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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

PUBLIC COPY



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Date: **MAY 07 2012**

Office: CALIFORNIA SERVICE CENTER

FILE:



IN RE: Petitioner:
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:



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 provider of hospice services and seeks to employ the beneficiary as a hospice regional nurse 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 director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

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.

The petitioner, as a hospice service provider, claims to offer a comprehensive program of care to patients and families facing life-threatening illnesses. It claims to employ 74 persons and to have a gross annual income of approximately \$10 million.

Regarding the job duties of the proffered position, counsel for the petitioner stated in a letter dated December 8, 2009 that the beneficiary will be responsible for "facilitating and overseeing the development of a collaborative interdisciplinary plan and ensuring the overall coordination and medical management of regional hospice services for patients and their families."

In a letter from the petitioner dated December 1, 2009, the following duties were associated with the proffered position:

- Develop and implement effective hospice and palliative care measures and programs for the assigned region;
- Provide comprehensive nursing evaluations and assessments;
- Prepare and oversee the preparation of individualized care plans needed by the patient;
- Coordinate care services for the patient and family and oversee provision of skilled and palliative care for the remainder of patient's life;
- Ensure efficient delivery of care plans and activities;
- Integrate hospice services and programs with strategic organizational goals and objectives;
- Evaluate hospice service operations and activities to improve service utilization;
- Identify strategies for effective delivery of hospice services and resource allocation;

- Report to the administrator and meet and confer with administrator and other health care staff to discuss and resolve hospice service issues and coordinate health service activities.

The petitioner further stated:

[H]ospice service is a health and nursing service that entails catering to terminally ill patients. It is therefore a specialized health service that emphasizes in palliative care rather than curative treatment. Therefore, to be able to perform the duties of a hospice regional nurse manager, the incumbent must possess in-depth knowledge of nursing and health services administration principles. The hospice regional nurse manager must possess the ability to exercise independent, sound nursing judgment in planning and providing patient care. The incumbent should possess strong communication, organizational, interpersonal and leadership skills. He or she must have strong strategic planning, resource allocation, and human resource modeling skills. The hospice regional nurse manager must exhibit knowledge of pathophysiology and accepted treatment protocols for common home care diagnoses as well as knowledge of basic safety and infection control principles.

The petitioner concluded by stating that a bachelor's degree in nursing or a closely related field is the petitioner's minimum requirement for entry into the position.

On December 28, 2009, the director issued an RFE which requested additional information pertaining to the proffered position. Specifically, the director requested a more detailed job description for the position, as well as additional information regarding the organizational hierarchy of the petitioner and the beneficiary's place therein. Finally, the director requested additional evidence regarding the beneficiary's qualifications and clarification regarding the number of beneficiaries using the Labor Condition Application (LCA) included with the petition.

In response, the petitioner addressed the director's request for a more detailed job description in a letter dated March 10, 2010. The petitioner stated that, although a detailed list of duties had been provided in its initial letter of support, it was now resubmitting the same list of duties with the corresponding percentages of time the beneficiary would devote to each of these duties. The petitioner divided the duties into two main areas as follows:

<ul style="list-style-type: none">• Develop and implement effective hospice and palliative care measures and programs for the assigned region[;]• Provide comprehensive nursing evaluations and assessments[;]• Prepare and oversee the preparation of individualized care plans needed by the patient[;]• Coordinate care services for the patient and	80%
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<p>family and oversee provision of skilled and palliative care for the remainder of patient's life[;]</p> <ul style="list-style-type: none"> • Ensure efficient delivery of care plans and activities[;] • Integrate hospice services and programs with strategic organizational goals and objectives[;] • Identify strategies for effective delivery of hospice services and resource allocation[;] 	
<ul style="list-style-type: none"> • Evaluate hospice service operations and activities to improve service utilization[;] • Report to the administrator and meet and confer with administrator and staff to discuss hospice service issues and coordinate health service activities. 	20%

In summary, the petitioner stated:

[T]he beneficiary's task as a Hospice Regional Nurse Manager will be to oversee the delivery of palliative care and administration of hospice care plans for the assigned region in accordance with current standards and regulations.

The petitioner also provided a line and block organizational chart, which demonstrated that the beneficiary, as a hospice regional nurse manager, would jointly oversee six case managers who in turn supervised a number of other employees including social workers, patient care coordinators, and LVNs. Finally, the petitioner resubmitted evidence pertaining to the beneficiary's education and qualifications.

On May 7, 2010, the director denied the petition. The director found that the proffered position is not a specialty occupation. Although counsel and the petitioner contended that the proffered position was akin to that of a medical and health services manager as described by the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director disagreed. Specifically, the director found that the proffered position was most akin to that of a registered nurse, and more specifically a head nurse or a nurse supervisor, but not that of an administrative nursing position.

On appeal, counsel contends that the director's finding was erroneous, and that his conclusions were based on facts not included in the evidence as well as on an "inflexible and close-minded" interpretation of the *Handbook*. Counsel reasserts that the proffered position is akin to the occupation of medical and health services manager, not a registered nurse, and asserts that based on this classification it is therefore a specialty occupation. Counsel concludes that the petition should be approved.

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 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.

A review of the occupational category of medical and health services manager, to which both counsel and the director compared the proffered position, reveals similarities to the proffered position. According to the *Handbook*, this occupational category is described 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.

The structure and financing of healthcare are changing rapidly. Future medical and health services managers must be prepared to deal with the integration of healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called on to improve efficiency in healthcare facilities and the quality of the care provided.

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.

In group medical practices, managers work closely with physicians. Whereas an office manager might handle business affairs in small medical groups, leaving policy decisions to the physicians themselves, larger groups usually employ a full-time administrator to help formulate business strategies and coordinate day-to-day business.

A small group of 10 to 15 physicians might employ 1 administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays, and patient flow. A large practice of 40 to 50 physicians might have a chief administrator and several assistants, each responsible for a different area of expertise.

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.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2010-11 ed., "Medical and Health Services Managers," <http://www.bls.gov/oco/ocos014.htm> (accessed Mar. 28, 2012). According to the *Handbook*, medical and health services managers plan, direct, coordinate, and supervise the delivery of healthcare, and are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system. In this matter, the description of the proffered position indicates that the position of hospice regional nurse manager is most akin to that of a medical and health services manager, since the beneficiary will be tasked with coordinating

and overseeing the hospice services of the petitioner. Moreover, the subheading of clinical manager in this section also applies to the proffered position, since such employees are responsible for establishing and implementing policies, objectives, and procedures for their departments as well as coordinating activities with other managers.

Consequently, the AAO concurs with counsel's assertions that the proffered position encompasses the duties of a medical and health services manager. 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 in the United States. Therefore, despite the classification of the proffered position into this occupational category, this classification, contrary to counsel's claims, does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. According to the *Handbook*, the educational requirements of a medical and health services manager are as follows:

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.

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.¹ Moreover, the *Handbook* indicates that some

¹ 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).

physician's offices and smaller facilities hire individuals who possess on-the-job training in lieu of formal education.

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 or its equivalent in a specific specialty 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.

In support of the petition, the petitioner submitted an expert opinion evaluation from [REDACTED] Associate Professor of Nursing at St. John Fisher College, in support of the contention that a bachelor's degree in a specific specialty is common to the petitioner's industry. [REDACTED] claims that the "skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree or its equivalent, with a concentration in Nursing, or a related field, is considered necessary by people in the industry seeking to hire a Hospice Regional Nurse Manager. . . ." and concluded that such a degree is considered an industry standard.

The AAO finds [REDACTED] evaluation insufficient to establish an industry-wide standard in this matter. While [REDACTED]'s evaluation claims that individuals employed in the position of hospice regional nurse manager are routinely required to have a minimum of a bachelor's degree in nursing, the basis upon which she rests this assertion is unclear. Although she claims that, based on her position as an Associate Professor of Nursing, she is qualified to render an expert opinion on this subject, she provides no independent evidence to support her conclusion that a bachelor's degree in nursing is a degree that is routinely required by employers similar to the petitioner for entry into the position of hospice regional nurse manager, a claim that is at odds with the *Handbook* in that it does not list nursing as a field studied by most individuals holding generalist positions. Rather, she simply restates the proffered position description as provided by counsel and the petitioner. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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." This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree *in a specific specialty* for entry into the occupation.

The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). In this matter, the evaluation by Professor Mick is not supported by objective evidence demonstrating that a bachelor's degree in nursing is routinely required within the petitioner's industry for entry into the proffered position.

The petitioner also submitted two job postings for positions it claims are similar to that of the proffered position in this matter. The AAO, however, does not find these postings sufficient to meet the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Specifically, the first, advertised by [REDACTED] Hospital Medical Center, is for a position entitled "Program Manager (Nurse) Palliative." The second, posted by careerbuilder.com, is for an unidentified client and advertises the position of "RN Hospice Branch Manager." While both of these advertisements state that the positions require the incumbent to hold at least a bachelor's degree in nursing, the postings are insufficient to establish eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

More specifically, the posting by careerbuilder.com does not identify the entity for whom the services are required; therefore, the AAO cannot determine whether the organization is similar in size and scope to the petitioner, which operates one facility and employs a staff of 74. The posting for Northridge Hospital, while similar in details to that of the proffered position, is likewise not a parallel position in an organization similar to the petitioner. Specifically, the minimal information contained in the posting indicates that Northridge Hospital is a hospital offering a "full spectrum of healthcare programs and Centers of Excellence," which is not akin to the petitioner's hospice care facility. Consequently, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).²

² According to the *Handbook's* detailed statistics on medical and health services managers, there were approximately 14,000 persons employed as medical and health services managers by home health care service firms in 2008. *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos014.htm> (last accessed Nov. 30, 2011). 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 two job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the home health care service industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of hospice regional nurse manager for a 74-person hospice firm 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

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 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. The petitioner does not explain or clarify 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-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under 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. Although the petitioner claims in its letter of support dated December 1, 2009 that it has “always required a bachelor’s degree for nurse management positions,” the petitioner did not claim at any time during the adjudication process to have previously employed other persons in the position of hospice regional nurse manager. Since the record is devoid of evidence that the petitioner previously hired specialty degreed individuals to fill the proffered position in the past, the petitioner has failed to satisfy this criterion.

Although the petitioner claims that the proffered position requires the incumbent to possess a bachelor’s degree in nursing, health services administration, or a closely related field, this claim is not persuasive, since the record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher 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 AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

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.

Aside from the letter from ██████████ the evidentiary weight of which has been discounted, the petitioner has submitted no independent documentation in support of the contention that specialized and complex knowledge is required to perform the duties of the proffered position. Instead, the petitioner and counsel simply provide their own unsupported opinions with regard to the qualifications necessary for a hospice services manager to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them. Relative specialization and complexity have not been developed for the proffered position and, as such, the evidence of record does not establish that this position is significantly different from other medical and health service manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. 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, or its equivalent, in a specific specialty.³ Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation in that it has failed to satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)A. Accordingly, the AAO shall not disturb the director's denial of the petition. The appeal shall be dismissed, and the petition will be denied.

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.

³ Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other medical and health services manager positions for 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).