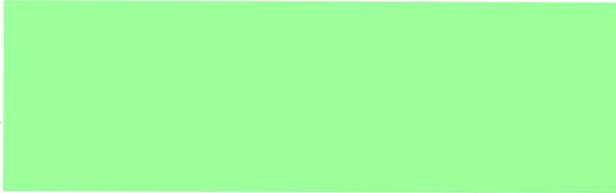


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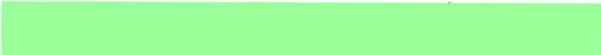
U.S. Citizenship  
and Immigration  
Services



Date: APR 01 2013

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 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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 skilled nursing facility, with 112 employees, established in 1988. To employ the beneficiary in what it designates as a registered nurse 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 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.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal 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 employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires 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 [(2)] requires 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 a particular position 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a registered nurse position, and that it corresponds to Standard Occupational Classification (SOC) code and 29-1111.00 Registered Nurses from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level II position

Counsel also provided a letter dated April 23, 2010, from the petitioner's director of nursing and a document entitled, "[REDACTED] Job Description," describing the duties of a registered nurse position.<sup>1</sup>

The petitioner's director of nursing's letter does not contain any educational requirement for the proffered position and describes the duties of the proffered position as follows:

[The beneficiary] will supervise eight members of our staff. She will assess resident's [sic] needs, develop care plans, administer care, and evaluate care. [She] will draw on her more than three years experience working as staff nurse at the 200 bed government hospital, [REDACTED] in the Republic of the Philippines. She will find her skills supervising staff and nurses at this government hospital to be highly applicable to our offered position.

The petitioner's director of nursing stated that further details of the duties of the proffered position are included in the document from [REDACTED] describing registered nursing positions. That document states the following as the duties of registered nurses:

**GENERAL PURPOSE:**

Responsible for the independent supervision of the delivery of care to a group of residents in a nursing unit. Assess resident needs, develop individual care plans, administer nursing care, evaluate nursing care, and supervise Certified Nursing Assistants (CNAs) and other personnel in the delivery of nursing care.

**ESSENTIAL JOB FUNCTIONS:**

**RESIDENT ASSESSMENT**

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<sup>1</sup> The AAO observes that the petitioner's letterhead indicates that the petitioner is doing business as [REDACTED]

**Duties:** Adhere to state rules and regulations concerning delivery of care and assure that effective quality nursing care is delivered which is outcome focused through utilization of the nursing process. Effectively interview the resident/responsible party to obtain information required for developing and implementing a plan of care. Demonstrate ability to perform physical assessment through observation, inspection, palpation, percussion and auscultation. If applicable, is involved in and accurately complete the [Resident Assessment Instrument] process. Identify needs and provide input for discharge planning and follow-up throughout length of stay.

#### **DEVELOPS PLAN OF CARE**

**Duties:** Develop individualized plan of care in collaboration with the resident/responsible party and interdisciplinary care team by documenting problems, statements, goals and approaches in collaboration with other members of the interdisciplinary care team. Seek LPN and Certified Nursing Assistant input when developing plan of care. Define realistic and obtainable long and short term goals for the residents. Initiate appropriate nursing interventions with time frames for outcome evaluations and document appropriately in medical record. Revise plan of care with input from resident/responsible party and interdisciplinary care team. Implement teaching with resident/responsible party consistent with interdisciplinary plan of care.

#### **IMPLEMENTS PLAN OF CARE**

**Duties:** Implement plan of care consistently, effectively and cost efficiently with focus on resident centered outcomes. Identify rationale and anticipated outcomes for each nursing intervention. Assume responsibility for care interventions consistent with skill level and professional standards of care. Utilize time efficiently to assure completion of duties and responsibilities in allotted time frame. Utilize professional and sound judgment in delivery of care that is cost efficient but does not jeopardize safe, effective care delivery. Follow company policies and procedures to ensure a safe, caring, comfortable and clean environment. Utilize all appropriate, available resources for resident/family/responsible party counseling and discharge planning. Keep physician and/or other health care professionals (Nurse Practitioner, Physician Assistant, podiatrist, dentist, etc.) informed of resident's condition; and notify physician and/or other healthcare professionals immediately of significant changes of condition. Work in collaboration with physician and/or other health care professionals by sharing information relevant to changing plan of care. Question and seek clarification of unclear orders.

#### **EVALUATES PLAN OF CARE**

**Duties:** Evaluate team and make changes as needs are recognized. Critique and take responsibility for evaluating nursing care delivered. Utilize the expertise of Nurse colleagues to evaluate plan of care. Elicit feedback from individual being served and/or family or responsible party to determine that their needs are being met. Evaluate effectiveness of the plan of care in conjunction with the interdisciplinary care plan team.

### **DELIVERS RESIDENT CARE**

**Duties:** Deliver and maintain optimum resident care and comfort by demonstrating knowledge and skills of current nursing practices. Transcribe physician and/or other health care professionals' orders appropriately and accurately. Ask for clarification of questionable orders from the ordering physician and/or other health care professionals. Perform only those activities that are within the scope of RN nursing practice. Notify physician and/or other health care professionals if orders are not carried out and document event appropriately. Follow company, facility and departmental policies and procedures, and appropriately utilize nursing judgment. Ensure accurate documentation of all medical records and reporting forms. Promptly respond to call lights and other resident needs.

### **SUPERVISION**

**Duties:** Supervise Certified Nursing Assistants and other personnel. May supervise other Nurses, including other RNs. Coach, counsel and assign Certified Nursing Assistants and other Nurses to provide quality resident care. Independently evaluate the job skills and work performance of the Certified Nursing Assistants and other Nurses through the formal performance evaluation process. Appropriately discipline or participate in the discipline of Certified Nursing Assistants and other Nurses for violations of work rules, policies or poor performance, including the recommendation of suspensions and terminations. Recognize Certified Nursing Assistants and other Nurses for exceptional care and job performance on a regular basis and as part of their formal performance evaluation. Assign Certified Nursing Assistants and other Nurses specific duties for resident care and direct their work. Assign hours, breaks and meal periods to Certified Nursing Assistants and other Nurses. Ensure proper staffing by calling in replacement employees for Certified Nursing Assistants and other Nurses not reporting for work and by transferring or reassigning Certified Nursing Assistants and other Nurses to ensure adequate staffing levels. Revise work schedules of Certified Nursing Assistants and other Nurses as necessary. Train and/or assist in the orientation of new employees. Attempt to effectively resolve Certified Nursing Assistant and other Nurses' problems/complaints and grievances. Incorporate Certified Nursing Assistants and other Nurses in a work team to meet resident needs. Attend and participate in supervisory meetings. Support and follow through with management team goals. Perform other management duties as assigned.

### **CUSTOMER SERVICE**

**Duties:** Provide compassionate resident care services. Establish and maintain positive interactions with internal and external customers, including co-workers and direct reports. Take responsibility for resolving Certified Nursing Assistant, Nurse, and other customers' issues and concerns striving for a win-win outcome. Customers include residents, families, vendors and other employees.

### **RESIDENTS' RIGHTS**

**Duties:** Demonstrate strong and ethical practices regarding individual/resident rights as stated in company policy. Support resident autonomy and choice. Demonstrate both sensitivity and appropriate responsiveness to each resident's "end of life" wishes.

#### **RESIDENT COMFORT AND SAFETY**

**Duties:** Demonstrate safe practices in regard to resident's comfort and safety by applying knowledge of proper body alignment for self and resident. Practice and promote adherence to institutional safety codes. Promote a restraint-free environment.

#### **PHARMACY KNOWLEDGE**

**Duties:** Maintain an updated knowledge base of pharmacology. Demonstrate knowledge of policies governing medication administration and documentation. Demonstrate a knowledge of drug reactions and sensitivities and nursing interventions. Assure that narcotics are accounted for properly. Apply adult learning principles when educating individuals, family members or responsible party regarding the resident's medication regimen.

#### **LAB VALUES**

**Duties:** Recognize normal and abnormal lab values and communicate same in appropriate manner to physician, and other interdisciplinary team members as appropriate.

#### **INFECTION CONTROL**

**Duties:** Demonstrate working knowledge of infection control practices.

#### **CONTINUING EDUCATION**

**Duties:** Recognize self-evaluation and self-development as important tools in maintaining high standards of care and professionalism. Seek and provide peer support and consultation. Participate in facility/department in services. Attend continuing education programs. Attend facility/department/staff meetings as required.

#### **SAFETY**

**Duties:** Comply with, support and enforce Company policies involving all safety and infection control procedures to include the proper use of mechanical lifts, gait belts and personal protective back supports.

#### **RESIDENTS' RIGHTS AND POSITIVE RELATIONSHIPS**

**Duties:** Understand, comply with and promote all rules and regulations regarding residents' rights; promote positive relationships with residents, visitors, and regulators, to include presenting a professional appearance.

#### **OTHER JOB FUNCTIONS:**

**CORPORATE COMPLIANCE**

**Duties:** Must adhere to the company Code of Conduct and Business Ethics policy, including documentation and reporting responsibilities.

**STAFF DEVELOPMENT**

**Duties:** Attend and participate in educational activities, in-service training and staff meetings; assist in orientation and training other staff.

**QUALITY IMPROVEMENT**

**Duties:** Participate in Quality Improvement activities as assigned.

**OTHER DUTIES**

**Duties:** Other duties as assigned.

Among the qualifications that document lists for registered nursing positions, it states: "Must hold and maintain a current license to practice as a Registered Nursing in practicing state." It does not state any other requirement pertinent to education.

On October 5, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted (1) two letters, both undated, from the petitioner's director of nursing; (2) evidence pertinent to [REDACTED] and [REDACTED] and (3) a copy of the regulation at 38 C.F.R. § 51.130.

Both letters state that the petitioner is surveyed annually by the Utah state government and by the Department of Veterans Affairs (VA), and that this oversight requires that the proffered position be filled by a nurse with a bachelor's degree. One letter states, *inter alia*, that (1) the petitioner requires a "Bachelor's Degree in Nursing," (2) "[REDACTED] served as the registered nurse supervisor from October 2002 to January 2008," and (3) "[REDACTED] served as the registered nurse supervisor from November 2004 to February 2010."

The petitioner's director of nursing stated:

Attached are copies of the Diploma's and wage reports showing the two previous registered nurse supervisors held Bachelor Degrees and one supervisor held a Master's Degree in a related health care field in addition although a Master's degree is not required.

[Errors in the original].

The evidence submitted shows that [REDACTED] holds a bachelor's degree in nursing awarded by [REDACTED] in the Philippines. It further shows that [REDACTED] earned a master's

degree in Public Health/Health Services Administration in 1992, and then, subsequently, earned a bachelor's degree in nursing in 1995 at the [REDACTED]

The director denied the petition on April 4, 2011, 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 in a specific specialty or its equivalent. 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).

On appeal, counsel provided (1) a letter, dated April 29, 2011, from the petitioner's director of nursing, (2) a 46-page form that counsel labeled Attachment B, and (3) a brief.

In his letter of April 29, 2011, the petitioner's director of nursing stated:

The specific duties of the [proffered] position is [sic] unique to a State Veteran's Nursing Home in that it requires the registered nurse, in a supervisory position, to know and apply these additional set [sic] of standards (Attachment B) not required of other State Nursing Homes.

To lead, communicate appropriately with the staff, negotiate with external stakeholders and perform the specialized duties needed to maintain regulatory compliance, the registered nurse must have the knowledge required to perform the duties, knowledge usually associated with the attainment of a baccalaureate or higher degree.

Attachment B, referred to by the petitioner in its April 29, 2011 letter, is a form used to rate Nursing Home Care facilities. Many of the criteria on that form appear to have no direct bearing on a registered nurse or nurse supervisor position. The form provides, for instance, that at least 75% or, under some circumstances, at least 50% of the residents of VA approved facilities must be eligible for VA nursing home care. It states that such facilities must designate a primary care physician to serve as its medical director. It states that an approved facility must maintain a quality assessment and assurance committee consisting of its director of nursing services, a primary physician, and at least three other members. It states that if a facility provides its own laboratory or diagnostic services, they must meet all appropriate standards. That form includes many other requirements. It does not state that registered nurses, or supervisory registered nurses, in a VA approved nursing home must possess a minimum of a bachelor's degree in nursing or any other specific specialty. The petitioner's director of nursing did not specify any requirement in Attachment B, or any combination of requirements, that would require a minimum of a bachelor's degree in a specific specialty or its equivalent to understand or to implement.

In the appeal brief, counsel also relied on the fact that the petitioner is subject to VA oversight, in addition to state regulatory oversight, in asserting that the proffered position necessarily requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Again, however, he offered no argument pertinent to any individual requirements or combination of requirements that would,

directly or indirectly, compel the petitioner to hire a registered nurse with a minimum of a bachelor's degree in nursing, or any other specific specialty, or such a degree's equivalent, to fill the proffered 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 U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> As an initial matter, the AAO concurs with both the petitioner's and director's classification of the proffered position as one encompassing the characteristics of registered nurses. In the "Registered Nurses" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Registered Nurses Do**

Registered nurses (RNs) provide and coordinate patient care, educate patients and the public about various health conditions, and provide advice and emotional support to patients and their family members.

### **Duties**

Registered nurses typically do the following:

- Record patients' medical histories and symptoms
- Give patients medicines and treatments
- Set up plans for patients' care or contribute to existing plans
- Observe patients and record the observations
- Consult with doctors and other healthcare professionals
- Operate and monitor medical equipment
- Help perform diagnostic tests and analyze results
- Teach patients and their families how to manage their illnesses or injuries
- Explain what to do at home after treatment

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<sup>2</sup> 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.

Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides. For more information, see the profiles on licensed practical and licensed vocational nurses; nursing aides, orderlies, and attendants; and home health and personal care aides.

Registered nurses sometimes work to promote general health by educating the public on warning signs and symptoms of disease. They might also run general health screenings or immunization clinics, blood drives, or other outreach programs.

Most registered nurses work as part of a team with physicians and other healthcare specialists.

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, healthcare consultants, public policy advisors, researchers, hospital administrators, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

Registered nurses' duties and titles often depend on where they work and the patients they work with. They can focus on the following specialties:

- A specific health condition, such as a diabetes management nurse who helps patients with diabetes or an oncology nurse who helps cancer patients
- A specific part of the body, such as a dermatology nurse working with patients who have skin problems
- A specific group of people, such as a geriatric nurse who works with the elderly or a pediatric nurse who works with children and teens
- A specific workplace, such as an emergency or trauma nurse who works in a hospital or stand-alone emergency department or a school nurse working in an elementary, middle, or high school rather than in a hospital or doctor's office.

Some registered nurses combine one or more of these specialties. For example, a pediatric oncology nurse works with children and teens who have cancer.

Many possibilities for specializing exist. The following list includes just a few other examples of ways that some registered nurses specialize:

**Addiction nurses** care for patients who need help to overcome addictions to alcohol, drugs, tobacco, and other substances.

**Cardiovascular nurses** treat patients with heart disease and people who have had heart surgery.

**Critical care nurses** work in intensive care units in hospitals, providing care to patients with serious, complex, and acute illnesses and injuries that need very close monitoring and treatment.

**Genetics nurses** provide screening, counseling, and treatment of patients with genetic disorders, such as cystic fibrosis and Huntington's disease.

**Neonatology nurses** take care of newborn babies.

**Nephrology nurses** treat patients who have kidney-related health issues that are attributable to diabetes, high blood pressure, substance abuse, or other causes.

**Rehabilitation nurses** care for patients with temporary or permanent disabilities.

**Advanced practice registered nurses** may provide primary and specialty care, and, in most states, they may prescribe medicines. All states specifically define requirements for registered nurses in these four advanced practice roles:

- **Clinical nurse specialists** provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health.
- **Nurse anesthetists** provide anesthesia and related care before and after surgical, therapeutic, diagnostic, and obstetrical procedures. They also provide pain management and emergency services.
- **Nurse-midwives** provide care to women, including gynecological exams, family planning advice, prenatal care, assistance in labor and delivery, and care of newborns.
- **Nurse practitioners** serve as primary and specialty care providers, providing a blend of nursing and primary care services to patients and families.

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#tab-2> (last visited March 25, 2013).

As to the educational requirements of registered nurse positions, the *Handbook* states the following:

### **How to Become a Registered Nurse**

Registered nurses usually take one of three education paths: a bachelor's of science degree in nursing (BSN), an associate's degree in nursing (ADN), or a diploma from an approved nursing program. Registered nurses must also be licensed.

### **Education**

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.

Generally, licensed graduates of any of the three types of education programs (bachelor's, associate's, or diploma) qualify for entry-level positions as a staff nurse.

Many registered nurses with an ADN or diploma find an entry-level position and then take advantage of tuition reimbursement benefits to work toward a BSN by completing an RN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field.

### **Important Qualities**

***Critical-thinking skills.*** Registered nurses must be able to assess changes in the health state of patients, including when to take corrective action and when to make referrals.

***Compassion.*** Registered nurses should be caring and sympathetic, characteristics that are valuable when treating patients.

***Detail oriented.*** Registered nurses must be responsible and detail oriented because they must make sure that patients get the correct treatments and medicines at the right time.

**Emotional stability.** Registered nurses need emotional stability to cope with human suffering, emergencies, and other stresses.

**Organizational skills.** Nurses often work with multiple patients with various health needs, and organizational skills are critical to ensure the patient is given proper care.

**Patience.** Registered nurses should be patient so they can provide quality care under stressful or hectic circumstances.

**Speaking skills.** Registered nurses must be able to talk effectively with patients to correctly assess their health conditions. Nurses need to clearly explain how to take medication or give other instructions. They must be able to work in teams with other health professionals and communicate the patients' needs.

### **Licenses**

In all states, the District of Columbia, and U.S. territories, registered nurses must have a nursing license.

To become licensed, nurses must graduate from an approved nursing program and pass the National Council Licensure Examination, or NCLEX-RN.

Other requirements for licensing vary by state. Each state's board of nursing can give details. (For more on the NCLEX-RN examination and a list of state boards of nursing visit the National Council of State Boards of Nursing.)

### **Certification**

Nurses may become credentialed through professional associations in specialties such as ambulatory care, gerontology, and pediatrics, among others. Although certification is usually voluntary, it demonstrates adherence to a higher standard, and some employers may require it. Certification is required for all registered nurses serving in any of the four advanced practice registered nurse roles.

### **Advancement**

Most registered nurses begin as staff nurses in hospitals or community health settings. With experience, good performance, and continuous education they can move to other settings or be promoted to positions with more responsibility.

In management, nurses can advance from assistant unit manager or head nurse to more senior-level administrative roles, such as assistant director, director, vice president, or chief of nursing. Increasingly, management-level nursing positions require a graduate degree in nursing or health services administration. Administrative

positions require leadership, communication and negotiation skills, and good judgment.

Some RNs choose to become advanced practice registered nurses (APRNs). APRNs work independently or in collaboration with physicians. They may provide primary care, and, in most states, they may prescribe medications. APRNs require at least a master's degree. Each state's board of nursing can provide the specific regulations regarding APRNs.

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home-based, and chronic care businesses.

Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need registered nurses for jobs in health planning and development, marketing, consulting, policy development, and quality assurance.

Other nurses work as postsecondary teachers in colleges and universities. For more information, see the profile on postsecondary teachers.

*Id.* at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4> (last visited March 25, 2013).

The *Handbook's* information on the educational requirements for the occupational classification "Registered Nurses" indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

Further, the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for an employee who performs moderately complex tasks that require limited judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The classification of the proffered position as a Level II position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that the *Handbook* suggests that some registered nurse positions do not require such a degree.

The AAO also finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of nursing and nurse supervision, 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.

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 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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 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*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Further, as was noted above, the petitioner has designated the proffered position as a Level II position on the LCA, indicating that it is a position for an employee who performs moderately complex tasks that require limited judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). In order to attempt to show that parallel positions require a minimum of a bachelor's degree in registered nursing or its equivalent, the petitioner would be obliged to demonstrate that other Level II registered nursing positions, positions performing moderately complex tasks that require limited judgment, require a minimum of a bachelor's degree in registered nursing or its equivalent, which proposition is not supported by the *Handbook*.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its 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 consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other registered nurse positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The record contains no evidence that would differentiate the work of the proffered position from the work of registered nurse positions in general. Counsel and the petitioner's director of nursing have relied on the fact that the fact that the petitioner must comply with VA requirements to demonstrate that the proffered position is more complex or unique than other registered nurse positions. They have not, however, demonstrated which VA requirements would complicate the proffered position or to what extent. They have not shown that other VA nursing homes require their nurses, or their supervisory nurses, to have a bachelor's degree in nursing.

The duties of the proffered position (such as assessing residents' needs, developing care plans, administering care, supervising other staff, and evaluating care) are described in terms of generalized functions generic to registered nurse positions in general, and so have not been shown to be more complex or unique than the duties of other registered nurse positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level II registered nurse, an indication that the proffered position is a position for an employee who performs moderately complex tasks that require limited judgment. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* states that some registered nurse positions do not require such a degree.

For the reasons explained above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will consider the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner establishes that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>3</sup>

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<sup>3</sup> 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 a 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").

The petitioner claims that it is a skilled nursing facility with 112 employees. Counsel submitted evidence pertinent to two people whom the petitioner's director of nursing stated the petitioner previously employed as registered nurse supervisors. The petitioner's director of nursing implied that those are the only two people whom the petitioner has employed as registered nurse supervisors, or perhaps the only two who have had bachelor's degrees. The AAO finds unlikely the proposition that the petitioner, a 112-employee skilled nursing facility, employed no nursing supervisors from its inception in 1988 to October 2002, one nursing supervisor from October 2002 to November 2004, two nursing supervisors from November 2004 to January 2008, one nursing supervisor from January 2008 to February 2010, and then no nursing supervisors from February 2010 until it filed the instant visa petition on July 23, 2010.

Further, that the petitioner must have a supervising nurse on each of its shifts almost certainly indicates that it must employ at least three nursing supervisors at any given time, and very likely employs at least four nursing supervisors at any given time. The evidence strongly suggests that the petitioner did not provide sufficient evidence to demonstrate that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent. Previously hiring only two employees with a bachelor's degree in a specific specialty does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree or the equivalent in a specific specialty for the proffered position.

The regulation at 38 C.F.R. § 51.130 states that VA approved facilities "must provide an organized nursing service with a sufficient number of qualified nursing personnel . . . under the direction of a full-time registered nurse." It further states that such facilities must provide "registered nurses 24 hours per day, 7 days per week" and the director of nursing service must designate a registered nurse as a supervising nurse for each tour of duty." It does not state that any of the registered nurses at such facilities must have a minimum of a bachelor's degree or its equivalent.

How many nurse supervisors the petitioner has employed, how many it currently employs, and how many of those have or have had a minimum of a bachelor's degree in nursing or its equivalent is not stated in the record, let alone demonstrated. The evidence pertinent to those two employees, therefore, is insufficient to establish that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, including its supervisory duties, are entirely within the ambit of the duties of a registered nurse. In fact, one description of the proffered position, entitled "[REDACTED] Job Description," explicitly states that the

beneficiary would, "Perform only those activities that are within the scope of RN nursing practice." The individual duties described, including those pertinent to resident assessment, developing, implementing, and evaluating care plans, delivering resident care, supervision of CNAs and other nurses, etc., contain no indication of such specialization and complexity that the knowledge they require is usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level II registered nurse position, a position requiring performance of moderately complex tasks that require limited judgment. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely related to nursing, notwithstanding that some registered nursing positions require no such degree.

For the reasons stated above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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

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. The appeal will be dismissed and the petition denied.

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