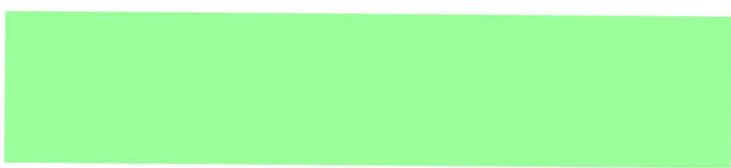




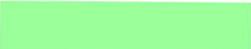
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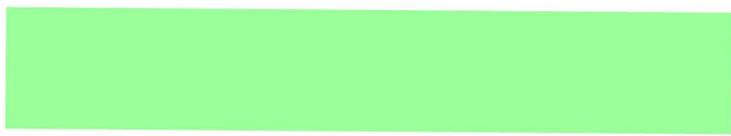


Date: **JAN 11 2013**

Office: VERMONT SERVICE CENTER

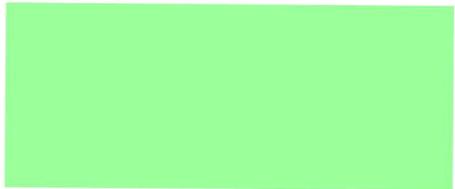
FILE: 

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner stated that it is a retirement living community with 336 employees. To employ the beneficiary in what it designates as an RN Nurse 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 failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

The issue on appeal 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 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business

specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

With the visa petition, counsel submitted evidence that the beneficiary has a bachelor's degree in nursing awarded by [REDACTED] in Pennsylvania.¹ Counsel also submitted a letter, dated December 23, 2010, from the petitioner's senior director of human resources. That letter states the following as the duties of the proffered position:

- Assign responsibility for direct resident care to nursing staff on the basis of staff qualification, size, and physical layout of the nursing unit, characteristics of the residential load, and the emotional, social, physical, psychological, religious, nutritional, and nursing care needs of the resident.
- Complete monthly staffing pattern for specific shift to meet state required nursing hours.
- Note and supervise that physician orders are implemented and carried out including the administering of medications and treatment plans as prescribed by the physicians.
- Supervise and evaluate performances of all nursing personnel on the unit and assure that all standards of [the petitioner] are enforced for the health, welfare, and safety of the residents.
- Participate in employee disciplinary procedures.
- Review and revise plans of care for problems, goals, and approaches, to assure that top care is given on a continuing basis.
- Make nightly rounds on assigned unit to assess the physical and emotional status of residents and initiate and supervise any required nursing interventions.
- Review MAR's (Medication and Treatment) and physician orders on a monthly basis to assure accuracy.
- Conduct and record in-service training of nursing staff to meet the needs of the residents as well as fulfill state requirements.
- Assess emergencies and administer emergency treatment and assist physician as required.
- Report any unusual or serious conditions or incidents as well as any change in the condition of resident.

¹ Subsequently, a second diploma was provided, showing that the beneficiary received a bachelor's degree in engineering from [REDACTED]. That degree, however, has no apparent direct relevance to any material issue in this case.

As to the educational requirements of the proffered position, the petitioner's senior director of human resources stated:

This position is not a standard registered nursing position. Rather, the [proffered position] supervises and trains the nursing staff of the facility. This position is managerial and administrative in nature as it focuses on supervising and coordinating nursing activity in order to maintain standards of patient care and does not focus the majority of the time on providing day-to-day care to patients as a standard registered nurse would.

[The petitioner] requires a Bachelor of Science in Nursing for all its nursing managerial positions because nurses with baccalaureate degrees in Nursing are required to manage the facility due to their extensive educational background. The [person in the proffered position] will need to respond effectively to all emergencies in a facility that contains over 350 residents and patients. Because of the nature of the duties and the level of responsibilities involved with this position, the minimum requirement is at least a Bachelor's Degree in Nursing or Health Care Management from an accredited university in the United States. Two years of experience in the nursing field is also required for this position.

On January 6, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center specifically requested that the petitioner, "Submit an explanation as to why a licensed Registered Nurse without a bachelor's degree could not perform [the duties of the proffered position]."

In response, counsel provided (1) 34 vacancy announcements; (2) an organizational chart; (3) a list of the petitioner's other RN nursing managers; (4) a list of the employees whom the beneficiary would supervise; (5) a letter explaining why the petitioner asserts that the proffered position requires a minimum of a bachelor's degree in nursing or its equivalent; (6) a letter, dated January 17, 2011, from the petitioner's senior director of human resources; and (7) counsel's own letter, dated January 31, 2011.

The discussion of the need to employ someone with a bachelor's degree in nursing in the proffered position states:

[The petitioner's] rationale for a BSN trained nurse is for the effective management of our facility due to their educational background in nursing research, computer applications/skills, leadership, ethics, along with other 'macro level' concepts that are part of the curriculum in the BSN program and these courses are not required at the two[-]year level associate nursing degree.

That unattributed statement further asserts the following as duties of the proffered position:

1. *Training and orientation* of all skilled nursing staff.
2. *Quality Assurance* – Overseeing patient care for 61 skilled nursing residents to provide safe and effective patient care. Disciplining or suspending employees who place patients at risk for not following medical protocols.
3. *Reporting to the DON* of any unsafe issues that might be suspected.
4. *Help with hiring* since we have a team approach to all interviews
5. Scheduling staff
6. Working with all of the *[the petitioner's] computer applications to deliver quality documentation.*

That statement further asserts:

Someone without a BSN credential will not be able to perform such duties or carry on the responsibilities due to the above mentioned reasons. Therefore, it has been a requirement for the past five years all RN supervisors must have a BSN credential to be hired so that [the petitioner] will have effective personnel in such positions.

In his January 17, 2011 letter, the petitioner's senior director of human resources reiterated the previously provided description of the duties of the proffered position.

In her January 31, 2011 letter, counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as evidence that the proffered position requires a bachelor's degree. In that letter, counsel asserted that the proffered position is a medical and health services manager position. Counsel asserted that the proffered position is not a standard registered nurse position, but requires a registered nurse license because it involves some registered nursing duties.

The director denied the petition on February 15, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, counsel provided, *inter alia*, an evaluation of the proffered position, a printout of content from a web site maintained by the U.S. Department of Veterans Affairs, and a brief.

The evaluation of the proffered position was prepared by a professor of radiation oncology and internal medicine at the [redacted]. The evaluator stated:

I am providing this Professional Evaluation based on my experience a) as a professor and evaluator of credentials at [redacted] and b) as an accomplished medical practitioner, including extensive practice in Hematology, Internal Medicine, Oncology, and other discipline, [sic] in which capacity I have become familiar with the requirements associated with various positions in medical treatment facilities and environments.

He also stated:

Further, I have been a physician in the field of oncology working in coordination with medical staff partners for the past 14 years, and have thus gained extensive familiarity with work in the field of nursing, and the requirements for different nursing positions.

The evaluator stated that bachelor's degree programs in nursing exist to train people for the more advanced nursing positions, that the duties of R.N. Nurse Managers require a theoretical knowledge of nursing and medical science, and that the knowledge necessary to perform those duties can only be attained through the completion of a bachelor's degree in nursing or the equivalent.

On appeal, counsel stated:²

The Veteran's Administration, the nation's largest employer of registered nurses has already established the baccalaureate degree as the minimum preparation of its nurses for promotion beyond entry-level beginning in 2005

Counsel also stated:

The BSN in the instant case is essential to performing the job duties in a reasonable manner. Seventy-five percent (75%) of the duties of this position involve non-patient care. They are administrative duties involving leadership, management and quality assurance.

Counsel further stated:

[A] BSN program provides individuals a background in management, leadership, ethics, regulatory compliance together with the clinical studies preparing graduates for leadership and supervisory roles.

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 AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I); which is satisfied if a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

² Counsel cited no authority for this assertion.

In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook*, supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

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

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

More specifically, the *Handbook* describes the following duties as typical of registered nurse positions:

Registered nurses *typically* do the following:

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm> (last visited January 9, 2013) (emphasis added).

However, the *Handbook* also states, "Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides." *Id.*

The *Handbook* makes clear that the duties attributed to the proffered position are within the ambit of the duties of some registered nurses, some of whom serve in a supervisory capacity. Applying the preponderance of the evidence standard, the AAO finds that the duties described by the petitioner appear to comport closest with the duties of a "Registered Nurse," as described in the *Handbook*.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

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

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

Education

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete. All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

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

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited January 9, 2013).

The *Handbook* confirms counsel's assertion that bachelor's degree programs in nursing offer more instruction in leadership. This likely accords them an advantage in seeking promotion. The *Handbook* does not, however, confirm counsel's assertion that a bachelor's degree is essential to entry into supervisory registered nurse positions.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of registered nursing, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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.

Counsel did provide 34 vacancy announcements, as was stated above. They are for, *inter alia*, positions for supervisory nursing positions; however, none of the announcements contain a description of duties that is sufficiently similar to the description of the duties of the proffered position that the AAO can determine that the positions announced are parallel to the proffered position.

The positions announced are with hospitals, a multi-specialty medical group, the [REDACTED], residential nursing facilities, homecare companies, companies that manage hospitals, a BioPharmaceuticals services company, and the U.S. Department of Veterans Affairs. Most of them do not appear to be retirement communities.

Many of the vacancy announcements provided state that the positions they announce require a minimum of a bachelor's degree in nursing. Some are for positions that require registered nurses with bachelor's degrees. The AAO observes that a registered nurse with a bachelor's degree would not necessarily have a bachelor's degree in nursing. One position calls for a bachelor's degree in nursing or the equivalent, but does not state what the hiring authority would consider to be equivalent to a bachelor's degree in nursing. Three announcements state that they are for positions that require a bachelor's degree in nursing or an equivalent combination of education and experience, but do not state what the hiring authority would consider to be a combination of education and experience equivalent to a bachelor's degree in nursing.

Further, even if all of the vacancy announcements were for positions in similar companies in the petitioner's industry, which they are not, and even if all were demonstrated to be for positions

parallel to the proffered position, which they have not been, and even if all indicated a bachelor's degree or the equivalent in a specific specialty to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 34 vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

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

Also, the petitioner has designated the proffered position as a Level II position on the LCA, indicating that it is a position for an employee able to perform moderately complex tasks that require limited judgment. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in nursing or its equivalent, the petitioner would be obliged to demonstrate that other Level II registered nursing positions, positions for employees able to perform moderately complex tasks that require limited judgment, require a minimum of a bachelor's degree in nursing or its equivalent, a proposition that appears to be contradicted by the *Handbook*.

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

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 registered nursing 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.

⁴ 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 34 job postings with regard to determining the common educational requirements for entry into parallel positions in similar retirement communities. 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 a supervisory registered nurse position required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The evaluation submitted on appeal observes that the proffered position is supervisory. It also implies that, because it is supervisory, the proffered registered nurse position requires a bachelor's degree in nursing. None of the other evidence submitted, however, supports the proposition that all supervisory registered nurse positions require a minimum of a bachelor's degree in nursing or its equivalent.

The AAO does not contest the evaluator's assertion that bachelor's degree programs in nursing exist to train people for the more advanced nursing positions. That, however, does not appear to be the issue in this case. The issue here is whether the proffered position itself requires a minimum of a bachelor's degree in nursing.

Further, although the evaluator states that, as a professor and evaluator of credentials and as a medical practitioner, he has "extensive familiarity with work in the field of nursing, and the requirements for different nursing positions," the record contains no evidence to support his self-certification that he is extensively familiar with the requirements of various nursing positions.

Neither the body of the evaluation nor the attached résumé and list of publications and presentations establishes that the evaluator is an expert in the area in which he presents himself as such. No evidence in the record of proceeding establishes that the evaluator has in any way attained such knowledge about the actual performance requirements of positions such as the one proffered here that his opinion should be accorded any deference by USCIS. The record contains no indication of scholarly research conducted by the professor on the specific area upon which he is opining; books, articles, or treatises authored by him in the area of claimed expertise; or recognition by professional organizations as an authority on the educational requirements of supervisory nursing positions. As the professor has not established his credentials as an expert on industry hiring standards, his opinion in this area merits no special weight and is not persuasive.

Notwithstanding the absence of any evidence of expertise, the evaluator's opinion is based entirely upon his professed personal knowledge. The evaluator cites no studies, reports, statistics, other authoritative references, or any substantive basis for his conclusions.

For all of the above reasons, the AAO accords no probative weight to the evaluation provided. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or

unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

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

Next, the AAO will discuss the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the proffered position.⁵

The petitioner provided a list of the three people it claims to employ in the proffered position. It stated that two of those people have bachelor's degrees in nursing, and that the third does not. It stated that, when that third person retires, she will be replaced by a person with a bachelor's degree in nursing. No evidence was submitted to corroborate the claimed degrees. 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).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Scheduling and assigning nurses, supervising and evaluating nurses, participating in employee disciplinary procedures, assuring that physicians' orders are carried out, reviewing and revising care plans, etc., contain no indication of specialization and complexity sufficient to require a bachelor's degree in nursing. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than registered nurse positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁶ For the reason discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

⁵ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁶ As noted above, the petitioner has designated the proffered position as a Level II position on the submitted Labor Condition Application (LCA), indicating that it is a position for an employee who has a good

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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

understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. 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 specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.