, this assertion is not sufficient to meet the petitioner's burden of proof in this matter.

Although counsel and the petitioner both claim that the proffered position requires the incumbent to possess at least a bachelor's degree or a four-year degree, they also state during the course of the record that a bachelor's degree in nursing is "preferred" for the proffered position. These claims, therefore, constitute an admission that the performance of the duties of the proffered position does not require a baccalaureate or higher level of education in a specific specialty. Regardless, even if the petitioner believes or otherwise asserts 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.

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 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 medical and health services manager positions that are not usually associated with at least a bachelor's degree or higher in a specific specialty or its equivalent. Moreover, counsel for the petitioner simply provides his own unsupported opinions with regard to the qualifications necessary for an individual to perform the duties of the proffered position. Finally, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a specialty-degreed individual could perform them. The fact that the beneficiary has worked in various nursing and administrative positions and gained experience in the field does not establish that the position is inherently more specialized or complex than other similar but non-specialty-degreed employment.⁴

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 petition denied for this reason.

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any

⁴ Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).

event, the petitioner did not submit evidence that the beneficiary possessed the appropriate licensure to perform nursing duties. While the AAO takes note of counsel's assertion that the proffered position will not involve direct patient care, the petitioner's letter of support dated March 29, 2010 clearly stated that the beneficiary would "perform selected nursing duties . . . as instructed by administrator." As such, since evidence was not presented that the beneficiary possessed the appropriate license, and the record contains inconsistent claims with regard to the extent of the beneficiary's proposed duties, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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