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



U.S. Citizenship  
and Immigration  
Services

DATE: **AUG 02 2013** OFFICE: VERMONT 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director initially approved the nonimmigrant visa petition. In response to new evidence the director issued a notice of intent to revoke (NOIR), and ultimately did revoke the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

On the Form I-129 visa petition, the petitioner describes itself as a Health Care System with 30 employees, established during 1996. To employ the beneficiary in what it designates as a Quality Control Coordinator position, the petitioner endeavors to classify him 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 service center director approved the visa petition on August 26, 2009. However, on June 1, 2011 the director issued a notice of intent to revoke (NOIR) in this matter. Subsequently, having received no response to the NOIR, the director revoked approval of the visa petition on September 19, 2011, finding that the evidence does not establish that the petitioner would employ the beneficiary in a specialty occupation position.

The petitioner filed an appeal on October 21, 2011, asserting (1) that the petitioner had not received a copy of the NOIR prior to the decision to revoke approval of the instant visa petition; and (2) that the underlying basis of the director's decision, that the evidence does not show that the petitioner would employ the beneficiary in a specialty occupation position, is erroneous.

Initially, the AAO will address counsel's assertion that the petitioner did not receive the NOIR in this matter, and that approval of the visa petition was, therefore, improperly revoked.

The petitioner is presently represented by [REDACTED] who made the assertion that the petitioner had not received the NOIR. The visa petition was filed, however, by [REDACTED], a different attorney, who remained the petitioner's counsel of record when the NOIR was issued. The NOIR was sent to the petitioner, care of [REDACTED]. The record contains no indication that it was returned.

In any event, even if service of that NOIR were demonstrably ineffective, the AAO observes that a copy of the NOIR was provided to the petitioner and its new counsel with the decision of revocation, and that, on appeal, counsel addressed the underlying basis for the revocation. Because the petitioner and counsel have been accorded an opportunity to respond to the basis for the decision in this case, any error involved in serving the NOIR on the petitioner has been rendered harmless error.

The remaining issue is whether the evidence shows that the petitioner would employ the beneficiary in a specialty occupation position. As will be discussed below, the AAO has determined that the director did not err in his decision to revoke approval of the visa petition based on that issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and approval of the visa petition will remain revoked.

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 petitioner's response to the RFE; (4) the service center's NOIR; (5) the director's notice of revocation; and (6) the Form I-290B and counsel's submissions on appeal.

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, a proposed 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered 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 alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a quality control coordinator position. With the visa petition, counsel

submitted evidence that the beneficiary received a bachelor's degree in nursing from [REDACTED] in the Philippines. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in nursing.

That evaluation also purports to evaluate a bachelor's degree in biology the beneficiary received from the same institution. Further, the record contains the petitioner's résumé and an undated letter from the petitioner's president which also state that the beneficiary received a bachelor's degree in biology from the [REDACTED]. However, the record contains no other evidence pertinent to a bachelor's degree in biology awarded to the beneficiary by either [REDACTED] or by the [REDACTED]. That additional educational qualification has not been shown to exist and will not be further considered.

In his undated letter, the petitioner's president also stated:

[The petitioner] started doing business as [REDACTED] with operations at [REDACTED] it was a physical therapy and rehabilitation company catering to work related injuries. Thereafter, the [petitioner] branched into providing contract physical therapists with [REDACTED], to name a few. Presently, it provides home health services to Medicare and Medicaid patients through [REDACTED]

This home health agency seeks to provide services within [REDACTED] and such other counties like [REDACTED]. With the growth of the [petitioner], it has become necessary to hire a person for the position of Education and In-Service Coordinator.

He also observed that the beneficiary has worked as a staff nurse, and stated: "[The proffered position] requires a Bachelor's Degree in the health sciences."

On July 1, 2009, the service center issued an RFE in this matter. The service center requested evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) seven vacancy announcements; (2) a summary report in the O\*NET Internet site pertinent to Medical and Health Services Managers; and (3) counsel's own letter, dated August 13, 2009.

Although counsel made no argument pertinent to the O\*NET summary report provided, the AAO infers that, in providing it, counsel was implicitly asserting that the proffered position is a Medical and Health Services Manager position, and that it therefore qualifies as a specialty occupation position.

In his August 13, 2009 letter, counsel stated:

The beneficiary who will occupy this position will make sure that quality assurance standards in the company are properly and strictly observed. He will review and evaluate patients' medical records while applying quality assurance criteria; compile statistical data and write narrative reports summarizing quality assurance findings. These duties will take up most of his time, or roughly 80% thereof.

Counsel did not then state what duties would occupy the remaining 20% of the beneficiary's time.

The petition was subsequently approved.

On June 1, 2011, the director issued the NOIR in this matter. In the NOIR, the director informed the petitioner that the consular officer "indicated the beneficiary is likely to work as a nurse instead of Quality Assurance Coordinator." The director observed that the evidence submitted does not demonstrate that the duties of the proffered position would require a minimum of a bachelor's degree in a specific specialty or its equivalent and again requested additional evidence to show that the proffered position is a specialty occupation position.

The director allowed the petitioner 33 days to respond to the NOIR. When no response was received, the director revoked approval of the petition on September 19, 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.

On appeal, counsel submitted a copy of an employment contract, dated April 1, 2009, and executed by the petitioner and the beneficiary. Appended to that contract is the following, which purports to be a list of the duties of the proffered position.

1. Interpret and implement quality assurance standards in the Company to ensure quality care to patients;
2. Review quality assurance standards, studies existing company policies and procedures;
3. Interview company personnel and patients to evaluate effectiveness of quality assurance program;
4. Reviews and evaluates patients' medical records, applying quality assurance criteria[;]
5. Selects specific topics for review, such as problem procedures, drugs, high volume cases, high risk cases, or other factors[;]
6. Write quality assurance policies and procedures;
7. Compile statistical data and writes narrative reports summarizing quality assurance findings;
8. Such other duties as may be assigned.

Counsel also submitted a separate, and somewhat different, list that describes the duties of the proffered position as follows:

1. Interpret and implement quality assurance standards in the company to ensure quality care to patients;
2. Review quality assurance standards, study existing company policies and procedures, and interview company personnel and patients;
3. Conduct audits and studies, based on pre-established criteria, to assess and monitor the quality of care delivered and to meet regulatory requirements, such as those imposed by Medicare;
4. Evaluate effectiveness of quality assurance program, and write quality assurance findings[;]
5. Compile statistical data and write narrative reports summarizing quality assurance findings[;]
6. Participate in the development and monitoring of quality improvement initiatives;
7. Maintain databases to support quality assurance findings[;]
8. Provide benchmarking information regarding quality assurance projects/programs;
9. Provide information and education on quality and performance improvement processes to all staff;
10. Assist with compliance for licensure and accreditation by providing education, and expertise in interpreting regulations and standard requirements, especially those related to performance improvement.

The AAO observes that the petitioner never previously asserted that the beneficiary would assist with compliance with licensure and accreditation requirements by providing education, either to the petitioner's employees or to anyone else.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Further, only counsel has asserted that the beneficiary will perform this additional duty. The record contains no such indication from the petitioner. The unsupported statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

For both reasons, the tenth duty described in counsel's list will not be considered.

Subsequently, counsel submitted a brief. In it, he stated:

While the requirement of bachelors degree in nursing is common in the home healthcare industry, petitioner does not specifically require it for the proffered position. The proffered position is not a Registered Nurse position, and , therefore, does not require license as a Registered Nurse.

[Errors in the original.]

Counsel further stated:

The same position was previously occupied by [REDACTED] a Doctor of Medicine graduate but who is not certified to practice as a Medical doctor. Ms. [REDACTED] occupied the position for three years.

As to the educational requirement of the proffered position, counsel stated:

Petitioner requires a bachelor's degree in the health sciences [for the proffered position], health sciences being the different applied sciences and sub disciplines dealing principally with health such as health education, biomedical engineering, biotechnology, nursing, nutrition, pharmacology, pharmacy, public health, social work, psychology, physical therapy, and medicine, and such similar fields.

As to the duties of the proffered position, counsel provided the following amended description of the proffered position:

The Quality Assurance Coordinator reviews all Medicare and other episodic payer's clinical records at the local level to assure appropriate documentation, quality of care provided, visits utilization, appropriate contact with physicians, adherence to the care plan, and evidence of communication between disciplines. He/She reviews documents for accuracy and completeness prior to locking and submitting data electronically and audits charts for clinical oversights and compliance of clinical records and files, using measurements such as licensure, certification, and accreditation results. Combined, these duties take up about 50% of the Quality Assurance Coordinator's time.

Further, the Quality Assurance Coordinator simultaneously identifies clinical problem areas and documents deficiency trends in a proactive approach while educating administrative and clinical associate staff in correcting these deficiencies. He/She then reviews quality assurance standards, stuiies existing company policies and procedures, and interviews company personal [sic] and patients to evaluate the effectiveness of quality assurance program. Additionally, he/she will write quality

assurance policies and procedures pursuant to his/her findings. About 20% of the Quality Assurance Coordinator's [time] will be taken up by these duties.

Likewise he/she manages the development and implementation of security policies, standards, guidelines, and procedures in regard to privacy and access to patient health information pursuant to the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. He/She will maintain and implement the [petitioner's] Privacy Policies and Procedures and assure that the same Privacy Policies and Procedures are fully complaint [sic] with the HIPAA Privacy Rule, other applicable federal laws and regulations, and applicable State laws and regulations. In the pursuit of this duty, he/she maybe [sic] considered as the de facto "HIPAA Compliance Officer" for petitioner. These take up about 30% of his/her time.

Again, the AAO observes that the duty of developing and implementing security policies, standards, guidelines, and procedures pertinent to privacy and access to health information pursuant to HIPAA and other laws and regulations was never previously mentioned.

As stated before, a petitioner cannot, on appeal, offer a new position to the beneficiary, or materially change a position's job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Additionally, as stated before, only counsel has asserted that the beneficiary will perform the duty of developing and implementing security policies, standards, guidelines, and procedures pertinent to privacy and access to health information pursuant to HIPAA and other laws and regulations, and counsel's basis for making that assertion is unclear. This unsupported statement of counsel is not evidence and will not be accorded any evidentiary weight. See *INS v. Phinpathya, Supra*; *Matter of Ramirez-Sanchez, Supra*.

Counsel also implied that the proffered position corresponds to a Medical and Health Service Coordinator position as described in O\*NET, and cited O\*NET's classification of such positions in Job Zone 5, and Specific Vocational Preparation range (SVP) 8.0 and above as evidence that it requires a bachelor's degree in a specific specialty or the equivalent.

As a preliminary matter, it must be noted that the claimed entry requirement of at least a bachelor's degree in "health education, biomedical engineering, biotechnology, nursing, nutrition, pharmacology, pharmacy, public health, social work, psychology, physical therapy, and medicine, and such similar fields" for the proffered position is inadequate to establish that the proposed 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 and closely to the position in question. Since there must be a close correlation between the required specialized

studies and the position, the alleged requirement of a degree in two disparate fields does not establish the position as a specialty occupation. See § 214(i)(1) of the Act (requiring in pertinent part the "application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in the specific specialty" (emphasis added)); cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree or its equivalent in a specialized field of study directly related to the duties of the proffered position. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in the specific specialty or its equivalent that is directly related to the proposed position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in health education, biomedical engineering, biotechnology, nursing, nutrition, pharmacology, pharmacy, public health, social work, psychology, physical therapy, medicine, or a similar field. As this wide array of fields of study fails to delineate a specific specialty or its equivalent, this assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must, therefore, be affirmed on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into

the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The petitioner implied that the proffered position corresponds to a Medical and Health Services Manager position from O\*NET. The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of Medical and Health Services Managers:

### **What Medical and Health Services Managers Do**

Medical and health services managers, also called healthcare executives or healthcare administrators, plan, direct, and coordinate medical and health services. They might manage an entire facility or specialize in managing a specific clinical area or department, or manage a medical practice for a group of physicians. As healthcare changes, medical and health services managers must be able to adapt to changes in laws, regulations, and technology.

### **Duties**

Medical and health services managers typically do the following:

- Work to improve efficiency and quality in delivering healthcare services
- Keep up to date on new laws and regulations so the facility complies with them
- Supervise assistant administrators in facilities that are large enough to need them
- Manage finances of the facility, such as patient fees and billing
- Create work schedules
- Represent the facility at investor meetings or on governing boards
- Keep and organize records of the facility's services, such as the number of inpatient beds used
- Communicate with members of the medical staff and department heads

In group medical practices, managers work closely with physicians, nurses, laboratory technicians, and other healthcare employees. For more information, see the

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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.

profiles on physicians and surgeons, registered nurses, and medical and clinical laboratory technologists and technicians.

Medical and health services managers' titles depend on the facility or area of expertise in which they work. The following are some examples of types of medical and health services managers:

**Nursing home administrators** manage staff, admissions, finances, and care of the building, as well as care of the residents in nursing homes. All states require them to be licensed; licensing requirements vary by state.

**Clinical managers** manage a specific department, such as nursing, surgery, or physical therapy and have responsibilities based on that specialty. Clinical managers set and carry out policies, goals, and procedures for their departments; evaluate the quality of the staff's work; and develop reports and budgets.

**Health information managers** are responsible for the maintenance and security of all patient records. They must stay up to date with evolving information technology and current or proposed laws about health information systems. Health information managers must ensure that databases are complete, accurate, and accessible only to authorized personnel.

**Assistant administrators** work under the top administrator in larger facilities and often handle daily decisions. Assistants might direct activities in clinical areas, such as nursing, surgery, therapy, medical records, or health information.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited July 31, 2013).

The duties of the proffered position as initially described by counsel consist primarily of reviewing and evaluating medical records, compiling statistical data, and writing narrative reports summarizing quality assurance findings.

Subsequently, counsel provided the more detailed version of those duties contained in the employment contract executed by the petitioner and the beneficiary. That more detailed version states that the beneficiary would:

1. Interpret and implement quality assurance standards in the Company to ensure quality care to patients;
2. Review quality assurance standards, studies existing company policies and procedures;

3. Interview company personnel and patients to evaluate effectiveness of quality assurance program;
4. Reviews and evaluates patients' medical records, applying quality assurance criteria[;]
5. Selects specific topics for review, such as problem procedures, drugs, high volume cases, high risk cases, or other factors[;]
6. Write quality assurance policies and procedures;
7. Compile statistical data and rites narrative reports summarizing quality assurance findings;
8. Such other duties as may be assigned.

The employment contract is dated April 1, 2009 and purports to have been signed by the petitioner's president. As such, it was purportedly in existence and available when the visa petition in this matter was submitted, on April 3, 2009. Counsel did not explain why this more detailed description of the duties of the proffered position was not then submitted.

In any event, the duties of the proffered position consist chiefly of implementing and enforcing standards and procedures pertinent to quality assurance, determining to what extent those standards and procedures are being observed, and reporting on findings. Those duties do not include managing an entire facility, managing a specific clinical department, managing a medical practice, or management of anything at the level contemplated by the *Handbook* in its discussion of medical and health services manager positions. Although the duties of the proffered position include some duties that are arguably managerial, the degree of responsibility involved is at a much lower level than that contemplated in the *Handbook* chapter pertinent to medical and health services managers. The low-level management duties described do not convince the AAO that the proffered position is a medical and health services manager position as described in the *Handbook*. However, the AAO will assume, *arguendo*, that the proffered position corresponds to a medical and health services manager position, so as to address counsel's assertions pertinent to such positions.

Counsel observed that the O\*NET service categorizes a medical and health services managers as a Job Zone 5 occupation, and classifies it as within SVP 8 and above. Counsel appeared to imply that this demonstrates that it is a specialty occupation position.

A designation of Job Zone 5 indicates that a position requires extensive preparation.<sup>2</sup> It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See the O\*NET *OnLine* Help Center, at [www.online.onetcenter.org/help/online/zones](http://www.online.onetcenter.org/help/online/zones), for a discussion of Job Zone 5, which explains that this Zone signifies only that most but not all of the occupations within it require graduate school. It does not indicate that the specific position offered here, even if it were demonstrated to be a medical and health services manager, would require graduate school or, even if it did, that it would

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<sup>2</sup> For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

require a degree in a specific specialty closely and directly related to the duties of the proffered position.

Further, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position.<sup>3</sup> An SVP of 8 and above, for instance, indicates that a position requires over four years of preparation, but does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Therefore, even if the proffered position had been demonstrated to be a Medical and Health Services Manager position, its SVP rating would not demonstrate that it qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

As was stated above, the AAO recognizes the *Handbook* as an authoritative source on the educational requirements of the occupations that it addresses. The *Handbook* states the following about the educational requirements of Medical and Health Services Managers position:

#### **How To Become a Medical or Health Services Manager:**

Most medical and health services managers have at least a bachelor's degree before entering the field; however, master's degrees also are common. Requirements vary by facility.

#### **Education**

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees in health services, long-term care administration, public health, public administration, or business administration also are common.

Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

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<sup>3</sup> For an explanation of SVP levels see <http://www.onetonline.org/help/online/svp>.

## Work Experience

Although bachelor's and master's degrees are the most common educational pathways to work in this field, some facilities may hire those with on-the-job experience instead of formal education. For example, managers of physical therapy may be experienced physical therapists who have administrative experience. For more information, see the profile on physical therapists.

## Important Qualities

**Analytical skills.** Medical and health services managers must be able to understand and follow current regulations and be able to adapt to new laws.

**Communication skills.** These managers must be able to communicate effectively with other health professionals.

**Detail oriented.** Medical and health services managers must pay attention to detail. They might be required to organize and maintain scheduling and billing information for very large facilities, such as hospitals.

**Interpersonal skills.** Medical and health services managers need to be able to discuss staffing problems and patient information with other professionals, such as physicians and health insurance representatives. They must be able to motivate and lead staff.

**Problem-solving skills.** These managers are often responsible for finding creative solutions to staffing or other administrative problems.

**Technical skills.** Medical and health services managers must be able to follow advances in health care technology. For example, they may need to use coding and classification software and electronic health record (EHR) systems as their facility adopts these technologies.

## Advancement

Medical and health services managers advance by moving into more responsible and higher paying positions. In large hospitals, graduates of health administration programs usually begin as administrative assistants or assistant department heads. In small hospitals or nursing care facilities, they may begin as department heads or assistant administrators. Some experienced managers also may become consultants or professors of healthcare management. The level of the starting position varies with the experience of the applicant and the size of the organization.

For those already in a different healthcare occupation, a master's degree in health services administration or a related field might be required to advance. For example,

nursing service administrators usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration. For more information, see the profile on registered nurses.

### Licenses

All states require nursing care facility administrators to be licensed; requirements vary by state. In most states, these administrators must have a bachelor's degree, pass a licensing exam, and complete a state-approved training program. Some states also require administrators in assisted-living facilities to be licensed. A license is not required in other areas of medical and health services management.

*Id.* at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited July 31, 2013).

Even assuming, *arguendo*, that the proffered position is a medical and health services manager position, the *Handbook* would not support the proposition that the proffered position is a specialty occupation position. While the *Handbook* reports that most medical and health services managers have a bachelor's degree, it does not indicate that such a degree is a minimum entry requirement or, more importantly, that the degrees held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation. This is evident in the range of educational or experience requirements in the *Handbook*'s discussion in the "How to Become a Medical or Health Services Manager" section of its chapter on "Medical and Health Services Managers," which does not specify a minimum requirement of a bachelor's degree in a specific specialty for entry into the occupation. Moreover, it also indicates that a degree in a general field, such as business administration, is common.<sup>4</sup> Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education. For all of those reasons, the *Handbook* does not support the proposition that the proffered position is a specialty occupation position.

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<sup>4</sup> To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Again, the *Handbook* indicates that positions in this field can be performed by an individual with only a general-purpose degree, i.e., a degree in "business administration," or on-the-job experience. This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation.

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 health care administration, but do not establish any particular level of formal, postsecondary 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.

As stated earlier, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry 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 did submit seven vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Quality Assurance Specialist for [REDACTED], a nonprofit Catholic social welfare agency, requiring a bachelor's degree in social sciences;

2. Quality Assurance Coordinator for [REDACTED] a home health care service, requiring a bachelor's degree, but in no specific specialty or range of specialties;
3. Quality Analyst for [REDACTED] a nonprofit, state-owned system of healthcare facilities, requiring a bachelor's degree in business, healthcare administration, nursing, or a related field;
4. Medical QA Specialist for [REDACTED] a provider of government-outsourced occupational health and disability examination services, requiring a "BS/BA degree, FMG<sup>5</sup> or equivalent related work experience";
5. QA Specialist for [REDACTED] which operates medical testing laboratories, requiring a bachelor's degree, "preferably in cytology or related field";
6. Clinical Manager – Quality Assurance, for [REDACTED] a home health care provider, requiring a Massachusetts registered nurse's license, and preferring a bachelor's degree in nursing; and
7. Call Center Quality Assurance Specialist – Healthcare for [REDACTED] a telecommunications company, requiring a "college degree or a minimum of 5 years working in call center environment, preferably healthcare."

The petitioner provides home health care and also provides its employees to medical facilities to work for them. Although the record contains no evidence that they are otherwise similar to the petitioner, the second and sixth vacancy announcements appear to have been placed by home health care providers. None of the other vacancy announcements appears to have been placed by an organization in the petitioner's industry.

Further, even if they were all placed by similar organizations in the petitioner's industry, those vacancy announcements would not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as they do not show that the positions announced require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The first vacancy announcement states that the position announced requires a bachelor's degree in the social sciences. Social science is an abstract term that refers to the study of society and the relationships of those within it. Although the term may be used more or less inclusively, it certainly includes anthropology, criminology, economics, penology, political science, psychology, and sociology. It does not, therefore, denote a specific specialty.

A degree with a generalized title is not a degree in a specific specialty. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in liberal arts, the social sciences, engineering, or business administration, for instance, is not a requirement of a minimum of a

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<sup>5</sup> FMG may stand for foreign medical graduate, although that is unclear.

bachelor's degree in a specific specialty or its equivalent. The first vacancy announcement does not, therefore, state that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The second vacancy announcement states a requirement of a bachelor's degree, but does not state that the degree must be in any specific specialty. It clearly does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The third vacancy announcement indicates that an otherwise undifferentiated bachelor's degree in business would be a sufficient educational qualification for the proffered position. As was noted above, a requirement of an otherwise undifferentiated bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One alternative educational qualification for the fourth vacancy announcement is a bachelor's degree. As was noted above, if any bachelor's degree, regardless of subject, would be a sufficient educational qualification for a position, then the position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. In addition, that vacancy announcement states that "equivalent work related experience" may be substituted for the educational requirement, but provides no indication of what type and amount of experience the hiring authority would consider to be equivalent to an unspecified bachelor's degree. For both reasons, that vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The fifth vacancy announcement states that it requires a bachelor's degree, "preferably in cytology or related field." A preference for a degree in a specific specialty is not a minimum requirement. As such, that vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The sixth vacancy announcement states that a bachelor's degree in nursing is preferred for the position. Again, a preference is not a minimum requirement, and that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The seventh vacancy announcement states that the position requires a "college degree or a minimum of 5 years working in call center environment, preferably healthcare." That vacancy announcement indicates that a college degree in any subject would be a sufficient educational preparation for the proffered position. Further, it indicates that five years working in a call center, which is not equivalent to a bachelor's degree, may be substituted for the requisite unspecified bachelor's degree. For both reasons, that vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

None of the vacancy announcements provided requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, even if all of the vacancy announcements were for

parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from seven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>6</sup>

Thus, based upon a complete review of the record, the petitioner has not established 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established

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<sup>6</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of medical or health services manager in firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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 particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that, even if the position had been shown to be a medical and health services manager position, there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>7</sup>

Counsel stated, in the brief on appeal, that [REDACTED], a medical graduate, previously held the proffered position for three years. Counsel provided no evidence that [REDACTED] previously held the proffered position, or that she is a medical graduate, and did not even state a basis for making those assertions. The AAO observes, again, that the unsupported statements of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya, supra*, and *Matter of Ramirez-Sanchez, supra*.

In any event, previously hiring only one employee with a "Doctor of Medicine" degree does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree in a specific specialty, or the equivalent, for the proffered position.

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<sup>7</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").

Further, the AAO observes that the petitioner was founded in 1996. As such, it has been in existence for approximately 17 years. Counsel stated that Ms. [REDACTED] held the proffered position for only three years. Counsel provided no evidence pertinent to the number of people whom the petitioner has employed in the proffered position and their educational qualifications. As such, the record does not demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties attributed to the proffered position, such as implementing and enforcing standards and procedures pertinent to quality assurance, determining the extent to which those standards and procedures are being observed, and reporting on findings, for instance, do not contain any indication of specialization and complexity that require a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, even assuming that the proffered position is a medical and health services manager position, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of medical and health services manager 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 for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

(b)(6)

*NON-PRECEDENT DECISION*

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.