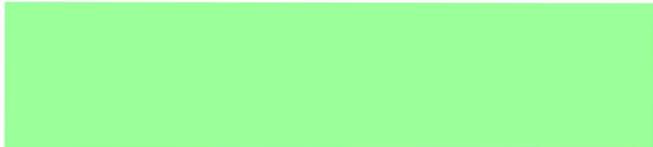




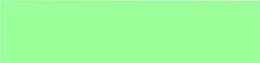
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 25 2013**

Office: VERMONT SERVICE CENTER

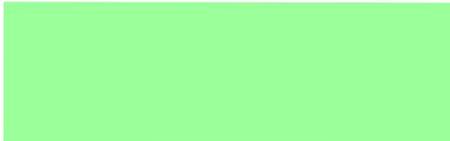
FILE: 

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition the petitioner stated that it is a "[s]urgical treatment and management of patients with neurological problems" business, and that it employs 26 workers. To employ the beneficiary in what it designates as a registered nurse position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, present counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

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

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 before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meet 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 (5<sup>th</sup> 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.

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.

With the visa petition, previous counsel submitted evidence that the beneficiary was awarded a bachelor's degree in nursing by [REDACTED]. Previous counsel also submitted, *inter alia*, (1) a letter, dated July 28, 2010, from the petitioner's program director; and (2) an evaluation of the beneficiary's educational credentials. The petitioner's program director's July 28, 2010 letter states the following about the duties of the proffered position:

The responsibilities for this professional position are to provide critical healthcare and requires caring for patients being evaluated for various treatment options, and overseeing testing and patient education. [The beneficiary] would assist in the coordination of the physician-nursing duties to facilitate the efficient day to day workings of our comprehensive spine and concussion center. [The beneficiary] would report directly to the Center's Program Director [REDACTED].

An effective Nurse must have the medical knowledge and skills to operate equipment and use technology associated with patient care. They must have the advanced knowledge of medical techniques used to diagnose and treat injuries and disease; knowledge of drug properties and interactions; knowledge of human behavior and performance; and have highly autonomous and specialized roles.

Additional professional responsibilities of a nurse employed by our medical practice include:

- Order, interpret, and evaluate diagnostic tests to identify and assess patient's conditions.
- Provide clinical reasoning and decision making
- Assess patient health problems and needs
- Administer therapy and treatments
- Maintain accurate, detailed reports and records
- Record patient's medical information and vital signs
- Monitor, record and report symptoms and changes in patient's conditions

The petitioner's program director also stated:

The minimum requirements for the candidate in this professional nursing position in our medial group are a Bachelor of Science degree in Nursing (BSN) and licensing.

The evaluation of the beneficiary's educational credentials states, *inter alia*, that the beneficiary's bachelor's degree in nursing from [REDACTED] is comparable to a bachelor's degree in nursing awarded by a U.S. institution.

On October 6, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence demonstrating that the petitioner would employ the beneficiary in a specialty occupation. The service center specifically requested that the petitioner provide a detailed list of the duties of the proffered position, and an explanation of "why a baccalaureate degree is essential for the satisfactory execution of each of the proffered duties," and "why a licensed Registered Nurse without a bachelor's degree could not perform these duties."

In response, previous counsel submitted (1) a letter, dated November 1, 2010, from the petitioner's director of operations, (2) résumés of three people, and (3) previous counsel's own letter, dated November 17, 2010.

In her November 1, 2010 letter, the petitioner's director of operations stated:

The neurosurgeons and rehabilitation doctors require that our staff nurses hold at least a Bachelor's degree to work with staff and patients in order to provide the high level care for the patients we treat in our Spine and Sports Concussion Center. Nurses who have completed a Bachelor's degree in Nursing have received more training in areas such as communication, leadership, and critical thinking, all of which are becoming more important in a medical practice with highly complex treatment programs as ours. Additionally, Bachelor's degree programs offer more clinical experience and this additional training is an essential minimum requirement to fully qualify the Nurse for the employment position in our Center.

She also provided the following revised description of the duties of the proffered position:

**1. ADMINISTRATIVE RESPONSIBILITIES: (20%)**

(This requires coordination of physician-nursing duties, maintaining records, ordering, evaluating and interpreting tests)

Registered Nurses record patients' medical histories and medical symptoms, help perform diagnostic tests and analyze results, operate medical machinery, administer treatment and medications, and help with patient follow-up and rehabilitation.

The nurse is required to have computer skills with Word, Excel, and Power point to manage and work regularly with electronic medical records.

**2. CLINICAL RESPONSIBILITIES: (20%)**

(This requires clinical reasoning and decision making responsibilities in order to measure patient's vital signs, administer therapy, treatments and medications.)

The Registered Nurse is required to screen patients for allergies, review their medications, take their vital signs, review treatment plans and patient education materials with patients, trouble shoot for any clinical situations. They must monitor, record and report symptoms and changes in the patient's condition and maintain accurate, detailed reports and records.

**3. CONSULTING RESPONSIBILITIES -(20%)**

(This requires assessing patient health, progress, problems, requirements)

After testing the registered Nurse will assist the neurosurgeon who will interpret the test results and identify any irregularities or deficits that the patient might have as a result of a possible concussion. At that point the nurse is then required to speak with the patient and educate the patient and the family about the medical treatment plan and the rehabilitation options that may be required. The nurse is required to monitor all aspects of patients care, including diet and exercise and overall physical activity.

When caring for patients, the Registered Nurse must establish a care plan or contribute to an existing care plan. Care plans may include numerous activities, such as administering medication, including careful checking of dosages and avoiding interactions; starting, maintain and discontinuing intravenous (IV) lines for fluid, medication, blood, and blood products; administering therapies and treatments; observing the patient and recording those observations; and consulting with physicians and other healthcare clinicians.

**4. EDUCATING RESPONSIBILITIES (20%)**

(This requires teaching patients and their families how to manage their illnesses or injuries)

The Registered Nurse must explain post-treatment home care needs; diet, nutrition, and exercise programs; and self-administration of medication and physical therapy.

The nurse is then responsible to follow the progress and track the patient's improvements or deficits. To perform these responsibilities requires an astute and educated clinical eye to be able to detect any changes in the patient. Following, tracking and recording the patient's progress is extremely important. This requires that they have the ability to provide multiple forms of communication with physical presence, touching and direct eye contact.

Following through with the family is another important element. The nurse must provide advice and emotional support, have compassion and understanding and at the same time be able to provide a therapeutic environment to the patient and the family who will be assisting and be involved in their treatment and progress. This follow up treatment requires communicating regularly with the patient and their family, tracking their rehabilitation progress or lack thereof, and follow up testing is involved.

## **5. TECHNICAL RESPONSIBILITIES (20%)**

(This involves medical equipment operation, readings and interpretations)

In order to provide the most advanced and complete medical care available, our nurses will use many of the following specialized technical services:

Musculoskeletal ultrasound: an imaging technology often used to help identify subtle soft tissue injuries, peripheral nerve entrapments, and real-time information not yet available through other imaging techniques.

Electrodiagnostic testing (EMG/NCS): used to detect abnormal muscle and nerve activity. It can help diagnose problems resulting from "pinched" nerves, disc herniations, and other nerve injuries.

Fluoroscopically guided injections: used for epidural steroid injections, sacroiliac joint injections, lumbar facet blocks, and to assure accurate placement of medications into joints such as the knee, hip and shoulder. The live X-ray helps guide injections to a precise location.

Computer Concussion management systems: used to help follow the patient's progress.

Digital radiography: x-rays that are available immediately for review on a computer monitor

These responsibilities require a professional who has received a formal education and instruction in musculoskeletal treatments and rehabilitation involving various

modalities. They must also have the ability to provide clinical reasoning, independent decision making, and clinical thinking.

Despite the explicit request by the service center, the petitioner's director of operations did not state why each of those duties requires a bachelor's degree or why a registered nurse without a bachelor's degree could not perform each of those duties. The only allusion to that request is the general statement, set out above, about the additional training in various subjects that a bachelor's degree in nursing provides. It does not explain why any of the administrative, clinical, consulting, educating, and technical duties described above require a bachelor's degree in nursing or why a registered nurse with only an associate's degree would be unable to perform them.

In her own November 17, 2010 letter, previous counsel referred to the three résumés provided as evidence that the proffered position "has not been offered to anyone with less than a Bachelor's degree or equivalent." She also stated that "parallel nursing positions that require the nurse to provide similar care to critically injured patients with high risk medical conditions and complex treatment programs also require at least a Bachelor's degree or equivalent to be employed in those positions."

The director denied the petition on November 30, 2010, 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 or the equivalent in a specific specialty.

In the appeal brief, present counsel asserted that the evidence presented demonstrates that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Present counsel asserted that the description of the duties of the proffered position and the other evidence submitted demonstrate that the proffered position satisfies more than one of the alternative criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns first 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)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *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 claims in the Labor Condition Application (LCA) that the proffered position falls under the occupational category "Registered Nurses."

In the "Registered Nurses" chapter, the *Handbook* provides the following descriptions of the duties of those positions:

### **What Registered Nurses Do**

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

### **Duties**

Registered nurses typically do the following:

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

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

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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.

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

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

Some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as nurse educators, healthcare consultants, public policy advisors, researchers, hospital administrators, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. Dept of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-12 ed., "Registered Nurses," <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-2> (last visited February 4, 2013).

The duties the petitioner's program director and director of operations attributed to the proffered position are consistent with the duties of registered nurses as described in the *Handbook*. The AAO finds that the proffered position is, in fact, a registered nurse position as described in the *Handbook*.

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

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

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

#### **Education**

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

Bachelor's degree programs usually include more training in the physical and social sciences, communication, leadership, and critical thinking, which is becoming more important as nursing practice becomes more complex. They also offer more clinical experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

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

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

### **Important Qualities**

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

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

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

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

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

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

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

### **Licenses**

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

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

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

### **Certification**

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

### **Advancement**

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

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

Some RNs choose to become advanced practice registered nurses (APRNs). APRNs work independently or in collaboration with physicians. They may provide primary care, and, in most states, they may prescribe medications. APRNs require at least a

master's degree. Each state's board of nursing can provide the specific regulations regarding APRNs.

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

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

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

*Id.* at <http://www.bls.gov/oooh/healthcare/registered-nurses.htm#tab-4>.

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

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in registered nursing, notwithstanding that the *Handbook* makes explicit that some registered nurse positions do not require such a degree.

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 (S.D.N.Y. 1989)).

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

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

The AAO will next review the record regarding 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." Counsel claims on appeal that the duties of the proffered position are complex and unique. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. 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 or its equivalent.

As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, and notwithstanding counsel's conclusory assertions to the contrary, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than registered nurse positions that can be performed by persons without a specialty degree or its equivalent.

Providing critical health care; overseeing testing and patient education; assisting in the coordination of the physician-nursing duties; ordering, interpreting, and evaluating diagnostic tests to identify and assess patients' conditions; providing clinical reasoning and decision making; assessing patient health problems and needs; administering therapy and treatments; maintaining accurate, detailed reports and records; recording patients' medical information and vital signs, monitoring, recording and reporting symptoms and changes in patient's conditions contain no indication of complexity or uniqueness beyond the ken of a registered nurse without a bachelor's degree in nursing.

Further, as was also noted above, the LCA submitted to support the visa petition is approved for a Level I registered nurse position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific degree, notwithstanding that the *Handbook* suggests that registered nurse positions in general do not require such a degree.

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

The petitioner may satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) by demonstrating that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the position.<sup>2</sup> The petitioner has alleged that it requires such a degree; the issue is whether it has demonstrated that requirement.

As noted earlier, counsel submitted résumés pertinent to three people it claims to employ as nurses, as evidence that the proffered position "has never been offered to anyone with less than a Bachelor's degree or equivalent."

One of the three résumés provided is that of a person with an associate's degree in nursing, who was allegedly concurrently enrolled, when that résumé was current, in both a bachelor's degree nursing program and in a master's degree nursing program.<sup>3</sup> If the petitioner then employed that person as a registered nurse, then it appears to have employed someone without a bachelor's degree.<sup>4</sup>

<sup>2</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

<sup>3</sup> The master's degree program in which that person was allegedly enrolled was offered by Jacksonville University. The AAO notes that Jacksonville University is located in Jacksonville, Florida, whereas that person's résumé states that she was then living in Stockton, New Jersey.

<sup>4</sup> The record does not demonstrate that the experience or other qualifications of the person to whom that résumé pertains, considered together with that person's education and whatever other qualifications she

No transcripts or diplomas were provided for any of those three people. Further, the record contains no indication that the petitioner, who claims to employ 26 workers, employs only three registered nurses. In fact, the record contains no documentary evidence to corroborate the implicit assertion that the petitioner employs those three people as registered nurses, or at all.

In any event, previously hiring only one or two employees with a bachelor's or higher degree in nursing, even if the petitioner demonstrated that it had done so, would not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire or has occasionally hired, someone with at least a bachelor's or higher degree in a specific specialty or the equivalent for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The evidence in the record is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree or the equivalent in nursing for the proffered position, and does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Recording patient histories, performing diagnostic tests and analyzing results; operating medical machinery; administering therapy, treatment and medications; helping with patient follow-up and rehabilitation; measuring patient's vital signs, screening for allergies, reviewing medications, reviewing treatment plans and patient education materials with patients, etc., all appear to be the generic duties of ordinary registered nursing positions. Those duties, as described, contain no indication that they are so specialized and complex that they are usually associated with a bachelor's degree in nursing, rather than an associate's degree in nursing or a hospital diploma.<sup>5</sup>

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possesses, is equivalent to a bachelor's degree in nursing.

<sup>5</sup> As noted above, counsel argues on appeal that the proffered position's duties are complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other registered nurse positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, as noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

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

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient 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.

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.

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[http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).