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U.S. Citizenship
and Immigration
Services

Date: **FEB 04 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a home health care services firm with 23 employees. To employ the beneficiary in what it designates as a training and development specialist 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 director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human

endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty"

as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a training and development specialist position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1073.00 Training and Development Specialists from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel provided evidence that the [REDACTED] awarded the beneficiary a bachelor's degree in medical technology and that [REDACTED] also in the [REDACTED] awarded the beneficiary a bachelor's degree in nursing. An evaluation in the record indicates that those degrees are equivalent to "[t]wo U.S. bachelor's degree[s]." Counsel also submitted an undated letter from the petitioner's president and an organizational chart of the petitioner's operations.

The organizational chart provided shows that the petitioner employs a president, an administrator, an operations and management analyst, a director of patient services, a systems analyst, an undisclosed number of nursing supervisors, and undisclosed number of marketing coordinators, an undisclosed number of workers in its human resources department, a referral intake management/patient services coordinator, an undisclosed number of workers in its quality assurance department, an undisclosed number of workers in its bookkeeping/payroll/accounting staff, an undisclosed number or workers in "field disciplines" (which may include nurses), a PT/OT/MSW coordinator, an undisclosed number of PT/OT/MSW workers, an undisclosed number of receptionist/medical supplies/office support staff, and an undisclosed number of workers in its medical records/office support staff. In addition, the petitioner proposes to employ the beneficiary in the proffered position.¹

¹ Preliminarily, the AAO observes that a nursing services firm with only 23 employees, some appreciable number of whom must be nurses, is unlikely to employ such a large number of those 23 people in administration and supporting services.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

The petitioner's president's undated letter states the following about the duties of the proffered position:

The [proffered] position requires the performance of the following duties: implements and monitors the [petitioner's] Quality Improvement Program; implements processes to monitor and evaluate safety, risk management, infection control and competency programs; prepares reports and identifies trends in areas of safety, risk management, outcomes, employee and client satisfaction; participates in orientation and continuing education of the Board of Directors, Professional Advisory Committee, and the [petitioner's] staff in matters related to the Quality Improvement Plan; coordinates the [petitioner's] quarterly clinical record review activities; and works collaboratively with clinical managers to assure documentation is complete, accurate, reflects care delivery and legal requirements.

That letter further states: "Qualifications for the ideal candidate include: Bachelor of Science in Nursing or Bachelor of Science degree with major in sciences : . . ."

On July 21, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*, (1) content from a website maintained at <http://careers.stateuniversity.com>, (2) two statements pertinent to the duties and educational requirements of the proffered position, and (3) vacancy announcements, including one placed by the petitioner. The vacancy announcements placed by other companies will be addressed below.

The two statements pertinent to the duties and educational requirement of the proffered position reiterate the duties previously stated in the petitioner's president's undated letter. It is noted that while one of the statements reiterates the previously stated educational qualification of the "ideal candidate," i.e., a "Bachelor of Science in Nursing or Bachelor of Science degree with major in sciences," the other statement claims a different educational qualification of the "ideal candidate," i.e., a "Bachelor of Science in Nursing or Bachelor of Science degree."

The director denied the petition on November 8, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted additional vacancy announcements and a brief. The AAO will address the vacancy announcements below. In his brief, counsel asserted that the evidence submitted is sufficient to show that the proffered position qualifies as a specialty occupation position.

As a preliminary matter, it is noted that the petitioner's claim that the "ideal candidate" would possess a "Bachelor of Science in Nursing or Bachelor of Science degree with major in sciences," or,

a "Bachelor of Science in Nursing or Bachelor of Science degree," indicates that the petitioner does not *require* any of those degrees. A preference for a candidate with a bachelor's degree is not a requirement that the individual have such a degree to qualify for the position.

Further, the petitioner appears to have indicated that, in addition to a bachelor's degree in nursing, a bachelor's degree in any of the sciences is a sufficient qualification for the proffered position. Such a claim is inadequate to establish that the proposed position qualifies as a specialty occupation. The "sciences" is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., chemistry and economics. Therefore, it cannot be determined that a general "Bachelor of Science degree with major in sciences" or a Bachelor of Science degree," is directly related to the duties and responsibilities of the particular position proffered in this matter, and, thus, it cannot be found that the proffered position requires anything more than a general bachelor's degree. 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).

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 any of the sciences, may be a legitimate prerequisite for a particular position, requiring or, in this case, preferring 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).²

² Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 (Comm'r 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a "Bachelor of Science in Nursing or Bachelor of Science degree with major in sciences," or, a "Bachelor of Science in Nursing or Bachelor of Science degree." These assertions are tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied 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 discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if a baccalaureate or higher degree in a specific specialty, 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.³ However, the AAO notes there are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O*NET) code, the occupational

³ 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.

definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.⁴ The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider all of the evidence presented to determine whether a beneficiary qualifies to perform in a specialty occupation.

In the instant case, the petitioner asserted in the LCA that the proffered position falls under the occupational category "Training and Development Specialists." This occupational category is included in the section of the *Handbook* entitled "Training and Development Specialists." The AAO reviewed the information in the *Handbook* regarding the occupational category "Training and Development Specialists" and notes that this occupation is one for which the *Handbook* does not provided detailed data.

Upon review of the entry for "Training and Development Specialists," the AAO observes that the *Handbook* does not indicate that these positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The full-text of the *Handbook* regarding this occupational category is as follows:

⁴ The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

Training and Development Specialists
(O*NET 13-1151.00)

Design and conduct training and development programs to improve individual and organizational performance. May analyze training needs.

- 2010 employment: **217,700**
- May 2010 median annual wage: **\$54,160**
- Projected employment change, 2010-20:
 - Number of new jobs: **61,600**
 - Growth rate: **28 percent (faster than average)**
- Education and training:
 - Typical entry-level education: **Bachelor's degree**
 - Work experience in a related occupation: **None**
 - Typical on-the-job-training: **None**

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited January 29, 2013).

The *Handbook* would not support an assertion that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupational category. The *Handbook* summary data provides "education and training categories" for occupations. The occupational category "Training and Development Specialists" falls into the group of occupations for which a bachelor's degree (no specific specialty) is the typical entry-level education. The AAO notes that, as evident in the above *Handbook* excerpt on this occupation, the *Handbook* reports only that a bachelor's degree is typical – but not required – for entry into training and development specialist positions, and, further, the *Handbook* does not report that bachelor's degrees held by those entering the occupation are limited to any specific specialty.

The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The AAO observes that the *Handbook* does not establish that the occupation requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher in the *specific specialty*, or its equivalent, as a minimum for entry into the occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Thus, the *Handbook* is not probative evidence of the occupational category "Training and Development Specialists" being a specialty occupation. Consequently, the proffered position's inclusion in the "Training and Development Specialists" occupational classification would not in itself satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The *Handbook*, however, provides detailed information on "Training and Development Manager" positions. The *Handbook* states training and development managers "oversee a staff of training and

development specialists." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Training and Development Managers," <http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-2> (last visited January 29, 2013). As to the educational requirement of training and development manager positions, the *Handbook* states the following:

Although a bachelor's degree is sufficient for many positions, some jobs for training and development managers require a master's degree. Managers can come from a variety of educational backgrounds but often have a bachelor's degree in human resources, business administration, or a related field.

Some employers prefer or require that managers have a master's degree, usually with a concentration in training and development, human resources management, organizational development, or business administration.

Training and development managers also may benefit from studying instructional design, behavioral psychology, or educational psychology. In addition, as technology continues to play a larger role in training and development, a growing number of organizations seek candidates who have a background in information technology.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Training and Development Managers," <http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-4> (last visited January 29, 2013).

The *Handbook* does not report that a training and development manager needs, as a standard entry requirement, at least a bachelor's degree in a specific specialty or its equivalent. Rather, it indicates that those with general degrees in business administration may enter the occupation. As noted above, 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 requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring 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 at 147.

That training and development manager positions do not as a category require a minimum of a bachelor's degree in a specific specialty, or its equivalent, strongly suggests that training and

development specialist positions, lower level positions that report to training and development manager positions, also do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. In any event, the petitioner has not provided sufficient evidence demonstrating that training and development specialist positions as a category require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of employee training and development, but do not establish any particular level of formal, post-secondary 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).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did provide 12 vacancy announcements. However, upon review of the documents, the AAO finds that they do not establish that similar organizations to the petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions.

The announcements are placed for positions entitled, *inter alia*, Employee Safety and Health Specialist, Developmental Specialist, Training Specialist, Training and Development Specialist,

Home Health Software Training Specialist, Training Coordinator, Staff Development Specialist I, and Compliance Training and Project Specialist. None of the vacancy announcements contains a description of duties sufficient to show that the positions offered are parallel to the proffered position, and only one of those organizations appears to be a home health care company.

Another of those vacancy announcements states that the position it announces requires an undergraduate degree in a health or safety field. Health fields include medicine, dietetics, dentistry, laboratory science, medical imaging, nursing, pharmacy, physician assisting, psychology, veterinary medicine, occupational health and safety, public health, environmental health, auxology, and numerous other diverse fields. Safety fields are similarly diverse. The requirement of a degree in such broad fields is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states a successful applicant must have the required degree as defined in the Massachusetts Early Intervention Operational Standards.⁵ While the various options permitted under those standards are too voluminous to list here, they do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the announcements states, "Nursing (RN) or bachelor's degree a plus." That announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for numerous reasons. First, that an attribute is "a plus" indicates that it is a desirable characteristic; it does not mean that it is a minimum requirement. Second, an RN designation may be earned without graduating from a bachelor's degree program or receiving any equivalent education or degree. See U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Registered Nurses," at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited January 29, 2013). Third, one option listed as a desirable characteristic is an otherwise undifferentiated bachelor's degree, which is not a minimum of a bachelor's degree in a specific specialty or its equivalent. For all of those reasons, that vacancy announcement does not state that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the vacancy announcements states that the position requires a bachelor's degree in social sciences, communications, or a related field. The requirement of a bachelor's degree in any of the social sciences, or in communications, or in any field the hiring authority might deem to be sufficiently closely related to that wide array of fields, is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Some of the announcements state that the positions they announce require four-year degrees, but not that the requisite degrees must be in any specific specialty. Other announcements state that they require a bachelor's degree but, again, not that the degree must be in any specific specialty. Those

⁵ Available at http://www.eiplp.org/documents/op_standards_2006.pdf, pages 22 and 23 (last visited January 29, 2013).

vacancy announcements do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

While one vacancy announcement appears to state that a four-year degree in healthcare administration or a related area or equivalent work experience is preferred for the position,⁶ that such a degree or, in the alternative, an unstated amount of work experience, is *preferred* for the position does not indicate that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

None of the vacancy announcements provided has been shown to be a parallel position at an organization similar to the petitioner's in the petitioner's industry and to require 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 12 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁷

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficiency of every vacancy announcement has been addressed.

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

⁶ The printout provided of that announcement is truncated such that the requirement is not perfectly clear.

⁷ 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 a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar home care 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 training and development specialist for a small home care services company 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 may 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.

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains no evidence that would differentiate the work of the proffered position as so complex or unique that it can be performed only by a person with a minimum of a bachelor's degree in a specific specialty or its equivalent. The claimed duties of the proffered position (such as implementing and monitoring the petitioner's quality improvement program; implementing processes to monitor and evaluate safety, risk management, infection control and competency programs; and preparing reports and identifying trends in areas of safety, risk management, outcomes, employee and client satisfaction) are not described in sufficient detail; therefore, whether they require a minimum of a bachelor's degree in a specific specialty or its equivalent is unclear.

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

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁸

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. Participating in orientation and continuing education of the Board of Directors, Professional Advisory Committee, and the petitioner's staff in matters related to the Quality Improvement Plan; coordinating the petitioner's quarterly clinical record review activities; and working collaboratively with clinical managers to assure documentation is complete, accurate, reflects care delivery and legal requirements, for instance, contain no indication that they

⁸ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

are so specialized and complex that the knowledge they require is usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than training and development specialist positions that may not usually be associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The 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 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 except to note that the petitioner did not submit an evaluation of her foreign degree establishing that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As noted above, while it appears that the beneficiary received (1) a foreign bachelor's degree in medical technology and (2) a foreign bachelor's degree in nursing, the evaluation only equates those degrees to general U.S. bachelor's degrees without any designation of the specialty that each foreign degree is equivalent to. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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