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



U.S. Citizenship  
and Immigration  
Services

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Date: MAR 07 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a case management agency and seeks to employ the beneficiary as a medical and health services manager. The petitioner 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 the proffered position was not a specialty occupation. On appeal, counsel for the petitioner contends that the proffered position is in fact a specialty occupation and asserts that the beneficiary qualifies for classification as a medical and health services manager. Counsel submits a brief and additional evidence in support of the appeal.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's requests for evidence (RFE); (3) the petitioner's responses to the RFE; (4) the notice of decision denying the petition; and (5) the Form I-290B and supporting materials in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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, 8 U.S.C. § 1184(i)(1), 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 (5<sup>th</sup> 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 petitioner, as a case management agency, claims to provide case management services as well as "care coordination for the elderly, medically and functionally fragile individuals who are at nursing home level of care but reside in their own homes or in residential care homes instead of a nursing institution." It claims to employ 20 persons and to have a gross annual income of approximately \$1.3 million.

Regarding the job duties of the proffered position, the petitioner's letter dated November 6, 2009 describes them as follows:

The position offered is that of Medical and Health Service Manager. As such, [the beneficiary] will be in charge of planning, directing and coordinating various medical and health care services of our company. She will ensure quality and safe delivery of health services. She will be in charge of monitoring and reviewing contracts and agreements with health care companies and Medicare requirements. Regularly and accurately monitors summaries of health visits, durable and medical equipments [sic], supplies, and drugs due for billing. Checks and monitors inputs in the computer of billing requirements for all services and coordinates billing processes with subordinates. Maintains and/or monitor[s] billing records accurately for easy retrieval and reference. Establishes rapport with all Claims Units of Insurance Organization to ensure smooth and timely billing with full authority to decide on behalf of the company. Regularly reports to the Clinical Administrator and/or other management officers on the progress and operations of her department. She will be in charge of coordinating expansion plans of the company which will include [REDACTED]

Regarding the educational requirements of the proffered position, the petitioner claimed that the position required the incumbent to have at least a bachelor's degree in health sciences or a related field, as well as health care project management experience. The petitioner further claimed that the beneficiary was qualified to perform the duties of the proffered position since she is a registered nurse.

On November 23, 2009, the director issued an RFE which requested additional information pertaining to the proffered position. Specifically, the director requested information pertaining to the terms of employment for the beneficiary, as well as a more detailed description of the duties of the proffered position and other evidence demonstrating that the position met the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, counsel for the petitioner claimed that the beneficiary would be a full-time employee of the petitioner, and would not be assigned to any outside contract work. Additionally, counsel provided an updated description of duties of the proffered position with a breakdown of the percentage of time the beneficiary would devote to each duty, as set forth below:

- a) planning, directing and coordinating various medical and health care services and personnel and oversight of home health care operations for compliance oversight for medical protocols and related areas, records management, patient services management and financial and budget oversight – 40%
- b) monitoring and reviewing contracts and agreements with health care companies and Medicare requirements – 15%
- c) regularly and accurately monitors summaries of health visits, durable and medical equipments [sic], supplies, and drugs due for billing – 15%
- d) check and monitors inputs in the computer of billing requirements for all services and coordinates billing processes with subordinates – 10%
- e) maintains and/or monitor[s] billing records accurately for easy retrieval and reference – 10%
- f) establishes rapport with all Claims Units of Insurance Organization to ensure smooth and timely billing with full authority to decide on behalf of the company – 8%
- g) regularly reports to the C.E.O. and/or other management officers on the progress and operations of his/her department – 2%[.]

Finally, counsel reasserted the petitioner's claim that the proffered position was that of a medical and health services manager.

On January 12, 2010, the director denied the petition. Specifically, the director found that, based on a review of the stated duties of the position, the proffered position resembled a nursing position beyond that of an entry-level nursing position, but not equivalent to an administrative nursing position. The director concluded that, contrary to the petitioner's assertions, the proffered position was most akin to that of a head nurse or nurse supervisor rather than that of a medical and health services manager. Noting that the petitioner had failed to submit evidence to satisfy that such a position was a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), the director denied the petition.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires

that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, indicates that the proffered position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner stated that the proffered position is that of a medical and health services manager as described by the *Handbook*. The director, on the other hand, found that the proffered position is more akin to a supervisory nursing position. The AAO will review both sections of the *Handbook* in making its determination as to the proper occupational classification of the proffered position.

The AAO first turns to the 2010-2011 online edition of the *Handbook* for its discussion of medical and health services manager. As stated by the *Handbook*, the occupation of medical and health services managers is described in relevant part as follows:

Healthcare is a business and, like every business, it needs good management to keep the business running smoothly. *Medical and health services managers*, also referred to as *healthcare executives* or *healthcare administrators*, plan, direct, coordinate, and supervise the delivery of healthcare. These workers are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system.

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Large facilities usually have several *assistant administrators* who aid the top administrator and handle daily decisions. Assistant administrators direct activities in clinical areas, such as nursing, surgery, therapy, medical records, and health information.

In smaller facilities, top administrators handle more of the details of daily operations. For example, many *nursing home administrators* manage personnel, finances, facility operations, and admissions, while also providing resident care.

*Clinical managers* have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work quality; develop reports and budgets; and coordinate activities with other managers.

*Health information managers* are responsible for the maintenance and security of all patient records. Recent regulations enacted by the Federal Government require that all healthcare providers maintain electronic patient records and that these records be secure. As a result, health information managers must keep up with current computer and software technology, as well as with legislative requirements. In addition, as patient data become more frequently used for quality management and in medical research, health information managers must ensure that databases are complete, accurate, and available only to authorized personnel.

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Medical and health services managers in managed care settings perform functions similar to those of their counterparts in large group practices, except that they could have larger staffs to manage. In addition, they might do more community outreach and preventive care than do managers of a group practice.

Some medical and health services managers oversee the activities of a number of facilities in health systems. Such systems might contain both inpatient and outpatient facilities and offer a wide range of patient services.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Medical and Health Services Managers," <http://www.bls.gov/oco/ocos014.htm> (accessed February 23, 2012). A review of the occupation described above indicates significant differences from the proffered position. Although the petitioner titles the proffered position as that of a "medical and health services manager," the core duties of such an occupation are not in line with those described by the petitioner. While a generic reading of the position title warrants the conclusion that the proffered position is that of a medical and health services manager, the occupation of health and medical services manager pertains more to the management of a specific facility, such as a nursing home, a clinic, or an entire healthcare system. General duties include managing patient data and overseeing the functions of a particular clinic or dedicated area. While elements of the proffered position correlate to the profession described above, the position of health and medical services manager appears to be more specialized and deals more specifically with managing the overall operation of facilities or clinics.

Regardless, even if the AAO found the proffered position to be that of a medical and health service manager, which it does not, a medical and health services manager does not categorically qualify as a specialty occupation. Regarding the educational requirements for entry in to this occupation, the *Handbook* states:

A master's degree in one of a number of fields is the standard credential for most generalist positions as a medical or healthcare manager. A bachelor's degree is sometimes adequate for entry-level positions in smaller facilities and departments.

In physicians' offices and some other facilities, on-the-job experience may substitute for formal education.

***Education and training.*** Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities, at the departmental level within healthcare organizations, and in health information management. Physicians' offices and some other facilities hire those with on-the-job experience instead of formal education.

*Id.* While the *Handbook* states that a master's degree is the standard requirement for a generalist position, it also states that a degree "in one of a number of fields" is acceptable. As discussed previously in this decision, 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 as required by section 214(i)(1) of the Act. According to the *Handbook*, degrees in a wide variety of fields, such as health services administration, long-term care administration, health sciences, public health, public administration, or business administration. 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. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Finally, it is noted that, according to the *Handbook*, some employers do not require higher degrees but hire individuals with on the job experience.

Therefore, even if the proffered position were deemed to be that of a medical and health services manager, it would not qualify as a specialty occupation by virtue of that classification.

The AAO now turns to the director's finding that the proffered position is that of a head nurse or nurse supervisor. Regarding these positions, included in the occupational category of registered nurses, the *Handbook* states in relevant part:

*Registered nurses (RNs)*, regardless of specialty or work setting, treat patients, educate patients and the public about various medical conditions, and provide advice and emotional support to patients' family members. RNs record patients' medical histories and symptoms, help perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

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Some nurses have jobs that require little or no direct patient care, but still require an active RN license. *Forensics nurses* participate in the scientific investigation and treatment of abuse victims, violence, criminal activity, and traumatic accident. *Infection control nurses* identify, track, and control infectious outbreaks in healthcare facilities and develop programs for outbreak prevention and response to biological terrorism. *Nurse educators* plan, develop, implement, and evaluate educational programs and curricula for the professional development of student nurses and RNs. *Nurse informaticists* manage and communicate nursing data and information to improve decision making by consumers, patients, nurses, and other healthcare providers. RNs also may work as healthcare consultants, public policy advisors, pharmaceutical and medical supply researchers and salespersons, and medical writers and editors.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., “Registered Nurses,” <http://www.bls.gov/oco/ocos083.htm> (accessed February 23, 2012). Even though the petitioner claims that the beneficiary is a registered nurse, the duties of the position, as described in the initial letter of support and again in response to the RFE, do not encompass traditional nursing duties. Specifically, the petitioner does not contend that the beneficiary will be responsible for treating or educating patients, or for providing advice or emotional support. Rather, the petitioner indicates that the beneficiary will be responsible for monitoring and coordinating billing for the petitioner’s enterprise as well as directing the petitioner’s services and its personnel. Although the *Handbook* indicates that some registered nursing positions do not involve direct patient care, such as forensic nurses, nurse educators, and healthcare consultants, none of these job titles are applicable in this matter. The AAO does not concur with the director’s comments equating the proffered position to a registered nurse/head nurse/nurse supervisor, and therefore withdraws the director’s findings pertaining to this classification.

Even if the AAO found the proffered position to be that of a registered nurse, which it does not, a registered nurse, like a medical and health services manager, does not categorically qualify as a specialty occupation. Regarding the educational requirements for entry in to this occupation, the *Handbook* states:

The three typical educational paths to registered nursing are a bachelor's degree, an associate degree, and a diploma from an approved nursing program. Nurses most commonly enter the occupation by completing an associate degree or bachelor's degree program. Individuals then must complete a national licensing examination in order to obtain a nursing license. Advanced practice nurses—clinical nurse specialists, nurse anesthetists, nurse-midwives, and nurse practitioners—need a master’s degree.

*Id.* The *Handbook* states that, in addition to attaining a bachelor’s degree in nursing, individuals can also become registered nurses by attaining an associate’s degree or a diploma from an approved nursing program. Therefore, even if the proffered position were deemed to be that of a registered nurse, it would likewise not qualify as a specialty occupation by virtue of that classification.

Upon review, the AAO finds that the proffered position is most akin to the *Handbook's* classification of operations managers, outlined in the section entitled "Top Executives." Specifically, the *Handbook* states:

All organizations have specific goals and objectives that they strive to meet. *Top executives* devise strategies and formulate policies to ensure that these goals and objectives are met. Although they have a wide range of titles—such as *chief executive officer, chief operating officer, general manager, president, vice president, school superintendent, county administrator, and mayor*—all formulate policies and direct the overall operations of businesses and corporations, public-sector organizations, nonprofit institutions, and other organizations.

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The nature of the responsibilities of other high-level executives depends on an organization's size. In small organizations, such as independent retail stores or small manufacturers, a partner, an owner, or a general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties. In large organizations, top executives not only direct the overall organization, but also may be responsible for implementing strategies and setting the overall direction of a certain area of the company or organization. For example, chief financial officers direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds and manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions.

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*General and operations managers* plan, direct, or coordinate the operations of companies and other public- or private-sector organizations. Their duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources that are too diverse and general in nature to be classified into any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the tasks of general and operations managers may overlap those of chief executive officers.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Operations Managers," <http://www.bls.gov/oco/ocos012.htm> (accessed February 23, 2012). The AAO finds the above discussion of general and operations managers to be generally reflected in the petitioner's description of the duties of the proffered position. Specifically, tasks such as oversight of home health care operations, coordination of personnel, and monitoring billing encompass the general duties of the proffered position in this matter.

The *Handbook* describes the educational requirements of top executives as follows:

The formal education and experience required by top executives vary as extensively as their responsibilities do, but many of these workers have at least a bachelor's degree and considerable experience.

***Education and training.*** Many top executives have a bachelor's or master's degree in business administration, liberal arts, or a more specialized discipline. The specific type and level of education required often depends on the type of organization for which top executives work. . . .

*Id.* According to the *Handbook*, formal education for persons in these positions varies greatly. Although the *Handbook* indicates that a bachelor's degree is typically the minimum requirement for entry into this occupational category, it also indicates that acceptable degrees include those in business administration, liberal arts, or other disciplines. Therefore, a bachelor's degree in a specific specialty is not required for entry into the proffered position.

Accordingly, 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. Factors considered by the AAO when determining this criterion include 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)).

Although the petitioner submitted a job posting for a medical services manager on appeal in support of a common degree requirement within the petitioner's industry, this posting fails to satisfy the regulatory requirements. A review of the job posting, which is advertised by Medical Faculty Associates of The George Washington University Department of Medical Services, indicates that this posting is for a medical services manager within "the largest multi-specialty physician practice in the Washington, DC area." The position is also on a U.S. army base in Doha, Qatar. This posting, therefore, cannot be deemed representative of a common degree requirement for parallel positions within the petitioner's industry, since this advertised position is not similar to that of a health, medical, or operations manager in a 20-person case management agency.<sup>1</sup>

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<sup>1</sup> According to the *Handbook's* detailed statistics on medical and health services managers, there were approximately 16,800 persons employed as medical and health services managers by home health care agencies, and 4,800 persons employed in such positions in the administrative support industry in 2010. *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos014.htm> (last

In addition, counsel for the petitioner submitted copies of H-1B approval notices for other individuals whom counsel claims are registered nurses currently approved for specialty occupation employment in the United States, and asserts that this evidence satisfies the evidentiary requirements under this criterion. The AAO disagrees. The petitioner submits several copies of I-797B forms, along with copies of foreign diplomas in the field of nursing for the individuals named thereon. Merely submitting evidence that a selection of workers, currently in the United States on H-1B status, have attained degrees in nursing does not establish a common degree requirement within the petitioner's industry. The record does not contain copies of the I-129 petitions and supporting evidence filed on behalf of these individuals. The AAO, therefore, cannot determine whether the individuals named in the approval notices are employed in parallel positions within the petitioner's industry. Moreover, as discussed briefly above, the occupational category of registered nurse is not considered a specialty occupation; therefore, copies of H-1B approvals for individuals holding degrees in nursing, without more, are not persuasive evidence under this criterion.

The petitioner also submitted two newspaper excerpts in response to this criterion. However, these articles are not persuasive evidence, since they simply recognize the individual achievements of the petitioner's president and do not represent common requirements within the petitioner's industry. For the reasons set forth above, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner provided no documentary evidence or further explanations regarding the complexity of the proffered position. Merely claiming that the position is complex and unique, without documentation to support the claim, will

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accessed February 7, 2012). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just one job posting with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the petitioner's industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisement was 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 job of health, medical, or operations manager for a 20-person case management agency 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.

not satisfy the petitioner's burden. Further, the AAO finds that the requisite complexity and uniqueness is not evident in the extent to which the duties comprising the proffered position are described. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, counsel indicated in response to the RFE that the petitioner "has petitioned only one H-1B employee before" and provides his name, petition receipt number, and dates of approval. The petitioner, however, fails to state whether this employee occupied the position currently being offered to the beneficiary, nor does it provide evidence of his payroll records or degree. Since the petitioner claims to employ a staff of 20 persons, the capacity in which this individual was employed cannot be determined. The record, therefore, is not persuasive in demonstrating that the petitioner routinely hires only degreed individuals for the proffered position. Since the petitioner has not established that it previously employed a degreed operations or health and medical services manager in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>2</sup>

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge than that normally

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<sup>2</sup> To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

possessed by a general or operations manager, a position which does not require a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation.

In reaching its decision, the AAO has again considered the petitioner's letter dated November 6, 2009, the response to the RFE dated November 23, 2009, and the statements submitted on appeal. The initial letter of support provided only a vague and generalized overview of the proffered position's duties, and the evidence submitted in response to the RFE failed to describe these duties in further detail. On appeal, counsel for the petitioner simply contends that the position is a specialty occupation by relying on the *Handbook's* section pertaining to medical and health services managers. While the AAO has determined that this occupational category does not apply to the proffered position in this matter, it should be noted that counsel fails to make any attempt to explain why the proffered position is a specialty occupation. Moreover, no documentary evidence is submitted to further highlight the nature of the proffered position. Consequently, there is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulations to qualify as a specialty occupation. The AAO is not persuaded that the nature of the specific duties is so more specialized and complex as to require knowledge usually associated with the attainment of a bachelor's or higher degree or its equivalent in a specific specialty, especially considering that the *Handbook* indicates that this occupation can be performed by individuals without such a degree. The totality of the record does not establish the proffered position is a specialty occupation based on a claimed complex and unique nature as required by 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.

Beyond the decision of the director, the beneficiary does not qualify to perform the services of a specialty occupation. Generally, 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. In any event, it should be noted that the petitioner did not submit an evaluation of the beneficiary's foreign degree or sufficient evidence to establish that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least the equivalent of a U.S. bachelor's degree in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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 (9<sup>th</sup> 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.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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