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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

[redacted]

D2

Date: MAR 20 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[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 home health care agency and seeks to employ the beneficiary as a quality assurance coordinator. 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 director erred by comparing the proffered position to that of a registered nurse. 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 response 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)(l) of the the Act, 8 U.S.C. § 1184(i)(l), 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 petitioner, as a home health care agency, claims that it is primarily engaged in marketing, recruiting, and outsourcing skilled health care workers and professionals. It also claims to provide skilled and unskilled nursing care, as well as physical therapy services in patients' homes. It claims to employ 16 persons and to have a gross annual income of approximately $1.33 million.

Regarding the job duties of the proffered position, the petitioner stated in a letter dated December 10, 2009 that the beneficiary "will be responsible for monitoring and evaluating the quality of patient care, and ensuring that it meets agency standards and local, state, and federal regulations and requirements." The petitioner also stated that the beneficiary would report to the petitioner's Director and would have no supervisory duties. Regarding her specific duties, the petitioner provided the following list:

- Ensure that patient care delivered by field personnel meets established agency guidelines and local, state, and federal regulations and requirements
- Review and evaluate patients' medical records, apply quality assurance criteria required by Medicare, Medicaid, and private insurance companies to ensure that appropriate care is ordered, delivered and billed
- Review treatment plans to ensure they reflect patients' medical problems and appropriate interventions, with interdisciplinary team
- Review medication profiles to ensure they reflect patients' medical problems and appropriate interventions, with interdisciplinary team
- Monitor patients, families, referral sources and physician satisfaction with agency services to assure that needs are met
- Monitor reports of unusual incidents, notify interdisciplinary team, and advise on corrective measures, if any
- Monitor reports and maintain records of infections related to care or services provided, notify interdisciplinary team, and advise on corrective measures, if any
- Check health care workers' notes to ensure that: frequency of visits is consistent with billing paperwork; notes are completely and accurately completed; referrals are made to supervisors when there are changes to patients' needs; all laboratory tests are completed and submitted as required; and referrals are made to medical doctors as needed

- Compile statistical data and compare reports summarizing quality assurance findings
- Review and evaluate quality assurance standards, ensure that all personnel comprehend and practice so as to meet these standards
- Revise quality assurance guidelines, procedures, and policies as necessary
- Meet with interdisciplinary teams to review status and progress on an ongoing basis

Regarding the educational requirements of the proffered position, the petitioner claimed that the candidate for the proffered position must have at least a bachelor's degree in health care or a related field. The petitioner further stated that the beneficiary was duly qualified for the position because she possessed a bachelor of science degree in nursing from St. Jude College in the Philippines.

On December 22, 2009, the director issued an RFE which requested additional information pertaining to the proffered position. Specifically, the director requested information pertaining to the employment for the beneficiary, including 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, although the beneficiary would not be providing care for patients, she was required to review the treatment plans introduced by other medical professionals, thereby justifying the requirement that the candidate for the position hold at least a bachelor's degree in health care or a related field. Additionally, counsel provided an updated description of duties of the proffered position. Counsel restated the duties set forth in the petitioner's initial letter of support, but provided an additional breakdown of the percentage of time the beneficiary would devote to each duty, as set forth below:

1. Assists Agency with compliance of all applicable federal, state, and local regulations. **Ongoing**
2. Assists agency with compliance of JCAHO and other applicable standards.
3. Develops indicators for quality assurance monitoring activities. **1 hour**
4. Collects data related to specific monitoring activities. **2.5 hours**
5. Participates in evaluating results of monitoring activities, and develops corrective action plans. **1.5 hours**
6. Assists Agency with development and implementation of Infection Control policies and procedures and reports concerns promptly. **1.5 hours**
7. Works effectively with staff to improve quality of care, documentation, and compliance with policies and procedures. **Ongoing**
8. Identifies quality problems, documents and reports them appropriately and promptly. **2 hours**
9. Assists Agency with monitoring for timely completion of recertification/audits and assists with completion when necessary. **1 hour**
10. Assists agency with AMRs and submits within five (5) days and follow-up as assigned **2 hours**

11. Conducts utilization and clinical record review activities, and refers discrepancies to Quality Assurance Director/Director of Nursing. **6 hours**
12. Assists agency with orientation of new employees as needed. **Ongoing**
13. Develops and maintains effective working relationships with staff, supervisors, physicians and clinical teams. **Ongoing**
14. Review clinical notes for clearness, conciseness, and accuracy, and submits required documentation on a timely basis. **14 hours**
15. Identifies ICD-9-CM codes for patients on admission and as new information is obtained. Reviews clinical notes for accuracy of codes. **1.5 hours**
16. Reviews clinical notes for accuracy and completion for timely processing of billing. **2 hours**
17. Serves as a resource for all staff on documentation of Quality Assurance issues. **Ongoing**
18. Serves on Clinical Evaluation Committee, which audits records and determines quality of patient care, utilization of services, and patient outcomes. Recommends and assists with appropriate action to correct deficient clinical notes. **3 hours**
19. Participates in case conferences, staff meetings and in-service trainings as assigned. **2 hours**

Counsel also submitted additional documentation in response to the RFE that will be discussed later in this decision.

On February 9, 2010, the director denied the petition. Specifically, the director found that, based on a review of the stated duties of the proffered position, it 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 has stated that the proffered position is that of a quality assurance coordinator and, on appeal, asserts that the position is most akin to 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

registered nurse whose duties include quality assurance. The AAO will review both sections of the *Handbook* in making its determination.

The AAO first turns to the director's finding that the proffered position is that of a registered nurse. Regarding the occupational category of registered nurses, the 2010-2011 online edition of 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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> * * *
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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 March 6, 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. In fact, the petitioner specifically states that the beneficiary will not provide patient care. Rather, the petitioner indicates that the beneficiary will be responsible for ensuring agency compliance with applicable regulations, as well as monitoring activities and reviewing the work of 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, 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, is not 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.

The AAO next 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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> * * *
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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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> * * *
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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 March 6, 2012). A review of the occupation described above indicates that the proffered position encompasses many of the stated duties of this occupational category. Although the petitioner titles the proffered position as that of a quality assurance coordinator, the core duties of the proffered position, which include managing personnel and evaluating work quality, appear most akin to the duties of a medical and health services manager. Consequently, the AAO concurs with counsel's assertions that the proffered position should be classified as a medical and health services manager.

A medical and health services manager, however, 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 most generalist positions, 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. 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.

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)).

The petitioner submitted no evidence that responds to this criterion. The petitioner, therefore, 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 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.

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 bachelor's or higher degree in a specific specialty 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 specialty degrees who previously held the position, and copies of those employees' diplomas.

In the instant matter, the petitioner submitted a letter in response to the RFE in which it claims that it has always required a degree in a health care field for the proffered position. In support of this contention, counsel submits letters from three individuals: and , who claim to currently work for the petitioner in the position of quality assurance manager on either a full- or part-time basis. Each of these individuals submits a letter attesting that a bachelor's degree in a health care field was a requirement for the position. The record also contains copies of these individuals' foreign degree certificates, demonstrating that each possesses a bachelor's degree in nursing.[1] Additionally, the record contains a copy of the petitioner's Employer's Contribution and Wage Report, demonstrating that these individuals are currently employed by the petitioner.

This evidence, however, is insufficient to establish eligibility under this criterion. Even where a petitioner establishes a sustained, continuous history of recruiting and hiring only persons with at least a bachelor's degree in a position-related specialty, USCIS must examine the ultimate employment of the alien, and determine whether actual performance of the duties of the position qualifies as a specialty occupation because of the extent and educational level of highly specialized knowledge that must be applied in order to perform the job. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results: if USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. The evidence of record does not establish such a knowledge requirement.

Counsel for the petitioner further claims eligibility under this criterion based on the fact that the petitioner previously obtained approval to employ status in the position of quality assurance coordinator. The record does not contain a copy of the I-129 petition and

[1] The record does not establish, however, that the foreign education attained by these individuals is equivalent to a bachelor's degree from an accredited college or university in the United States.

supporting evidence filed on behalf of this individual. The AAO, therefore, cannot determine whether the individual referred to by the petitioner was employed in a parallel position within the petitioner's industry, and further cannot accept this unsupported assertion as evidence of a hiring history of only degreed individuals. The petitioner has therefore failed to meet its burden in establishing the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

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 possessed by a medical and health services manager, a position which does not require a degree in a specific specialty.

In reaching its decision, the AAO has again considered the petitioner's letter of support, its response to the RFE, and an occupational analysis prepared by submitted on appeal. The letter from prepared by , in consultation with 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 expand or describe these duties in further detail. On appeal, counsel relies on the letter prepared by claiming that the opinions expressed therein are sufficient to establish the complexity of the proffered position under this criterion. The AAO disagrees.

The opinions expressed by are not persuasive. First, the doctors conclude that the proffered position is akin to that of a medical and health services manager as described by the *Handbook*, which the AAO has determined is not a specialty occupation. Additionally, the letter indicates tha concludes that an individual possessing a bachelor's degree in nursing would be "ideally suited" for the position. Although the letter distinguishes between the educational background of an individual completing a registered nursing programs versus an individual attaining a bachelor's degree in nursing, these facts are not relevant here. This letter, aside from equating the proffered position to that of a medical and health services manager, fails to explain why or how the proffered position qualifies as a specialty occupation. Moreover, no documentary evidence is submitted on appeal 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. 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*).[2]

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[2] Although it is asserted that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex, the duties as described lack sufficient specificity to distinguish the proffered position from other medical and health services manager positions for

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.

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.

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which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

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).