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



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

Date: **SEP 28 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the 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.

On the Form I-129 visa petition the petitioner stated that it is a nursing care facility. To employ the beneficiary in what it designates as a Health Education & Training Specialist position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding before the AAO contains (1) the 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 denial decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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.

With the visa petition, counsel submitted evidence sufficient to show that the beneficiary has a bachelor's degree in nursing from Misamis University in Ozamis City, Philippines. Counsel also submitted a copy of the beneficiary's registered professional nurse license in Illinois as well as an evaluation that states that the beneficiary's degree is comparable to a bachelor's degree in nursing earned in the United States.

Further still, counsel submitted a letter, dated December 3, 2009, from the petitioner's vice president *for operations*. *In this letter, the petitioner's vice president described the duties of the proffered position as follows:*

- 20% Plan, design and implement education, training and development programs to support retention of a highly qualified workforce; participate in the definition of factors that directly and indirectly influence and affect the care rendered to the Centre's clients.
- 20% Identify general and specific needs of staff relative to their skills and make arrangements for them to receive special training as indicated; help develop training processes specific to employee requirements; access company's training needs and develop an educational program to suit those needs.
- 15% Prepare and submit periodic reports on training and education program activities and achievements; compile data and information to be used in projecting future program needs; *if available, may review grant proposals* for training and education programs submitted by contract agencies to insure consistency with stipulated guidelines; monitor training and education programs and insures compliance with contracts.
- 15% Visit other healthcare facilities to observe training and education programs; recommend methods of improving existing programs and involving not only the management but as well as patients and staff in the activities of the centre; make visits regularly to observe care being rendered, to assess the condition and use of equipment and supplies, and to receive reports of the patient/family satisfaction with care.
- 10% Research sources for health information; summarize materials and use information to prepare bulletins, reports, educational pamphlets and brochures; assist in the writing of newsletters and other documents designed to inform the public on health problems, prevention and treatment (i.e. covering topics on nursing care management).
- 10% Monitor productivity requirements for staff on a monthly basis and participate in correcting productivity problems; communicate and "advertise" training and educational programs to employees; open

communication lines between employees and management to effectively implement these programs. Disseminate same to patients' families.

- 5% Prepare activity reports to inform management of the status and implementation plans of programs, services, and quality initiatives. Based on reports, may be asked to assist in preparation of budget or recommend allocation of funds for advancement and promotion of health education & training.
- 5% Continually educate staff of home safety practices and provide resources to insure the safety of [REDACTED] patients and staff; organize and develop training manuals, reference library, testing and evaluation procedures, multimedia visual aids and other educational materials.

The petitioner's vice president's letter further states that the proffered position requires a bachelor's degree in nursing.

On December 29, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation, including a more detailed description of the duties of the proffered position.

In response, counsel provided a vacancy announcement and counsel's own letter, dated February 3, 2010. The vacancy announcement will be addressed below.

In his February 3, 2010 letter, counsel reiterated the duty description previously provided and commented on the skills necessary to perform the duties described, as follows:

- 20% Plan, design and implement education, training and development programs to support retention of a highly qualified workforce; participate in the definition of factors that directly and indirectly influence and affect the care rendered to the Centre's clients.

To effectively perform this function, one must have specialized knowledge in education, focusing on educating healthcare professionals. Beneficiary studied essential courses in Strategies of Health Education, Health Care, Nursing Management & Leadership and Health Care with Related Learning Experience which she will apply when performing this function.

- 20% Identifies general and specific needs of staff relative to their skills and make arrangements for them to receive special training as indicated; help develop training processes specific to employee requirements; access company's training needs and develop an educational program to suit those needs.

The applicant must have flexible assessment skills and be ready to adapt training and education programs to the needs/abilities of the staff. Essential upper-division courses taken by Beneficiary included General Psychology, Strategies of Health Education and Foundations of Nursing Practice.

- 15% Prepare and submit periodic reports on training and education program activities and achievements; compile data and information to be used in projecting future program needs; if available, may review grant proposals for training and education programs submitted by contract agencies to insure consistency with stipulated guidelines; monitor training and education programs and insures compliance with contracts.

Preparing reports and reviewing grant proposals requires analytical skills typically developed in a college setting. Beneficiary will apply skills and knowledge acquired in Health Ethics, Human Development and Nursing Care Management to analyze the grant proposals and projecting future need for programs. She will also benefit from courses in Nursing Research and Writing in the Discipline to compile data and prepare reports.

- 15% Visit other healthcare facilities to observe training and education programs; recommend methods of improving existing programs and involving not only the management but as well as patients and staff in the activities of the centre; make visits regularly to observe care being rendered, to assess the condition and use of equipment and supplies, and to receive reports of the patient/family satisfaction with care.

Analyzing the current state of education programs and comparing them with other programs in similar health[-]related agencies to suggest improvements for the petition will require analytical skills and deductive reasoning typically associated with higher education. Beneficiary will apply skills and knowledge developed in Community Health Development/Nursing, Foundations of Nursing Practice, Health Ethics, Curative & Rehabilitative Nursing Care Management and Basic Nutrition.

- 10% Research sources for health information; summarize materials and use information to prepare bulletins, reports, educational pamphlets and brochures; assist in the writing of newsletters and other documents designed to inform the public on health problems, prevention and treatment (i.e. covering topics on nursing care management).

Research skills, and the analytical skills to apply the findings of research to the company's needs, are skills that are developed in a college setting. Essential upper-division courses taken by Beneficiary included Health Care, Curative & Rehab Nursing Care Management, Promotive & Preventive

Nursing Care Management and Beneficiary also took courses in Nursing Research and Speech & Oral Communication.

- 10% Monitor productivity requirements for staff on a monthly basis and participate in correcting productivity problems; communicate and “advertise” training and educational programs to employees; open communication lines between employees and management to effectively implement these programs. Disseminate same to patients’ families.

This is essentially a supervisory function requiring an advanced level of expertise and leadership skills. Beneficiary’s undergraduate curriculum involved at least 432 hours in Nursing Management and Leadership as part of her course in Related Learning Experience holding seminars or training in Health Centers, Schools, Industrial Agencies and Homes for the Aged/Children.

- 5% Prepare activity reports to inform management of the status and implementation plans of programs, services, and quality initiatives. Based on reports, may be asked to assist in preparation of budget or recommend allocation of funds for advancement and promotion of health education & training.

Taking an active role in implementing programs and initiating new services requires strong analytical skills typically developed in a baccalaureate setting. Beneficiary studied essential courses in Nursing Management and Leadership & Promotive & Preventative Nursing Care Management. To realize the objective of this function, she will also utilize skills and knowledge in Health Care Economics.

- 5% Continually educate staff of home safety practices and provide resources to insure the safety of [REDACTED] patients and staff; organize and develop training manuals, reference library, testing and evaluation procedures, multimedia visual aids and other educational materials.

Maintaining high standards for safety is of paramount importance and requires vigilance and thorough understanding of standards usually learned in an academic college setting. Beneficiary studied essential courses in Strategies of Health Education, Foundation of Nursing, Community Health Development, Health Practices, Health Care, Community Health Nursing and Health Ethics.

Counsel stated that the proffered position is a new position for the petitioner. Counsel also stated that those duties require a bachelor's degree in medical or health science and cited the U.S.

Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* for the proposition that the proffered position is a specialty occupation position.

The AAO observes that counsel's assertion that the proffered position requires a bachelor's degree in medical or health science is a distinct shift from the petitioner's vice president's assertion that it requires a bachelor's degree in nursing. Counsel did not state his basis for stating that the requirement of the proffered position is other than that stated by the petitioner's vice president.

The director denied the petition on March 22, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a health educator position as described in the chapter of that name in the *Handbook*. On appeal, counsel again asserted that the evidence provided shows that the proffered position qualifies as a specialty occupation position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook*, supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The AAO observes that the *Handbook* description of Health Educator positions suggests that they educate patients, patients' relatives, and members of the general public on health care issues. The duties of the proffered position, on the other hand, suggest that the beneficiary would provide training courses to the petitioner's nursing staff, and perhaps other health care workers, and that she would provide other administrative support pertinent to the petitioner's program for providing training to its staff. The AAO does not agree with the director's assertion that the proffered position is a health educator position.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

In the chapter entitled "Registered Nurses," however, the *Handbook* states, *inter alia*, the following about those positions, "Some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as nurse educators . . ." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm> (last visited September 27, 2012).

The duties that counsel and the petitioner's vice president attributed to the proffered position are entirely consistent with a registered nurse position, or, more specifically, a nurse educator position as described in the *Handbook* chapter pertinent to registered nurses. The AAO finds that the proffered position is a nurse educator position as described in the "Registered Nurses" chapter of the *Handbook*.

The *Handbook* states the following about the educational requirements of registered nurse positions, including nurse educator positions:

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

Bachelor's degree programs usually include more training in the physical and social sciences, communication, leadership, and critical thinking, which is becoming more important as nursing practice becomes more complex. They also offer more clinical experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

Id. at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4>.

The *Handbook* does not indicate that a bachelor's degree is necessary for registered nursing positions in general, and only indicates that "A bachelor's degree or higher is *often* necessary for . . . teaching." *Id.* [Emphasis added.] While this language likely refers to teaching positions at post-secondary institutions of higher education and not to training/educator positions at nursing facilities, it nevertheless does not indicate that a bachelor's degree is normally required for positions as nurse educators, nor even that it is typically required for such positions. Further, as a registered nurse may have a bachelor's degree in a subject unrelated to nursing, it does not indicate that a bachelor's degree in nursing is ever a requirement for a nurse educator position. Therefore, the *Handbook* does

not support the proposition that a minimum of a bachelor's degree or the equivalent in a specific specialty is required for entry into the proffered position.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of nursing and the ability to present that knowledge to others, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge. Although the college courses to which counsel referred would be helpful and in some cases necessary, the record does not show that such coursework would not be part of an associate's degree program and that it would constitute a curriculum leading only to a bachelor's or higher degree or the equivalent in a specific specialty. Accordingly, the evidence as presented fails to establish that a specialty, baccalaureate degree would be necessary to enter the occupation in the United States.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will address 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 determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The record contains no submissions from professional associations of registered nurses or nurse educators in the petitioner's industry attesting that a degree is a minimum entry requirement. The petitioner did not submit any letters or affidavits from firms or individuals in the industry to meet this criterion of the regulations.

Counsel did submit a vacancy announcement placed by MRI Network on a popular job search website for a Nursing Education Specialist for The HealthCare Initiative, a medical/health organization. The announcement indicates that the particular Nursing Education Specialist position announced requires RN license, experience as an educator, a bachelor's degree, managerial

competency and 5+ years of recent experience in an inpatient setting, and a firm understanding of healthcare-related documentation/systems, nursing skills/techniques and relative medical equipment.

Although that announcement requires a bachelor's degree, the position does not require a minimum of a bachelor's degree, or the equivalent, in any specific specialty. Further, the advertisement does not provide any information about the employer. Therefore, the advertisement provided is not evidence of a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner.

Yet further, even if the vacancy announcement submitted was demonstrated to be for a parallel position in the petitioner's industry with an organization similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of one announcement is statistically insufficient to demonstrate an industry-wide requirement.² The record contains no independent evidence that the announcement submitted is representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next review the record regarding the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." As evident in the earlier discussion about the description of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than registered nurse or nurse educator positions as described in the *Handbook* that can be performed by persons without a specialty baccalaureate degree or its equivalent.

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from one vacancy announcement with regard to determining the common educational requirements for entry into parallel positions in similar organizations. 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 announcement supported the finding that the position of nurse educator for a nursing care facility required a bachelor's or higher degree in a specific specialty or its equivalent, it could not be found that a single posting that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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. Counsel asserted, in his response to the RFE in this matter, that the petitioner has never previously hired anyone to fill the proffered position. In any event, the record contains no evidence pertinent to anyone that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).³

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

In essence, the duties of the proffered position consist of organizing and presenting classes to the petitioner's staff, and some auxiliary duties. The AAO finds that the terms in which the proposed duties are described do not convey the relative degree of specialization and complexity required to satisfy this criterion. As described in this record of proceeding, the duties do not reveal complexity and specialization above those of positions in the occupation that are not usually associated with knowledge that requires at least a bachelor's or higher degree in a specific specialty. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).⁴

³ 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 claimed 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 artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁴ It is noted that 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).

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 petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, although the job title on the LCA submitted with the petition reads "Health Education & Training Specialist," it was certified for an entry-level, Level I position under SOC (O*NET/OES) Code 13-1073.00 or "Training and Development Specialists." For the reasons discussed *supra*, the job as titled and as described by the petitioner, however, is best classified under SOC (O*NET/OES) Code 29-1111 or "Registered Nurses." As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O*NET/OES) Code 29-1111, not SOC (O*NET/OES) Code 13-1073, in order for it to be found to correspond to the petition.

To permit otherwise may result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A), by allowing that petitioner to simply submit an LCA for a different occupation and at a lower prevailing wage than the one being petitioned for. In this matter, this results in an LCA certified for a Level I prevailing wage of \$28,080 per year for an entry-level training and development specialist when a certified LCA should have been submitted for a registered nurse position with an absolute minimum, Level I prevailing wage of \$50,461 per year. As described by the petitioner, however, the position would likely be a Level III or IV position if in fact its duties require the training of other lower-level registered nurse positions, resulting in a required, minimum wage at that time of \$69,181 or \$78,541 per year, respectively. In either case, the attested salary of \$52,000 per year on the Form I-129 would barely exceed a Level I, entry-level registered nurse position but fall well below that required by law for a higher-level registered nurse educator position.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification and wage level, and the petition must be denied for this additional reason.

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 (9th 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.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.