

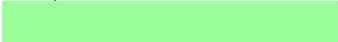
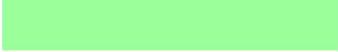


U.S. Citizenship
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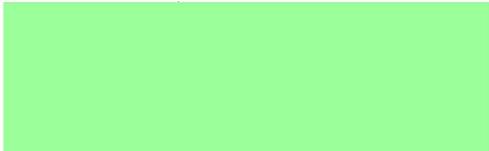


Date: **FEB 25 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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 nursing care firm. To employ the beneficiary in what it identifies by the title "Health Services Manager" position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. In reaching her decision, the service center director characterized the proffered position as belonging to the Registered Nurses occupational classification and analyzed it accordingly. The petitioner, however, has maintained that the position falls within, and should be analyzed as belonging to, the Medical and Health Services Managers occupational classification.

On appeal, counsel asserts that the evidence submitted is sufficient to show that the visa petition should be approved. In a brief filed subsequently to support the appeal, counsel asserts that previous cases with similar facts have been adjudicated and approved as medical and health services managers; that the director misconstrued the U.S. Department of Labor's *Occupational Outlook Handbook* as reporting that entry into the Medical and Health Service Managers occupational classification requires at least a Master's degree; and that, in essence, the director denied due process by failing to issue an additional RFE that would have provided the petitioner an additional opportunity to address what counsel refers to as "new issues" of which the petitioner was not provided notice prior to the director's decision to deny the petition, such as the apparent inadequacy of evidence that the petitioner had provided about the proposed duties.

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.

As will be discussed below, the AAO has determined that the director was correct to deny the petition on the basis specified in her decision, namely, the petitioner's failure to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied. Before proceeding further, however, the AAO will note its disagreement with certain aspects of the director's analysis.

First, based upon its independent, *de novo* review of the entire record of proceeding, and in partial concurrence with arguments from the petitioner's counsel, the AAO finds that, contrary to the director's stated view, the evidence of record does not indicate that the proffered position belongs, at

least in part, to the Budget Analyst occupational classification.¹ While the petitioner ascribes abstractly-described budget and budget analysis functions to the proffered position, those functions are not presented in sufficient detail to show that they would align with the Budget Analysts occupational classification as it is described in the US Department of Labor (DOL) resources to which USCIS routinely refers. Accordingly, the AAO withdraws the director's finding that the proffered position should be partly analyzed as belonging to the Budget Analyst occupational group.

Next, the AAO agrees with the petitioner's counsel that, in light of the particular job and duty descriptions provided in this particular record of proceeding, the proffered position should be analyzed not as a Registered Nurse position, but rather as a position within the Medical and Health Services Managers occupational classification. The AAO will proceed accordingly. It therefore withdraws the director's analysis of the proffered position as a Registered Nurse position, and it will analyze the proffered position as falling within the Medical and Health Services Managers occupational classification.

The AAO also concurs with counsel that the director's discussion of the Medical and Health Services Managers occupational classification was erroneous to the extent that it implies that entry into that occupational classification requires at least a Bachelor's or a Master's degree "in health services administration, long-term care administration, health sciences, public health, public administration, or business administration." As will be discussed later in this decision, and particularly with regard to the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), Medical and Health Services Managers do not comprise an occupational group for which entry requires attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

As will be evident in the remainder of the decision, however, the AAO is not persuaded by the evidence of record that the petitioner has established the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO acknowledges counsel's contention that the director's decision must be set aside because, so counsel argues, the director was required to issue an additional RFE to provide the petitioner an opportunity to respond to adverse factors in the director's determination that had not been specifically noted to the petitioner prior to the director's decision. As to this perceived error of the service center's not issuing an additional RFE, the AAO notes that there is no requirement for USCIS to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. Title 8 C.F.R. § 103.2(b)(8) clearly permits the director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the director. Second, even if the director had erred as a procedural matter in not issuing an RFE or Notice of Intent to Deny relative to the petitioner's failure to establish the proffered position as a specialty occupation, it is not clear what remedy would be appropriate beyond

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner yet another additional opportunity to supplement the record with new evidence. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Next, here at the outset of the decision, the AAO will also directly address two elements of the brief on appeal, namely: (1) counsel's reference to the standard of proof; and (2) counsel's reliance upon USCIS approvals of previous visa petitions for the H-1B specialty-occupation temporary workers in the Medical and Health Services Managers occupational category.

First, in light of counsel's references to the requirement to apply the preponderance of the evidence standard, the AAO affirms that, in the exercise of its appellate review in this matter, as an all matters that come within its purview, the AAO follows the preponderance-of-the-evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), which states in pertinent part:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

As noted by counsel in the brief on appeal, and in footnote 1 of this decision, the AAO conducts its own separate, independent, and *de novo* review of the records of proceeding pertaining to the matters before it. In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, the AAO finds that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that the director's determination that the petitioner did not establish the proffered position as a specialty occupation was correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the AAO finds that the petitioner has not established that its claim of a specialty occupation position is "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the petitioner's claim is "more likely than not" or "probably" true.

Next, the AAO is compelled to address a number of material errors underpinning counsel's claim that past USCIS petition approvals require that the appeal be sustained and that the petition be approved.

Counsel clearly errs in stating, at page 2 of the brief on appeal, that:

[I]n approving H-1B visa petitions on behalf of other beneficiaries for the position of Health Services Manager, the Service has concluded that the duties of the position are complex by their very nature in the context of the health care industry requiring attainment of a bachelor's degree.

Counsel's reliance upon past petition approvals as requiring a particular outcome for the present petition is without merit and mistaken on several counts, as will now be discussed.²

Counsel clearly errs in attributing precedential authority to petition approvals. Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, approval of a particular petition, or even approvals of a number of petitions, are not in themselves precedential. While 8 C.F.R. § 103.3(c) provides that decisions published as precedent decisions are binding on all USCIS employees in the administration of the Act, there is no statutory or procedural authority - and counsel cites none - for the propositions that Service Center approvals of H-1B petitions or even AAO decisions not formally

² As an administrative note, the AAO observes that the copies of the two petition approvals cited as Exhibit 1 in the brief on appeal apparently are the approval documents submitted as Exhibit 1 to the RFE response.

adopted and published as precedent are binding on either the director or the AAO. Further, despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. See § 291 of the Act, 8 U.S.C. § 1361.

Also, counsel appears to overlook the instruction in *Matter of Chawathe* that “[t]he ‘preponderance of the evidence’ of ‘truth’ is made based on the factual circumstances of each individual case.”

Also, for the reasons stated above, there is no supportive foundation for counsel’s apparent position that USCIS has determined as a precedential matter that a particular level of complexity is universally applicable to positions in the Medical and Health Services Managers occupational classification.³

Because counsel’s argument to the effect that precedent compels USCIS recognition of the proffered position is without foundation and therefore without merit, the AAO accords no weight to it. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

At the outset the petitioner should also be aware that, aside from the AAO’s determination that the evidence in the record of proceeding fails to establish the proffered position as a specialty occupation – which determination is the primary focus of this AAO decision – there is another aspect of this petition which precludes approval of this petition, namely, the fact that the evidence in this record of proceeding does not establish the beneficiary as qualified to serve in any specialty occupation position. This issue, discovered in the course of the AAO’s *de novo* review of the totality of the evidence, will be discussed in greater detail after the specialty occupation issue is fully addressed. However, at this time it is worth noting that the petitioner’s reliance upon the record’s combined evaluation of the beneficiary’s education and experience was misplaced, in that the evidence of record fails to establish that the opining professor who authored the evaluation is the type of official that the pertinent regulations recognize as competent to assess, for purposes of H-1B specialty-occupation petitions, that a person is qualified to serve in a specialty occupation.

³ This mistaken position is apparent in the brief on appeal where, immediately between a reference to the specialty occupation regulations and counsel’s description of what he claims to be approvals of petitions substantially similar to the one now before us, counsel states:

Therefore, in approving H-1B petitions on behalf of other beneficiaries for the position of Health Services Manager, the Service has concluded that the duties of the position are complex by their very nature in the context of [the] health care industry, requiring attainment of a bachelor’s degree.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

Before addressing each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will now provide an overview of both the petitioner and the proffered position as they are presented in the record of proceeding.

For the petition’s Labor Condition Application (LCA) the petitioner submitted one that had been certified for the Standard Occupational Classification (SOC) code 11-9111.00 and the associated occupational classification Medical and Health Services Managers. The LCA was also certified for a Level I prevailing wage-rate, the lowest of the four wage-rate levels available for designation.

Page 9

On the Form I-129, the petitioner identifies the proffered position by the title "Health Services Manager." The Form I-129 identifies the petitioner's NAICS Code as 623110, applies to Nursing Care Facilities (Skilled Nursing Facilities).

On the Form I-129 visa petition, the petitioner listed its company name as [REDACTED] its Federal Employer Identification Number (FEIN) as [REDACTED] and its address as [REDACTED]

A search pertinent to that FEIN indicates that it belongs to [REDACTED] of the same address as the petitioner. The AAO notes that the LCA (at Part C, Employer Information) states that the petitioner's legal business name is [REDACTED] – which is the same name used to identify the petitioner on the Form I-129 – and that its trade name/doing business name is [REDACTED]

The AAO finds that, while the petitioner presents some Internet printouts that relate general information about it, neither those printouts nor any other documents in the record of proceeding distinguish the petitioner's operations from those of elderly nursing care facilities in general. Likewise, none of the documents submitted into the record indicates that a health services manager performing the proposed duties for this petitioner, as those duties and this petitioner are described in this record of proceeding, would have to apply at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The information embodied in this record about the proposed duties and the proffered position indicates that the position may be properly classified as falling within the Medical and Health Services Managers occupational group. However, as will be shown in this decision's discussion of the application of the first criterion to the facts of this petition, a position's inclusion in that occupational group is not in itself sufficient to establish that it is one that normally requires at least a bachelor's degree or the equivalent in a specific specialty, for, as will be discussed, the Medical and Health Services Managers occupational group is composed of persons with bachelor's or higher degrees in widely diverse specialties, and also of persons without any bachelor's degrees at all.

The petitioner limits its discussion of its business operations to a generalized level of relatively abstract information that appears to be generic to elder care nursing facilities in general. Illustrative of this point is the petitioner's self-description at page 1 of its March 25, 2010 letter in support of the petition. The letter states, in pertinent part:

Founded in 2003, [the petitioner] strives to provide an array of personalized services for the elderly in a home like environment. Our staff is committed to providing an environment that creates a place of one's own. We strive to serve each individual with dignity, create a care partnership between the resident as well as their [sic] family, and allow the resident to be the primary individual in control. We have

⁴ The AAO notes, however, that its search of California corporate entities, via the pertinent search engine at the California Secretary of State's Internet site <http://kepler.sos.ca.gov/>, did not return any information indicating the existence of any corporation named [REDACTED] (Last searched on February 7, 2013). Although not a factor in the AAO's decision to dismiss this appeal, this aspect raises concerns as to whether the petitioner actually exists as a legal business and whether it is in fact doing business.

rapidly grown in the last few years. We currently employ 176 employees and reported gross revenue of US\$15.5 million in 2009. . . .

This is an appropriate place for the AAO to state its finding that none of the submissions into the record provide a factual foundation for reasonably concluding that any aspect of the petitioner's operations would more likely than not require the holder of its Health Services Manager position to apply at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty to fully perform his or her position.

The AAO will now discuss its determination that, to the extent that they are described in this record of proceeding, the proposed duties fail to establish that their performance would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a particular specialty, as would be required to meet the definition of a specialty occupation section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). As should be evident in the excerpts from the documentary evidence below, the petitioner has described the position and its constituent duties in terms of generalized functions that lack substantial details sufficient to establish whatever substantive work those functions would actually entail when performed, and sufficient to establish a particular educational level of any body of highly specialized body of knowledge that would be required to perform such work.

At the space at page 9 of the Form I-129 for a description of the proposed duties, the petitioner entered:

Plan and direct administration of health services in elderly care facilities, administer fiscal operations such as budget planning, accounting, and establishing rates for services; develop policies and procedures on keeping and updating records including how to secure health information and medical records.

The AAO notes that nowhere in the record of proceeding does the petitioner detail to any substantive degree what performance of any of the above-stated functions and subfunctions would involve in terms of specific business matters requiring concentration; applications of specialized knowledge that would have to be employed; expected work products.

The AAO finds that the lack of probative value of the relatively abstract level at which the petitioner provided information regarding the proffered position and its constituent duties is joined by another aspect of the record of proceeding that undermines the petition's credibility, namely, the petitioner's failures to provide the requested organizational chart and to elucidate the relative levels of responsibility in overlapping areas that would exist among the petitioner's owner, its administrator, its assistant administrator, its director of nursing, the petitioner's Accounts Payable person who was authorized to sign for the petitioner's owner during the adjudication of this petition, and the health services manager for which this petition was filed.

In her March 25, 2010 letter of support, which accompanied the Form I-129 on its filing, the petitioner's assistant administrator addressed the proffered position in terms to those used in the Form I-129, stating:

[The beneficiary's] primary responsibility will be to direct administration of health services for our elderly care facility; administer fiscal operations, such as budget planning, accounting, and establishing rates for healthcare services; and negotiate for improvement of and additions to buildings and equipment.

She will also develop policies and procedures on keeping and updating records including how to secure health information and medical records. As we continue to expand and diversify, she will also ensure that suitable business strategies are in place for efficient and productive business operations.⁵

The letter of reply to the RFE - dated October 19, 2010 and signed by the petitioner's counsel and by a Ms Evette Sarno, identifying herself as Accounts Payable – includes the following list, described as the “duties [that] will be performed by the Health Services Manager in the Petitioner's nursing home where it serves the needs of approximately 200 elderly residents on a daily basis and employs 179 employees including an administrator, professional nursing staff, and other support staff”:

Services Administration

- Direct administration of health services by coordinating the work of internal non-medical staff while reporting directly to the Administrator of the nursing home. Please note that the Petitioner employs a Director of Nursing to whom the medical staff reports.
- Liaise with non-medical staff internally (often at senior levels), and with people in external organizations, e.g., voluntary groups or the private sector[,] to facilitate delivery of routine and outside services and to ensure optimum care is contracted for the residents;
- Assist in recruitment, selection, appraisal and development of non-medical staff,
- Assist the Administrator in overseeing the day-to-day management;

⁵ The petitioner's assistant administrator also asserted that the proffered position "requires, at a minimum, a Bachelor's or foreign equivalent degree in Health Administration, Business Administration, Public Health, Allied Health, or a health[-]related field including Nursing or its equivalent in experience and/or in education."

- Develop and recommend new policies and directives to promote best administrative practices in the delivery of health care to the elderly;
- Gather and analyze patient, staff and other data to plan and manage projects and systems;
- Extrapolate data for quality assurance and monitoring purposes;
- Develop new and recommend changes to existing strategic policies to improve service delivery and achieve efficiencies;
- Attend meetings, prepare reports and discuss issues with management;
- Liaise with supervisors of various departments to facilitate administrative aspect of the services to residents such as housekeeping, cleaning and security; and
- Design and develop business strategies for efficient and productive business operation in collaboration with the administrator and management team.

It is expected that approximately 55% of the beneficiary's time will be engaged in these duties.

Fiscal Operations

- Plan budget for assigned projects and present parameters of the projects and cost/benefit analysis to the Administrator and the management team;
- Review and assess maintenance of or change to established rates for healthcare services;
- Review budgets for various departments to maintain efficiencies;
- Prepare reports and conduct audits as needed; and Discuss feasibility of and recommend capital improvement projects as well as purchase of new equipment.

It is expected that approximately 35% of the beneficiary's time will be engaged in these duties.

Medical Records

- Develop policies and procedures on keeping and updating confidential medical records by reviewing existing and new health regulations and guidelines' and
- Consult with Administrator and management on safeguards to be implemented to secure medical and billing information.

It is expected that 10% of the beneficiary's time will be engaged in these duties.

However, the AAO finds that, even when read in the aggregate, neither the above duty descriptions, nor any other in this record of proceeding, distinguish the proposed duties, or the position that they comprise, as so complex, specialized, and/or unique as to require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required to establish a specialty occupation in accordance with the definitions at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii). Rather, the AAO finds, the proffered position and its constituent duties are described in terms of general functions that appear generic to the occupation in general and that, as so generically described, do not convey the substantive nature of the work that would be involved in the performance of these functions within the particular context of the petitioner's business operations. The AAO finds that the extent to which the proposed duties and the matters upon which they would be applied are described in this record of proceeding does not establish either the substantive nature of the work that the beneficiary would perform, substantive applications of knowledge from specific specialties that the beneficiary would have to employ, or, ultimately, a requirement for any particular educational level of knowledge in a specific specialty.

While the petitioner lists numerous duties under each of three general headings (i.e., Services Administration, Fiscal Operations, and Medical Records), the petitioner fails to develop those duties, and the substantive matters upon which they would be performed in the specific context of the petitioner's particular business operations, with sufficient specificity to convey the substantive nature of the actual work that the beneficiary would perform within the compass of each enumerated duty. As illustrative of the lack of probative evidence, the AAO points to how the record's general outline of the following functions of the proffered position fail to convey the actual work and associated applications of knowledge that would be involved in their performance: "Coordinating the work" of the non-medical staff; "Assist[ing] in development of non-medical staff"; "Assisting the Administrator in overseeing the day-to-day management"; "Plan[ning] budget for assigned projects" [none of which, by the way, have been specified]; "Review[ing] and assess[ing] maintenance of or change to established rates"; and "Review[ing] budgets for various departments." The AAO further finds absolutely no basis in the record for finding that performance of the proposed functions would require the application of any particular educational level of knowledge in any specific specialty. The petitioner leaves to speculation whatever actual work, specialty-knowledge applications, and associated educational requirements would be involved in assisting the administrator, project budget-planning, rate reviews and assessments, and department-budget reviews. The AAO will not so speculate.

Further, as described in the record of proceeding, the proposed duties and the position to which the petitioner ascribes them are not presented with sufficient specificity to distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized and/or complex than positions which may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation defined at section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii).

The AAO will now also highlight how the "Fiscal Operations," "Medical Records," and "Services Administration" functions as outlined in the RFE reply-letter do not advance the petitioner's specialty-occupation claim.

As to the "Fiscal Operations" functions ascribed to the proffered position, the AAO notes that the RFE-reply letter states, "These duties require aptitude in math, business administration, knowledge and/or experience in the health care field, all of which can be attained in a baccalaureate program." That such aptitude can be attained in a bachelor's degree program does not mean that those duties cannot be performed without attainment of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

As to the "Medical Records" functions of the proffered position, counsel and [REDACTED] asserted:

These complex duties not only require knowledge and skills to be able to ascertain what appropriate action is needed but also a maturity level which is generally achieved through completion of a baccalaureate degree.

Counsel and [REDACTED] did not assert that the "knowledge and skills to be able to ascertain what appropriate action is needed" require a bachelor's degree, let alone a bachelor's degree in any specific specialty. Further, a requirement of a bachelor's degree in order to attain an employee of a given maturity level does not mark a position as a specialty occupation position. 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. The requirement of a college degree with no specific major, for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

The AAO next will address the impact of the assertion in the aforementioned RFE-reply letter that the skills, training and knowledge needed to perform the "Services Administration" duties of the position "can only come from a 4-year baccalaureate program in the field of health services administration, long-term care administration, health sciences, public health, public administration, or business administration." The AAO observes that, the acceptability of a generalized bachelor's degree in business administration, without further specification, is not indicative of a specialty occupation position. Again, 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.

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Again, the petitioner 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's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the substantive nature of the proffered position's work had been established – which is not the case – the instant petition could not be approved for this additional reason.

At this stage, the AAO will address some salient aspects of the documentary evidence that was submitted into this record of proceeding to support the petitioner's contention that the proffered position is a specialty occupation. As the discussion below will indicate, the AAO finds that, both alone and in the aggregate – and, of course, considered in the full context of, and in conjunction with the totality of evidence in this record of proceeding – these submissions are not probative evidence towards establishing that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Specifically, the AAO will now address, in order, the record's copies of (1) a one-page printout entitled "Medical and Health Services Manager," which bears a handwritten annotation indicating that it was taken from an Internet site (www.healthjobsstarthere.com); (2) a two-page job-vacancy announcement, apparently retrieved from the Internet site www.careers.org, for a Director of Residential Services at a family services organization; (3) a one-page job-vacancy announcement for a "Manager, Revenue Recycle Transformation" at [REDACTED], in Mission Viejo, California, which the announcement identifies as part of the [REDACTED] Hospital medical system; and (4) a two-page printout from "[REDACTED] US Military," entitled "Air Force Officer Job Descriptions & Qualifications[:] 41AX Health Services Administrator."

Prefatory to its discussion of these documents, the AAO notes that it considers and determines the evidentiary weight of these documents in the light of the pertinent information presented in the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*), as the AAO recognizes this biennial publication as an authoritative source on the duties

and educational requirements of the wide variety of occupational groups that it addresses.⁶ At this stage, it is important to note that, as will be discussed in detail in this decision's review of the application of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence of record, the relevant chapter of the *Handbook* (unsurprisingly entitled "Medical and Health Services Managers") indicates that a position's inclusion within this occupational group is not itself sufficient to establish that the position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). That being said, discussion of the four documents will now commence.

The one-page "Medical and Health Services Manager" Internet document consists of brief, generalized remarks that address four aspects of that type of position, namely, salary range, job description, work environment, and training requirements. The AAO accords no probative weight to what it regards as the key portion of this document, which reads:

Training requirements:

Medical and health services managers are required to earn a bachelor's degree, but a master's degree is preferred by larger health care organizations.

First, this document identifies neither the ultimate source of the above assertion (if it is indeed different than the owner of the Internet site itself) nor the empirical basis, if any, for this declaration that a bachelor's degree is an absolute requirement. Second, the statement itself does not comport with the information in the 2012-2013 *Handbook's* "Medical and Health Services Managers" chapter, which does not identify either a bachelor's degree or a master's degree as an absolute requirement for entry into the occupational group. In any event, and aside from those evidentiary problems that reduce the document to little value, as the vacancy announcement itself does not state a requirement for a degree in a specific specialty, it does not support the petitioner's claim that such a degree is required for entry into the Medical and Health Services Managers occupational group.

Next, the AAO will explain why it sees no probative value in the two-page job-vacancy announcement for a Director of Residential Services at a family services organization. This advertisement, which was placed by [REDACTED] of La Verne, California, describes the advertising employer as an organization that was founded as an orphanage and now serves children and families in need. The evidence of record does not establish that this advertising employer and the petitioner are engaged in the same industry or that the substantive duties, work, and responsibilities of the proffered position and the one advertised are so substantially similar as to constitute parallel positions. The petitioner fails to establish that the duties of this position or their particular performance requirements, which pertain to a different type of organization and clientele than the petitioner and which fall under a different job title, are relevant to establishing the educational requirements of the type of position that is the subject of this appeal.

⁶ 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.

Further, the educational and licensing requirements specified in this advertisement (stated as, "A Master's Degree in Social Work or a related behavioral science from an accredited college or university. LCSW, MFT, or Clinical Psychologist licensure required. Must be able to supervise MFT Interns and Associate Clinical Social Workers") clearly indicate that the proffered position and the one advertised in the job vacancy announcement are materially different and unrelated in any sense relevant to the adjudication of this appeal.⁷

The next document advertises the opportunity for a "Manager, Revenue Recycle Transformation" at at [REDACTED]. The AAO finds that the record of proceeding establishes no substantive correlation between that position as advertised and the one that is at issue here on appeal. Obviously, as the advertising organization is a hospital, it very likely has a different and more complex organizational structure than the entity where the beneficiary would work (described, in the petitioner's March 25, 2010 letter of support, as "our elderly care facility"); and very likely the hospital is responsible for a greater scope and level of medical services than the elderly nursing care facility where the beneficiary would work. In this regard, the AAO notes for contrast the petitioner's description of the proposed work site as an elder-care facility, on the hand, and, on the other, the following excerpt from the Mission Hospital advertisement's Ministry Marketing Statement:

[A]s a non-profit acute care facility serving all of south Orange County, our Level II Trauma Center is the designated Regional Trauma Center for south Orange County. We have Centers of Excellence in heart, maternity, trauma, breast care, spine, vascular, stroke, cancer, and brain injury.

The petitioner has not shown that the facility where the beneficiary would serve is substantially similar to [REDACTED] Hospital in size, organizational structure, financial requirements, and related activities, scope of patient services, or any other significant comparative measure that would lead the AAO to recognize the two types of facilities as being substantially similar. Likewise, the AAO finds, the petitioner has failed to provide evidence documenting why the duties of the proffered position should be viewed as generating substantially the same work requirements and associated educational requirements as specified in the advertisement, which is for a different type of position in a different operational environment.

⁷ The AAO observes that the position announced does not require a degree in any of the array of subjects mentioned in the petitioner's administrator's May 25, 2010 letter; and the AAO also notes that none of the degrees mentioned in that letter would qualify one for the position in that vacancy announcement according to the terms of the announcement. That is, the petitioner's assistant administrator stated that the proffered position requires a degree in Health Administration, Business Administration, Public Health, Allied Health, or a health-related field including Nursing or its equivalent in experience and/or in education, whereas the vacancy announcement states that the position it announces requires a degree in social work or a related behavioral science. There is no overlap in those lists of subjects. No degree that would satisfy the educational requirement asserted in the instant case would satisfy the requirement asserted in that vacancy announcement, and vice versa.

Further, even if both of the vacancy announcements were placed by organizations in the petitioner's industry, which they were not, and for positions parallel to the proffered position, which they were not, and stated an unequivocal requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from two announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁸

Next, the AAO finds that the petitioner has failed to establish the relevance of the printout from "[REDACTED]: US Military," entitled "Air Force Officer Job Descriptions & Qualifications[:] 41AX Health Services Administrator."⁹ The petitioner is not a military organization; there is no evidence documenting that the substantive nature and scope of the work of Air Force Officer 41AX Health Services Administrators are substantially similar to those of the proffered position; and the evidence of record does not establish that the educational requirements specified in this particular document are normally the minimum requirement for entry into the Medical and Health Services Managers occupational classification, let alone the normal minimum requirement for the particular proffered position pursuant to the provision at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Further, the position outlined in the Air Force Health Services Administrator document materially exceeds the range of duties and responsibilities of the position that is the subject of this petition, as is obvious in comparing the petitioner's descriptions of the duties and responsibilities of the proffered position against the statements comprising this Internet printout's segments "Specialty Summary" and "Duties and Responsibilities," which the AAO hereby incorporates by reference into this decision. Further still,

⁸ 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 two job postings with regard to determining the common educational requirements for entry into parallel positions in similar nursing homes. *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 such positions for a nursing home required a bachelor's or higher degree in a specific specialty or its equivalent - which they do not - it cannot be found that such a limited number of postings that may have been consciously selected is probative evidence of a degree requirement that is common in the petitioner's industry, among organizations parallel to the petitioner, for the type of position here proffered.

⁹ For this category of Air Force Health Services Administrator, the printout specifies as minimal educational requirements a graduate degree in Health Care Administration, Hospital Administration, Public Administration, Business Administration or Management, Information Systems Management, or equivalent.

there is no evidence anywhere in the record that the Air Force contemplates assigning any Air Force Health Services Administrator to elderly care nursing facilities.

Next there is the issue of the petitioner's decision to not provide an organizational chart, as requested in the RFE. In a footnote to the October 19, 2010 letter replying to the RFE, which letter is by [REDACTED] as "Accounts Payable," [REDACTED] states that the petitioner's owner was absent in response to a family emergency and had authorized [REDACTED] to sign on her behalf and on behalf of the petitioner. That letter also states, "The Petitioner respectfully requests that you allow it time to provide organizational chart which consists of confidential employee information and can only be released by the owner of the company."

While a petitioner should always disclose when a submission contains confidential commercial information, the claim does not provide a blanket excuse for the petitioner's failure to provide such a document if that document is material to the requested benefit. While a petitioner should always disclose when a submission contains confidential commercial information, the claim does not provide a blanket excuse for the petitioner's failure to provide such a document if that document is material to the requested benefit.¹⁰ Although a petitioner may always refuse to submit confidential commercial information if it is deemed too sensitive, the petitioner must also satisfy the burden of proof and runs the risk of a denial. *Cf. Matter of Marques*, 16 I&N Dec. 314 (BIA 1977).

In any event, the petitioner's organizational chart, which was specifically requested in the RFE, was not provided. The AAO finds that the failure to provide the requested chart frustrated and prevented the resolution of a line of inquiry, pursued in the RFE, that is material to the merits of the petition, and of this appeal. If the requested chart had been produced, it would have revealed information regarding the petitioner's staffing and staffing levels, and that information would have been relevant to determining if functions attributed to this position, such as, for instance, accounting and budget planning, were shared, or even principally performed, by positions other than the one proffered here. The requested organizational chart would likely also indicate the types and numbers of "non-medical" staff which would be under the beneficiary's authority, but which are nowhere specified in this petition.

Further, the March 25, 2010 letter was provided by the petitioner's *assistant administrator*, which implies that the petitioner also has a senior administrator. Given that the beneficiary's primary responsibility, as described by the petitioner's assistant administrator in her March 25, 2010 letter, is "to direct administration of health services," the beneficiary's position on that chart, and how many administrative managers and staff superior to the proposed position the petitioner employs, is relevant to the nature of the beneficiary's actual prospective duties, which is a material issue pertinent to whether the beneficiary would work in a specialty occupation position.

¹⁰ Both the Freedom of Information Act and the Trade Secrets Act provide for the protection of a petitioner's confidential business information when it is submitted to USCIS. *See* 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905. Additionally, the petitioner may request pre-disclosure notification pursuant to Executive Order No. 12,600, "Predisclosure Notification Procedures for Confidential Commercial Information." Exec. Order No. 12,600, 1987 WL 181359 (June 23, 1987).

In fact, the AAO additionally finds that the petitioner's failure to provide this information is itself sufficient basis for denying the petition. Despite the director's specific request, the petitioner failed to submit the requested material evidence. Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). For this reason also, the petition must be denied.

Next, the AAO will address the impact of documentation regarding the beneficiary's education and work experience has upon the merits of the petitioner's specialty-occupation claim. This includes evidence of graduation from a foreign three-year diploma course in general nursing, various certificates related to nursing, including a copy of the beneficiary's certification as a registered nurse in a country other than the United States and the former-employer letter-input submitted into the record of proceeding.

In contrast to the director's taking these documents as evidence that the beneficiary would actually be employed in a nursing position, the AAO sees them, instead, as further evidence weighing against the credibility of an expectation that the beneficiary would apply at least a bachelor's degree level of any body of highly specialized knowledge directly related to the proffered position, if this petition were approved.

Quite aside and apart from the issue of whether the beneficiary has actually attained the combined educational and experiential equivalent of at least a U.S. bachelor's degree in nursing, as alleged, the AAO finds that the related documents presented to establish the beneficiary's credentials do not credibly reflect the attainment of at least a bachelor's degree level of highly specialized knowledge directly related to the constellation of duties the RFE-reply letter ascribes to the proffered position.

In that regard, the AAO notes in particular the petitioner's emphasizing that the Director of Nursing would be in charge of the medical personnel, that the beneficiary would exercise supervisory control only over non-medical personnel, and that the beneficiary would not engage in any activities that would require licensure as a nurse. These aspects of the record undermine the relevance of the beneficiary's nursing education and nursing experience to the duties of the proffered position for two reasons. First, contrary to the unsubstantiated and (as will be discussed) discounted view of the professor opining on its educational-equivalency, the four corners of the former-employer's submission establishes no more than that the beneficiary performed duties of a staff nurse (albeit an experienced one), and in a position which she obtained with no more than a three-year foreign degree in nursing. Second, the AAO finds that none of the educational or experience documentation establishes that the beneficiary has attained a bachelor's degree level of any body of highly specialized knowledge in any specific specialty closely related to the core duties by which the petitioner characterizes this position, such as, by way of a few examples: design and development of business strategies; budget planning and analysis, rate determinations; auditing; and fiscal analysis and recommendations on the feasibility of capital building projects.

There is only one document submitted by a former employer, namely, a copy of an October 27, 2009 letter from a [REDACTED] of the Department of Neurology at [REDACTED] Hospital in

New Dehli, India. The letter is addressed "To Whomever It May Concern." As forecast in its opening paragraph, the letter attests only to the beneficiary's work as a staff nurse at that hospital, from March 5, 2009 to the date of the letter. That paragraph reads:

This is to certify that [the beneficiary] has been working as Staff Nurse in the Neuro-m edical department in this hospital from 5th March 1999 till the date [sic]. During this period of more than ten years, [the beneficiary] has gained enough insight and experience in dealing with complicated neuro-medical/surgical cases.

The next paragraph of [redacted] letter reviews the scope of the beneficiary's work and responsibilities as a "Staff Nurse in the Neuro-medical [D]epartment" as a "nursing professional" specializing in neuro-nursing care. The AAO observes that the paragraph focuses exclusively upon the beneficiary's work as a nurse and, in doing so, does not discuss the beneficiary as engaging in any of the activities that the petitioner represents as the duties comprising the proffered position.

The third paragraph is a one-sentence statement that the beneficiary has gained "an added advantage" by having "undergone extensive specialized training in Neuro Nursing Care at the [redacted] a pioneer institute of India in this specialty, from 9 April 2001 to 7 July 2001". Neither the sentence nor any other section of the letter provides any information indicating that this three-month course is material to any of the functions that the petitioner's descriptions of duties indicate that the beneficiary would perform in its elder care facility if this petition were approved.

The entire next paragraph of the letter is quoted immediately below, for, the AAO finds, that it is clear that this section of the letter also fails to establish a material correlation between the beneficiary's work experience as a Staff Nurse in India and the duties of the proffered position as they are described in the record of proceeding:

In her extended role she assumes the responsibilities of a supervisor/manager of the ward and acts as an interface with other departments, outside agencies and also [the] public. The Hospital is also a Medical College with facilities for teaching students pursuing Medical and Nursing streams. In her capacity as a senior nurse, [the beneficiary] supervises junior nurses, nursing attendants, and student nurses, instructs and demonstrates to them the advanced nursing practices followed in the hospital. Her portfolio of work also includes requisitioning of medicines and consumables, their storage and record keeping of usages; advising and educating the patients and their families about the post-treatment home care needs including diet, nutrition, exercise programmes, patient follow up and rehabilitation. She also manages linen; upkeep of fittings, fixtures, and furniture in the ward and waste disposal conforming to regulatory frameworks. Besides, playing a decisive role in hospital policies & procedures within the ward [the beneficiary] also attends to writing, maintaining and safekeeping of medical records; evaluation of performance of junior nursing professionals and paramedical staff and coordination with other departments. In short during her association spanning more than ten years with this Hospital, she has fully

developed her innate administrative and managerial skills and helped enhance the patient care delivery of the ward.

The letter closes on the following note, which also does not establish any material correlation between the proffered position and what the beneficiary did as a staff nurse in a neuro-medical ward:

I have found [the beneficiary] to be a diligent, industrious, and career oriented senior-level nursing professional. Her dedication to patient care and her sense of honesty are noteworthy. With her in-depth knowledge, experience and willingness to work[,] I am sure she will attain greater responsibilities and positions in the coming years.

If a petitioner, as here, is willing to accept for its position a person who has not been shown to possess by education, training, and/or experience the equivalent of at least a bachelor's degree level of a body of highly specialized knowledge of the type claimed to be directly related to the proffered position, the overall credibility of the petition is undermined.¹¹

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The petitioner should note that, for administrative economy, the AAO hereby incorporates by reference into this decision's remaining analyses all of the decision's previous comments and findings regarding the evidence of record and its impact upon the petitioner's claim that the proffered position is a specialty occupation.

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, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

As indicated early in this decision, the AAO is evaluating the proffered position as one within the Medical and Health Services Managers occupational category. The AAO recognizes DOL's *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupational groups that it addresses.¹² The pertinent chapter of the *Handbook*, is entitled "Medical and Health Services Managers." That chapter includes the following descriptive information about this occupational category:

¹¹ As should be evident from the overall decision that the AAO is issuing here, this particular aspect of the record of proceeding, while another factor reflecting negatively upon the specialty occupation claim, is not in itself decisive, or essential, to the AAO's determination that the petitioner has failed to establish the proffered position as a specialty occupation.

¹² All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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

Duties

Medical and health services managers typically do the following:

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

In group medical practices, managers work closely with physicians, nurses, laboratory technicians, and other healthcare employees. For more information, see the profiles on physicians and surgeons, registered nurses, and medical and clinical laboratory technologists and technicians.

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

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

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

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

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

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited February 7, 2013). According to the *Handbook*, medical and health services managers plan, direct, coordinate, and supervise the delivery of healthcare, and "might manage an entire facility or specialize in managing a specific clinical area or department or manage a medical practice for a group of physicians." This information and the above examples of "some examples of types of medical and health services managers" suggest that if the proffered position, as described in this record of proceeding, is properly categorized as belonging to the Medical and Health Services Manager occupational group, it would be a relatively low-echelon type of such position relative to the ranges of positions provided in the examples. In the same vein, it must also be noted that the beneficiary would not be charged with responsibility for a specific clinical department, let alone an entire facility or system, or for that matter, even a group medical practice.

In any event, review of the *Handbook's* education and training requirements for this occupational category, indicates that a bachelor's degree or higher, or the equivalent, in a specific specialty is not normally a minimum requirement for entry into this occupation in the United States. Therefore, contrary to counsel's claims, the proffered position's inclusion within this classification, does not by virtue of this categorization satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position that is the subject of the petition. According to the *Handbook*, the educational requirements of a medical and health services manager are as follows:

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

Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law

and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

Work Experience

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

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited February 7, 2013). The *Handbook* does not report that a medical and health services manager needs, as a standard entry requirement, at least a bachelor's degree in a specific specialty or its equivalent. Although counsel relies on the *Handbook's* statements that indicate a master's degree is commonly required and a bachelor's degree is typical, the AAO notes that the *Handbook* indicates that "some facilities may hire those with on-the-job experience instead of formal education." It also indicates that those with general degrees in business administration may enter the occupation, which countermines assertions that the requirement of a degree in business administration establishes that this occupation requires a degree in a specific specialty.

The AAO will repeat its point about the acceptability of an unspecified bachelor's degree in business. Again, 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 (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.

It is appropriate for the AAO to here incorporate by reference its earlier comments and findings with regard to Air Force Health Services Administrator printout, in order to dispel any reliance that the petitioner may have regarding that document as an authoritative source regarding the educational requirements for the particular position that is the subject of this petition.

For the reasons outlined above, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

The AAO here specifically finds that neither the two job-vacancy announcements submitted into the record nor the printout "Air Force Officer Job Descriptions & Qualifications[:] 41AX Health Services Administrator" are probative evidence that attainment of at least a bachelor's degree in a specific specialty, or the equivalent, is common in the petitioner's industry, in organizations similar to this petitioner, for positions that are parallel to the one proffered here. As the foundational analysis for this conclusion, the AAO hereby incorporates into this discussion this decision's earlier comments and findings with regard to those three documents.

As the evidence of record 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, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other such positions in the

petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The AAO hereby incorporates by reference into the analysis of this criterion this decision's earlier comments and findings with regard to the lack of substantive details regarding the proposed duties and the position that they are said to comprise. With specific regard to this second, alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the AAO finds that, as reflected in those earlier comments and findings regarding the general and relatively abstract level to which the information about the proposed duties, the proffered position, and even the petitioner's structure and operations was limited, the petitioner did not develop relative complexity or uniqueness as attributes of the proffered position, let alone as so elevated that the position can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area directly related to the duties and job responsibilities of that particular position. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty-degreed employment.

The petitioner has thus failed to establish either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next finds that, as the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, 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).¹³

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

¹³ It is still worth noting that, 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 generally *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if performance of the proffered position does not in fact require such a specialty degree or its equivalent, 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").

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.

The petitioner has submitted no independent documentation in support of the contention that specialized and complex knowledge is required to perform the duties of the proffered position. The petitioner and counsel simply provide their own unsupported opinions with regard to the qualifications necessary for a health services manager to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. Relative specialization and complexity have not been developed for the proffered position and, as such, the evidence of record does not establish that this position is significantly different from medical and health service manager positions, or even general administrative positions, that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.¹⁴ Therefore, the evidence does not establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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 will now address the aforementioned issue not addressed by the director, namely, the failure to establish the beneficiary as qualified to serve in a specialty occupation position, regardless of how that position is categorized.

¹⁴ The duties as described lack sufficient specificity to distinguish the proffered position from other medical and health services manager positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with duties that are so specialized and complex as to satisfy this criterion, as such a higher-level position would be classified at a higher LCA wage-rate than Level I, which is the lowest of the four assignable. 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).

The AAO finds that, even if the petitioner had established the proffered position as a specialty occupation, the petition would still not be approvable. Although not noted by the director, the evidence of record fails to establish that, at the time of the petition's filing, the beneficiary held either a U.S. bachelor's degree in a specific specialty or a combination of education, training, and/or experience equivalent to such a degree, as required by the beneficiary-qualification regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D). As will be discussed below, the petitioner's reliance upon the evaluation of education and experience that it obtained from [REDACTED] was misplaced. Again, the AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d at 145)), and it was in the process of this review that the AAO noted this material deficiency.

Counsel submitted evidence that the beneficiary has a diploma in nursing from the [REDACTED]. Other evidence shows that the diploma was the culmination of only three years of study. Counsel also submitted an employment verification letter pertinent to the beneficiary's relevant employment. In the evaluation of education and experience prepared for the petitioner, [REDACTED] who identifies himself as a professor of Operations Management and Management Science at the [REDACTED] opined that the combination of beneficiary's education and employment experience, considered together, is equivalent to a U.S. bachelor's degree in Nursing.

The AAO accords no weight to the professor's purported assessment of the educational equivalency of the beneficiary's experience. Simply put, the evidence in this record of proceeding does not establish this professor (who, by the way, appears to have no credentials in Nursing, Health Services, or Medical and Health Services Management) as one whom USCIS regulations recognize as competent to render a reliable evaluation of experience and/or training in the specialty that the petitioner claims for this petition. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) (which indicates that, to merit consideration towards establishing a beneficiary's qualifications to serve in a specialty occupation position, an evaluation of training and/or experience must have been provided by "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.")

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not meet either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree, or of an unrestricted state license, registration or certification which authorizes her to fully practice and be immediately engaged in a specialty occupation in the state of intended employment.

Next, the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for an alien holding a foreign degree determined to be equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation. The beneficiary does possess a foreign bachelor's degree in nursing. However, the record contains no evaluation stating that the foreign degree she has is equivalent, in itself, to a U.S. bachelor's degree. The evaluation in the record is an evaluation of the beneficiary's education and employment experience, considered together.

Next, in order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹⁵
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires, as set out above, "an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience."

The evaluation of the beneficiary's credentials was prepared by professor [REDACTED] a professor of operations management and management science at the [REDACTED]

An unsigned, unattributed addendum to that evaluation states that the professor "has had extensive experience reviewing foreign academic and work experience credentials in all disciplines." It does not state that he has authority to grant college-level credit for experience in nursing at the [REDACTED] or any other college or university, or that the [REDACTED] or any other college or university where the evaluator has such authority, has a program for granting credit toward a nursing degree based on related experience. Neither that evaluation nor any other evidence in the record satisfies the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, as the record contains no evidence related to them.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the AAO here reiterates that the evaluation provided is not an evaluation of the beneficiary's foreign education alone, but an evaluation of her education and employment experience, considered together. The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is not, therefore, satisfied.

¹⁵ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It allows recognition of a beneficiary's qualification by a USCIS determination that his or her training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty. This criterion provides that, for each year of college-level training the alien lacks:

[I]t must be clearly demonstrated [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹⁶;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains an employment verification letter, dated October 27, 2009, from a doctor in the [REDACTED]. It states that the beneficiary worked for that department from March 5, 1999 through the date of that letter, and details her duties. It does not demonstrate the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in any particular specialty occupation; or that the alien has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion.

¹⁶ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Consequently, the petitioner has not established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As the petition fails to establish that the beneficiary is qualified to serve in any specialty occupation, the petition must also be denied for failure to qualify the beneficiary under 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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