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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

DATE: **APR 30 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,

for Michael T. Kelly
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 describes itself as a healthcare clinic with 12 employees. In order to employ the beneficiary in what it designates as a business operations specialist position,¹ the petitioner seeks 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 on the basis of her determination that the petitioner had failed to establish that the proffered position qualifies for classification as a specialty occupation. In addition, the director denied the petition on the basis of her determination that the petitioner had failed to establish that the beneficiary is qualified for classification as a specialty occupation worker for the proffered position because she earned a degree in nursing.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

As will be discussed below, upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO will first address the director's determination that the proffered position is not a specialty occupation.

As will be discussed later in this decision, based upon its complete review of the record of proceeding, the AAO finds that the director's decision to deny the petition for its failure to establish the proffered position as a specialty occupation was correct. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

However, at the outset, the AAO finds that director was incorrect in classifying the proffered position belonging to the Medical Assistants occupational category. Therefore, that particular finding is hereby withdrawn. The AAO takes this action because, even though the proposed duties of the proffered position are very broadly drawn and lack substantive specifics,² they nonetheless convey that the proffered position would not involve the clinical dimensions that appear to be

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 13-1199, the associated Occupational Classification of "Business Operations Specialists, All Other," and a Level I (entry-level) prevailing wage rate. The position title is healthcare operations specialist.

² The negative impact of the petitioner's relating the duties of the position exclusively in generalized terms that lack substantively specific information will be discussed later in this decision.

material to the Medical Assistants occupational classification as that classification is presented in the related sections of the O*NET and the U.S. Department of Labor's *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*).

Further, the AAO will analyze the proffered position as belonging to the occupational group with which the petitioner identified it, namely, the occupational classification of Business Operations Specialists, All Other.

The AAO will now address its determination that the evidence in the record of proceeding fails to establish the proffered position 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 Immigration and Nationality Act (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.³

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.

At the outset, the AAO will address some salient aspects regarding the instant petition and the evidence of record within the record of proceeding.

³ The AAO acknowledges that on appeal, counsel attempts to undermine the Service’s reliance on *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000), by distinguishing the facts of that case as dissimilar the facts of the instant matter. Although the facts are different, the legal propositions for which the case is cited are nevertheless relevant. The case is cited here to underscore the primacy of the statute, and to establish that meeting the regulatory criteria alone is not necessarily sufficient in proving that a proffered position merits specialty occupation status.

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Next, the AAO will address the opinion letter submitted that the petitioner obtained to support its contention that the proffered position is position is a specialty occupation.

Within the initial filing, counsel submitted an opinion letter from [REDACTED], a Business Professor and Faculty Developer at [REDACTED]. [REDACTED] earned a Doctor of Business Administration, with a specialization in International Business. In her letter, dated October 24, 2011, [REDACTED] opines that the proffered position of healthcare operations specialist is a specialty occupation and, therefore, requires a bachelor's of science degree in a relevant field. [REDACTED] states that many of her students who have studied Healthcare Administration and Operation, Financial Management, Operations Management, Quantitative methods and Strategic Planning have been offered and accepted healthcare operations specialist positions. In addition, she states that the beneficiary's educational background in nursing, combined with her experience with medical-surgical procedures and hematology units, is an appropriate background for a professional-level position. The AAO observes that [REDACTED] does not state that the beneficiary has an appropriate background for the proffered position.

First, the AAO notes that [REDACTED] conclusion that a degree in a variety of fields as a sufficient minimum requirement for entry into the proffered position does not denote a requirement in a specific specialty, and therefore her conclusion is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as healthcare administration and quantitative methods, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

[REDACTED] provided a summary of her education and experience and attached a copy of her curriculum vitae. She described her qualifications, including her educational credentials and professional experience, as well as provided a list of her publications and presentation record. Based upon a complete review of [REDACTED] letter and curriculum vitae, the AAO notes that, while [REDACTED] may, in fact, be a recognized authority on various topics, she has

failed to provide sufficient information regarding the basis of her claimed expertise on this particular issue. [REDACTED] claims that she is qualified to comment on the position of healthcare operations specialist because of her educational, research, and professional background and expertise in the analysis of modern business operations. However, without further clarification, it is unclear how her claimed expertise in modern business operations would translate to expertise or specialized knowledge regarding the position here proffered.

[REDACTED] opinion letter and curriculum vitae do not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has published any work or conducted any research or studies pertinent to the educational requirements for healthcare operations specialists in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that she is an authority on those specific requirements.⁶ The opinion letter contains no evidence that it was based on scholarly research conducted by [REDACTED] in the specific area upon which she is opining. In reaching this determination, [REDACTED] provides no documentary support for her ultimate conclusion regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). [REDACTED] asserts a general industry educational standard for positions similar to the proffered position, without referencing any supporting authority or any empirical basis for the pronouncement.

Upon review of the opinion letter, there is no indication that [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the job description. The fact that she attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion. In addition, [REDACTED] describes her understanding of healthcare operations specialist positions. As will be discussed later in this decision, [REDACTED] description of the occupational classification is not similar to the duties described by the petitioner. More specifically, [REDACTED] describes the occupational field as follows:

Healthcare operations specialists conduct studies. Various purposes for these studies are determining demographic forecasting, planning the hiring and scheduling of staff members, preparing reports and providing input for strategic planning and execution, determining the age and appropriate care of patient pool (geriatric vs. pediatric, i.e.). It is critical to organizational success that all vendors be the most appropriate ones supplying the best quality products, supplies, and pharmaceuticals at the best price. One aspect of a healthcare operations specialist's job is to monitor vendors to assure these criteria. It is important for them to remain current with industry information but *sic* trade journals and appropriate conferences, seminars and professional conventions are necessary to attend and participate in also.

It is critical to the success of a healthcare operations specialist that they are familiar with appropriate computer programs, languages and software packages that will

⁶ The AAO acknowledges that [REDACTED] co-authored a paper entitled, "A six month snapshot of top-level teams in a hospital setting." As noted, this paper does not seem to be on point, nor did [REDACTED] explain the nature of her expertise to the position at issue.

assist them in acquiring, retaining, analyzing, reporting and using management information coming from within their organization as well as from outside, within their own industry and from other relevant industries. It may also be necessary to assist and train staff members in the use of various software packages.

It is necessary and expected that the healthcare operations specialists are able to apply statistical methods in their work in order to determine the profitability and feasibility of all possible patient care areas and product/service combinations. It is necessary to make comparative studies of area population pools for the purpose of determining the most profitable areas of opportunity as well as the areas most needing services.

In order to remain competitive, healthcare operations specialists must remain aware and vigilant about newly entering competitors within their industry and the potential impact competitors may have on their business. They must be prepared to respond with appropriate actions such as which areas be expanded or shrunk, such as: services, products, distribution methods, adjust pricing, broaden employee skills and responsibilities. They must be prepared to help their firm adjust to industry, society and patient pool changes.

Healthcare operations specialists must maintain a working knowledge of all organizational departments so that they clearly understand the coordination and inter-workings of all department heads (laboratory, radiology, patient service, insurance processing, business office, i.e.) in order to obtain cooperation when studying departments for the purpose of improving efficiencies and possibly restructuring a department. It is within their area of responsibility also to maintain contact with patients and be sure that all healthcare and patient care services are handled as promised and all questions are handled accurately and promptly by the right department.

As evident in the job description of the occupational field, [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Her opinion does not relate her conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. There is no evidence that [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. [REDACTED] provides general conclusory statements regarding healthcare operations specialist positions, but she does not provide a substantive, analytical basis for her opinion and ultimate conclusions.

[REDACTED] does not assert that the nature of the duties are complex and/or specialized, nor does she maintain that the position is unique or complex. Notably, there is no indication that the petitioner and counsel advised [REDACTED] that the petitioner characterized the proffered

position as a low, entry-level position (as indicated by the wage-level on the LCA). As previously discussed, the wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. It appears that [REDACTED] would have found this information relevant for her opinion letter. Moreover, without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine similar positions based upon job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the advisory opinion rendered by [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and does not support her conclusion with independent, objective evidence demonstrating the manner in which she reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letters into each of the bases in this decision for dismissing the appeal.

Now, the AAO will shift focus to the primary issue before the AAO, regarding the proffered position and eligibility for classification as a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

As already noted, in the Form I-129 and its allied documents, the petitioner asserted that it wished to employ the beneficiary in a position to which it assigned the title "healthcare operations specialist" on a part-time basis at the rate of pay of \$14.82 per hour, and that the beneficiary would work 20-40 hours

per week. The following description of the proposed duties are quoted, verbatim, from the petitioner's November 3, 2011 letter of support:

- Assist to develop budgets and approve expenditures for medical supplies and materials and human resources
- Improve the operational systems, processes and policies in support of the overall [the petitioner's name] clinic mission - specifically, support better management reporting, information flow and management, business processes and organizational planning
- Manage and increase the effectiveness and efficiency of the clinic's administration and support services
- Develop and implement quality control systems
- Prepare operational reports
- Review schedules to make decisions concerning inventory/supply requirements, staffing requirements, work procedures, and duty assignments considering budgetary limitations and time constraints
- Play a significant role in long-term planning, including an initiative geared toward operational excellence
- Assist to monitor overall financial management, planning, systems and controls
- Management of Petitioner's budget in coordination with the executive officers
- Payroll management, including tabulation of accrued employee benefits
- Organization of fiscal documents

The AAO finds that, even when read in the aggregate, neither the above-quoted duty descriptions, nor any other descriptions in any submission into this record of proceeding, distinguish the proposed duties, or the position that they comprise, as so complex, specialized, and/or complex as to require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required to establish a specialty occupation in accordance with the definitions at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii). Rather, the AAO finds that – as illustrated in the list above – the proffered position and its duties are described in terms of numerous but generalized functions that are not explained or nor documented in substantial details that would establish both the substantive nature of actual work into which actual performance of the duties would translate and any necessary correlation between knowledge that must be applied in that work and attainment of any particular educational level of highly specialized knowledge in a specific specialty. (In this regard, the AAO again notes that, for the

reasons already discussed, the AAO accords no probative value to the opinions expressed in [REDACTED]; opinion letter.)

The AAO further finds that there is nothing in the nature of the proffered position and its constituent duties as so broadly and generally described in this record of proceeding that indicates the need for at least a bachelor's degree, or the equivalent, in any specific specialty. In particular, the AAO finds no inherent requirement for any particular level of educational attainment in any specific specialty in any of the proposed duties as described. As evident in the duty descriptions quoted earlier in this decision, the petitioner fails to convey the specific nature of the work and any methodologies or specialized applications of knowledge in any particular specialty that would be involved in the actual performance of the proffered position. The petitioner fails to establish any particularized types of work, related applications and methodologies, and associated knowledge requirements that would be involved in the any of the job functions that the petitioner attributes to the proffered position, such as, for instance, assisting to develop budgets; approving expenditures; improving operational systems, processes, and policies; managing and increasing "the effectiveness and efficiency of the clinic's administration and support services"; and developing and implementing quality control systems.

Thus, while the petitioner does not provide documentation that substantiates its assertion that the proffered position requires the theoretical and practical application of high-level concepts related to healthcare management, business, health care administration, or healthcare specialties.⁷

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on February 21, 2012. Within the RFE, the director outlined the specialty occupation regulatory criteria and requested specific documentation to establish that the proffered position qualifies for classification as a specialty occupation. Counsel responded to the RFE on May 14, 2012, and submitted an RFE response letter and additional evidence.

The director denied the petition on June 23, 2012.

As noted by the director in her decision, [REDACTED] describes healthcare operations specialists as an occupation with duties that are quite different from those described by the petitioner in its support letter. The AAO agrees with the director that the occupational field, as described by [REDACTED], does not credibly relate to the position proffered as described by the petitioner. More particularly, the AAO finds that the duties bulleted above do not comport with [REDACTED] description of the occupation as one that conducts studies for various purposes; monitors vendors; and applies statistical methods to determine the profitability and feasibility of all possible patient care areas and product/service combinations; coordinates all organizational departments; maintains relationships with all department heads and possibly restructures departments; and maintains contact with patients.

⁷ The petitioner stated in the initial support letter that it required a degree in health care management, and in response to the RFE, the petitioner stated that business, health care administration, or healthcare specialties are required for entry into the position.

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "healthcare management, business, health care administration, or healthcare specialties" for the proffered position, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, acceptance of degrees in disparate sets of fields - here, health related fields on the one hand, and "business administration" on the other - would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each set of fields is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

The requirement of a bachelor's degree in business, without further specialization, is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO notes that the petitioner declined the opportunity, explicitly provided in the RFE, to specifically and substantially expand upon the substantive nature of the beneficiary's duties, upon

the position that they constitute, and, also, upon the petitioner's business operations. The AAO finds that, in the absence of such evidence, and as evident in the duty description quoted above, that the petitioner limited its descriptions of the position and its constituent duties to general functions. These general functions do not reveal, standing alone without further elaboration, the substantive nature of the actual work that would be involved, substantial information about any applications of a body of highly specialized knowledge, in any specialty, that would be required to perform such work. Also, the petitioner did not describe a necessary correlation between such work and the necessity for the beneficiary to hold at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the nature of the proffered position as it would actually be performed.

As a corollary to the record of proceeding's lack of substantive information about the proposed duties and the position they constitute, the AAO also finds that the petitioner has not provided a factual foundation sufficient to establish that the proffered position is particularly complex or unique that an individual with a degree must fill the position. Moreover, the AAO finds that the petitioner failed to establish that the nature of its duties are so specialized and complex, such that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Further, the AAO notes that the record of proceeding does not establish the substantive nature and work requirements of any projects or work assignments for the beneficiary during the period of proposed employment, and that this ultimately deprives the AAO of a substantive basis for finding that the proffered position, as it would actually be performed, satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses. The AAO concurs with counsel's contention that the proffered position does not fit within an occupational classification that is discussed in the *Handbook*. Therefore, the *Handbook* does not lend weight to the petitioner's specialty occupation claim.

Additionally, the AAO here incorporates by reference, and includes in this present discussion, this decision's earlier comments and findings with regard to [REDACTED] submission. For the reasons already discussed, that submission merits no probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in the occupational category of Business Operations Specialists, All Other is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Further, as developed in the AAO's earlier discussion and findings regarding the lack of substantive information regarding the specific work in which the beneficiary would engage, the AAO finds that the proffered position and its constituent duties as developed in this petition fail to establish the proffered position as one for which the normal minimal requirement for entry is at least a bachelor's degree, or the equivalent, in a specific specialty.

Finally, the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.¹⁰

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not established 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the

¹⁰ The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and 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 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 did not submit any job vacancy announcements to demonstrate that similar organizations offer parallel positions. As already discussed earlier in this decision, the AAO does not give any weight to Professor Hammond's opinion letter, wherein she asserts that the proffered position is a specialty occupation.

Thus, based upon a complete review of the record, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not satisfy 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."

The petitioner contends that the position meets the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).¹¹ Notably, this contention was not supported by any illuminative narrative discussion from the petitioner of why this proffered position is sufficiently complex and unique. Rather, it appears that the petitioner relies upon the aforementioned October 24, 2011 advisory opinion letter from [REDACTED] to make this case. However, the AAO here again invokes and incorporates by reference its earlier comments and findings that dismiss [REDACTED] advisory opinion as not having probative value towards satisfying this or any other criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO also hereby incorporates into its analysis of this particular criterion its earlier comments and findings with regard to the insufficiency of the evidence to establish relative complexity, specialization, or uniqueness as distinguishing aspects of the proffered position or its duties.

Consequently, as the petitioner did not show that this particular position is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

¹¹ In the initial support letter and in response to the RFE, the petitioner, through counsel, insisted that the proffered position is complex and unique. This claim is absent in the appeal brief.

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and with regard to employees who previously held the position in question.

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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the actual performance requirements of the position necessitate a petitioner's history of requiring a particular degree in its recruiting and hiring for the position. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

As evidence of eligibility under this criterion, the record contains information regarding three individuals, A-I-, A-O-, and K-I- whom the petitioner claims to have previously employed in positions similar to the one being proffered here.¹² According to this evidence, A-I- and K-I- possess bachelor's degrees in nursing awarded by an accredited institution of higher education in the United States. In addition, evidence in this record of proceeding indicates that A-O- earned the a bachelor's degree in nursing from an institution outside of the United States, and it was accompanied by an educational evaluation that opines the degree is equivalent to a bachelor's degree in nursing from an institution of higher education in the United States.

¹² All names have been withheld to protect individuals' identities.

However, the AAO finds that this evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The record contains no evidence that the petitioner ever actually employed A-I- or A-O- in healthcare operations specialist positions. There is an undated document entitled "Employee Summary," for the second quarter of 2010, and A-O- appears on this document under the column entitled, "Employee Information," but this does not indicate the position held by A-I-. Also, there is an undated document entitled "Employee Summary," with a notation that it is for the first quarter of 2010, and A-I- appears on this document under the column entitled, "Employee Information," but this does not indicate the position held by A-O-. Without documentary evidence to support the claim that these employees held the same position as the one here proffered, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, neither A-I- nor A-O- are listed as employees on the employer's State of Illinois quarterly wage reports for 2010 within the record of proceeding, which weighs against a finding that these individuals were employed by the petitioner.¹³ Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Second, given that both of the beneficiaries possess bachelor's degrees in nursing, and not one of the specifically stated degree fields of healthcare management, business, health care administration, or healthcare specialties, this evidence indicates that the petitioner does not require the services an individual with a bachelor's degree, or the equivalent, *in a specific specialty*.

With respect to K-I-, the record of proceeding reflects that the petitioner employed this individual as a healthcare operations specialist, the same position as the position here proffered, in H-1B status.¹⁴ In addition, the petitioner submits on appeal K-I-'s bachelor's degree transcript from [REDACTED] which reflects attainment of a bachelor of science degree in nursing; a Form I-797 H-1B approval notice for K-I- to work for the petitioner; and a Form I-129 listing the petitioner in the instant matter as the petitioner for K-I-. The AAO observes that the Form I-129 for K-I- lists that proffered position's title as Healthcare Operations Specialist. Counsel maintains that this evidence shows that the petitioner meets 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), and that an employer's self-imposed standards, based on its actual requirements, are specifically allowed by the regulations.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church*

¹³ The record of proceeding contains the petitioner's first, second, third, and fourth 2010 quarterly wage reports for the State of Illinois.

¹⁴ The record of proceeding reflects the State of Illinois Employer's Contribution and Wage Report for the quarter ending March 31, 2012, which lists K-I- as an employee.

Scientology International, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Furthermore, the evidence of the petitioner's employment for the offered position does not establish the extent to which it is representative of the petitioner's recruiting and hiring practices for the proffered position over the course of time for which it has been recruiting and hiring for the position.

For all of the reasons described above, the petitioner has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only “moderately complex tasks that require limited judgment.” The fact that this higher-than-here-assigned, Level II wage rate itself indicates performance of only “moderately complex tasks that require limited judgment,” is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer’s job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment’s

procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a 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 proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that the AAO finds that the director's determination to also deny the petition for failure to establish the beneficiary is qualified is correct in that the record failed to establish that a degree in any specific specialty is required for the proffered position.

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.