



U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: **APR 19 2013** 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,

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 "Medical clinic provider of medical services" with 82 employees. To employ the beneficiary in what it designates as a Nursing Staff Manager 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.

The issue on appeal before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. 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 included in the Standard Occupational Classification number and title 29-1111.00 Registered Nurses, as described in the Occupational Employment Statistics (OES) maintained by the U.S. Department of Labor (DOL).

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in nursing from [REDACTED] Republic of the Philippines. No evaluation of her degree and education in terms of a U.S. equivalent was provided. That omission will be discussed further below.

Counsel also provided a letter, dated November 3, 2010, from a physician in the petitioner's practice. That letter states that the beneficiary has also earned 18 credit hours towards a master's degree in management. The beneficiary's résumé also states that the beneficiary has 18 credit hours earned at [REDACTED] toward a master's degree in management. The record does not contain any corroborating evidence from any official source of that additional education.

In his November 3, 2010 letter, the physician further stated:

[The beneficiary] will be responsible in the direction and supervision of nursing care activities, assignment of specific duties, and activities of nursing staff members, as well as coordinating and planning with other health disciplines in our clinic.

The physician also stated that the proffered position requires, "an education, background, and eligibility for RN licensure as well as additional training and experience in health care and nursing management functions." He did not state that the proffered position requires a minimum of a bachelor's degree or its equivalent, or that, if it does, the requisite degree or equivalent must be in any specific specialty.

On February 22, 2011, 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, and outlined the specific evidence to be submitted. The service center also stated the following:

Additionally, if the beneficiary will supervise or direct others submit a copy of a line and block organizational chart showing the petitioner's hierarchy and staffing levels. List all divisions in the company. Clearly identify the proffered position in the chart.

Also, show the names and job titles for those persons, if any, whose work will come under the control of the proposed position. Indicate who will direct the beneficiary, by name and job title.

In response, counsel submitted an organizational chart and a letter, dated April 4, 2011, from the same physician who provided the November 3, 2010 letter.

Although the petitioner stated, on the Form I-129 visa petition, that it has 82 employees, only 74 positions are accounted for on the organizational chart.

The organizational chart shows that the beneficiary would supervise the petitioner's six RN staff, its 27 medical assistants, and its five technicians, and, with the petitioner's business manager, would co-supervise its five billing specialists. None of the people who would supervise the beneficiary and none of the people whom the beneficiary would supervise were identified by name.

The physician's April 4, 2011 letter describes the duties of the proffered position as follows:

[I]nsure [sic] appropriate referral of patients initially to medical professional staff best suited for particular patient needs-15%; insure [sic] the ongoing effective diagnostic and medical record notations, with technician personnel to obtain [M]edicaid approval for required diagnostic testing of patients, thereby minimizing repeat appointments because of improper diagnostic information submissions-15%; allocate RN personnel to required visits and presence at three area hospitals, as well as the four clinic locations on a coordinated and effective basis-20%; [sic] coordinate and insure [sic] RN/physician flow of information and interaction to maximize benefits for assessment and treatment needs of patients-20%; coordinate and schedule visits by outside medical specialists providing required cardiac, endocrinologist and/or neurological services for patients with those medical needs-5%; oversee and supervise quality of patient care rendered by RN staff at both clinic and hospital locations-15%; and operate as liaison between medical staff and billing specialist personnel-10%[.]

The physician also stated:

Because traditionally nurses have been engaged with clients at a very personal level, in many different types of medical need environments, the person that we seek must have the appropriate educational and expertise level that is commensurate with the education, training, and experience of an RN. Beyond that, however, the person in this position would necessarily have the additional expertise and training that we require to perform the functions in this multi-directional responsibility. And beyond the type of additional training and expertise that an RN would achieve in a Bachelor's level degree academic program, we require the services of a person who has sufficient managerial expertise and insight as it relates to allocation of appropriate personnel to the medical task necessary to assure the appropriate dissemination of medical record

information on a timely basis to the medical provider best suited to deal with those issues, to allocate the professional personnel to the different clinic locations and the three area hospitals to whom our patients are referred, and to facilitate a generally coordinated and well[-]functioning cadre of medical professionals, thereby optimizing the level of care rendered to the individual patients.

The petitioner's physician never explicitly stated what educational credentials are necessary to the proffered position. Although he appeared to imply that both a bachelor's degree in nursing and some additional education is required, he did not state exactly what that additional education would be, nor did he even explicitly state that the proffered position requires a minimum of a bachelor's degree in nursing or its equivalent.

The director denied the petition on April 26, 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.

The petitioner submitted its appeal on a Form I-290B. The body of that appeal reads, in its entirety:

USCIS has denied the current H1B application for this applicant by simply stating that the duties to be performed are consistent with those of a registered nurse, but simply stating that the duties and responsibility do not show enough complexity or authority beyond that typically encountered by registered nurses generally. That is a gross oversimplification and merely parrots the non-analytical position that RNs are not eligible for H1B visas, and ignores the guidance of the advisory from the Executive Associate Commissioner, Office of Field Operations, dated 11/27/2002 (HQISD 70/6.2.8-P).

Despite the petitioner's indication on the Form I-290B that it would submit a brief and/or additional evidence, no brief or additional evidence was submitted.

As a preliminary matter, the AAO agrees with counsel and the cited memorandum that some registered nurse positions may be shown to qualify as specialty occupation positions. However, the issue in the instant case is whether the proffered position herein has been shown to be such a 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 DOL'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>1</sup>

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

*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.

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<sup>1</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 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*, 2012-12 ed., "Registered Nurses," <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-2> (last visited April 12, 2013) (emphasis added).

Most of the duties the petitioner attributed to the proffered position are consistent with the duties of registered nurses in administrative positions as described in the *Handbook*. On balance, the AAO agrees with the petitioner that the proffered position is, as the petitioner asserted on the LCA, a registered nurse position.

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

### **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 April 12, 2013).

The *Handbook's* information on the educational requirements for the occupational classification "Registered Nurses" indicates that a bachelor's or higher degree in a specific specialty, or the equivalent, 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.

Thus, the *Handbook* does not support the proposition that registered nurse positions, or administrative registered nurse positions, require, as a category, a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* cannot, therefore, be used to show that the proffered position requires such a degree.

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 nursing administration, 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.

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 may be 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 duties of the proffered position (such as ensuring the appropriate referral of patients, ensuring effective diagnostic and medical record notations, assigning nurses to clinics and hospitals as appropriate, coordinating the flow of information between physicians and nurses, coordinating and scheduling visits by outside medical specialists, and supervising quality of patient care rendered by the petitioner's nursing staff) are described in terms of duties that are likely very common to registered nurses in administrative positions. The record contains no evidence that the proffered position is more complex or unique than other administrative or supervisory nurse positions, and no indication that administrative or supervisory registered nurse positions normally require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

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

The record contains no evidence 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 at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>2</sup>

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. Ensuring the appropriate referral of patients, ensuring effective diagnostic and medical record notations, assigning nurses to clinics and hospitals as appropriate, coordinating the flow of information between physicians and nurses, coordinating and scheduling visits by outside medical specialists, and supervising quality of patient care rendered by the petitioner's nursing staff contain no indication of specialization and complexity such that they require knowledge 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 administrative or supervisory registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, 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 record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

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<sup>2</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 does not have a U.S. degree. Instead, evidence in the record indicates that the beneficiary has a bachelor's degree in nursing awarded by an institution in the Philippines. When a petitioner will rely on a foreign degree, evidence of that degree must be accompanied by an evaluation of that foreign education and degree in terms of its equivalence to a U.S. education and degree. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

This record of proceeding contains no indication that the beneficiary's foreign education and degree has been evaluated to show its equivalence in terms of a U.S. education and degree. Without such an evaluation, the beneficiary has not been shown to be qualified to work in any specialty occupation. The petition must be denied for this additional reason.

Further, in the February 22, 2011 RFE, the service center specifically requested the names of all of the people in positions the beneficiary would supervise. That requested evidence was not provided.

Details such as the identities and qualifications of people whom the beneficiary would supervise are relevant to the material issue of whether the beneficiary would work in a specialty occupation position. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). 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 director's decision will be affirmed and the petition will be denied 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.