



U.S. Citizenship
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Services

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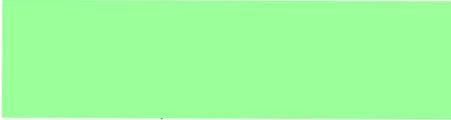


Date: **JAN 25 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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 director, California Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 petition, the petitioner claims to be an assisted living facility for the elderly, and it seeks to employ the beneficiary in what it designates as a health service manager position. The petitioner, therefore, endeavors to classify the beneficiary 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 proffered position was not a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

Specialty occupation means an occupation which requires [(1)] 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 requires [(2)] 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 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's decision denying the petition; and (5) the petitioner's Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

In an undated statement submitted with the petition, the petitioner claims that it operates a two-home residential care facility for the elderly. On the Form I-129 petition, it also claims that it was established in 2006 and currently employs 6 persons.

Regarding the proffered position, the petitioner claimed that it required the services of the beneficiary as a health services manager, and claimed that her duties would be as follows:

1. Plan, direct, coordinate and supervise the delivery of healthcare;
2. Improve efficiency in healthcare facilities and the quality of the care[;]
3. Serve as a case manager of the residents and monitor their health developments;
4. Coordinate perishable and non-perishable food supplies, in accordance with residents' diets, preferences and physicians' instructions;
5. Supervise and regularly audit the care giver in charge with medication management;
6. Function as a liaison between the physicians, nursing staff, allied healthcare professionals, residents and their families;
7. Ensure that residents thrive in a community that is pleasant, active, and supportive for all residents;
8. Supervise and manage the work of the care givers team[;]
9. Coordinate residents' weekly activity schedule, both indoor and outdoor[;]
10. Work with the Executive Director to develop and maintain relationships with local schools, businesses and social organizations to establish community resources;
11. Ensure the facility and its equipment and supplies are neat, clean, safe and utilized appropriately at all times;
12. Ensure facility policies, procedures, and guideline[s], as well as local and state regulations are met and followed by everyone in the facility;
13. Protect and promote resident rights; including confidentiality, privacy, dignity, and freedom from abuse[;]
14. Insure finances are handled accordingly and budgets are set[;]
15. May perform other duties as assigned.

The petitioner concluded by stating that a qualified candidate for the proffered position must possess a minimum of a "B.SC. degree with a major in Administration." The petitioner submitted a copy of an educational credentials evaluation from Educational Evaluators International, Inc. demonstrating that the beneficiary possessed the U.S. equivalent to a bachelor's degree in public administration.

On November 4, 2011, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary as well as specific documentation demonstrating that the petitioner met one of the four alternative criteria in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner responded on January 26, 2012, submitting several documents in response to the director's requests. The petitioner submitted the following updated description of the proffered position:

1. **PATIENT MEDICATION:** Our facility administers medication to our residents. Some of the medications are controlled substances. It is the administrator's duty to make sure that the facilities are stocked with the medication necessary for each patient, that the medication is locked up, properly accessed by authorized employees, inventory is strictly logged and controlled. The administrator signs off on each delivery of controlled or prescribed substances to the facility and is personally responsible for the inventory and logging of all medications.

The administrator does not administer the medication, but reviews records of each patient to make sure that the nurses are administering the medication in a timely manner. If anything is missing or out of order it is the administrator's failure to control the medication inventory.

Level of responsibility: The administrator answers directly to the company's owners. The administrator is responsible for the appropriate administration of all medication, including controlled substances, by all the nursing staff. In the event that anything is missing or irregular with the pharmaceutical inventory, it is the administrator's responsibility and culpability.

The facility's license and ability to operate depends on the vigilance and responsibility of the administrator.

Percentage of time: 5%

2. **HEALTHCARE SERVICES:** The administrator does not personally provide the services but has to make sure that each patient is given the therapies prescribed by the physicians. That is, every physical therapy appointment, etc. must be coordinated with the service provider, physician, family and insurance company.

Level of responsibility: The administrator is personally responsible for each patient being provided with the appropriate care at the appropriate time. This involves insurance, personnel, transportation and other logistics.

Estimated Time Percentage: 20%

3. **PERSONNEL:** The Administrator supervises and manages all personnel from janitors to nurses and everything in between. This includes training, scheduling, monitoring the quality of service, resolving inter-personal issues and any other issue involved with human resources.

Level of Responsibility: The Administrator will report any issue or problem directly to the business owners, will recommend hiring or firing or disciplinary action.

Estimated Time Percentage: 100% - The Administrator must be aware and proactive in this area at all times.

4. **FINANCES and INSURANCE:** The administrator will set up a budget for each facility taking into account the supplies and services required by each resident and will present the budget to the owner for approval. The administrator will bill insurance companies for services provided to the residents and invoice unpaid bills to the residents' families. The administrator will correspond with the insurance companies and physicians whenever further explanation is needed for any particular charge and will insure that the facility is paid for its services at the best rate possible. The administrator will have signature authorization on a bank account for each facility and will pay the bills in a timely manner, including payroll. The administrator will negotiate pricing with vendors.

Level of Responsibility: Answerable directly to the owner. Responsible for all financial aspects of the business.

Percentage of time: 15%

5. **SUPPLIES and FOOD:** The administrator is responsible for each facility being supplied with everything it needs to function. That means that the administrator is responsible for inventory of all items from syringes to toilet paper. The administrator must also make sure that each resident is being fed the diet recommended by his or her physician. That means monitoring each resident's needs and ordering the right type of perishable and non-perishable foods to ensure a proper, fresh, high quality diet for everyone.

Level of Responsibility: Answerable directly to the owner. Orders food and supplies directly from vendors and pays the bills.

Percentage of time: 5%

6. **FACILITIES MANAGEMENT:** The administrator is responsible for making sure that the facilities are functioning properly, including plumbing, electric, fixtures, furniture, equipment and all outdoor and indoor areas. In the event that a professional must be called to fix a problem it is up to the administrator to do so. The administrator must ensure that the facilities are clean, orderly, and up to code.

Level of Responsibility: Answerable to the owner. Responsible for all workmen brought into the facility to do repairs or any need for cleaning or repair.

Percentage of time: 100%. The administrator must keep a watchful eye at all times for any irregularity or any need for cleaning or repair.

7. **RESIDENTIAL LIFE ADMINISTRATION:** The administrator must plan, coordinate and manage activities for the residents. Each resident, depending on level of function and activity, must have something to do with their time. It is up to the administrator to see to it that each resident is provided with indoor and/or outdoor activities to occupy their time in a pleasant manner according to each one's abilities.

Level of Responsibility: Responsible for all activities. Reports directly to owner. Must schedule and monitor delivery of activities and services.

Percentage of time: 15%

8. **CASE MANAGEMENT:** The administrator must be familiar with each resident's condition, needs, wants, family-situation and physician orders. The administrator must be aware of each resident's condition and report any changes in health, mood, or mental capacity to the resident's physician and family. The administrator must address the requests, inquiries and demands of each resident and his or her family, including coordinating with the resident's physician, nurse or therapist to address such concerns.

As required by state law, the administrator must ensure that residents are not abused, that the residents and the families are aware of their rights as patients, and that all personnel and outside contractors are properly trained and do not abuse the residents or cause them any indignity or invade their privacy in any way.

Level of Responsibility: Reports to the owner. Responsible for addressing and coordinating all resident and family concerns. Any complaints of abuse, invasion of privacy, confidentiality or violation of patient's rights must be addressed by the administrator promptly.

Percentage of time: 25%

9. **LICENSING COMPLIANCE:** The administrator will make sure that the facility meets or exceeds all licensing standards, file all reports, applications, audits and any other paperwork required to maintain the facility's license.

Level of responsibility: Reports directly to owner. The administrator has the facility's license in her hands.

Percentage of time: 15%

The petitioner also submitted a copy of the beneficiary's administrator certificate, demonstrating that she completed the Residential Care for the Elderly Administrator Certification Program on November 11, 2011.

On February 17, 2012, the director denied the petition. Specifically, the director concluded that the record did not establish that the proffered position met any of the four supplemental criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director acknowledged that the duties of the proffered position appeared akin to those of a medical and health services manager as described by the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, but concluded that the *Handbook*, upon which USCIS routinely relies in determining whether a position qualifies as a specialty occupation, did not state that at least a bachelor's degree in a specific specialty was normally required for entry into the occupation.

On appeal, counsel for the petitioner contends that the director's findings were erroneous and asserts that the *Handbook* clearly requires a degree in a specific specialty, namely administration, for entry into the occupational category. Counsel submits additional documentation, including a copy of the foreign degree certificate for the petitioner's current health services manager, in support of the contention that the proffered position is a specialty occupation.

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The petitioner contends, and the director agreed, that the proffered position is akin to that of a medical and health services manager. The AAO does not dispute that a review of this occupational category reveals similarities to the proffered position. According to the *Handbook*, this occupational category is described as follows:

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 January 16, 2013). According to the *Handbook*, medical and health services managers plan, direct, coordinate, and supervise the delivery of healthcare, and are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system. In this matter, the description of the proffered position

indicates that the beneficiary will be responsible for overseeing the entire residential care facility of the petitioner, and will refrain from providing direct patient care.

A review of the *Handbook's* education and training requirements for this occupational category, however, indicates that it does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into this occupation in the United States. Therefore, this classification, contrary to counsel's claims, 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. 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 January 16, 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 counsel's assertions on appeal that the requirement of a degree in administration establishes that this occupation requires a degree in a specific specialty.

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.

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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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 such 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide, standard requirement of at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. The only evidence submitted by the petitioner that responds to this criterion is the beneficiary's administrator certification, demonstrating that she has completed the Residential Care for the Elderly

Administrator Certification Program. While the AAO notes and concurs with the petitioner's statement that California requires administrator certification in order to obtain employment in all similar-staffed residential care facilities in the petitioner's industry, this does not equate to a common specialty-degree requirement for entry into the proffered position. In fact, a review of Section 87405(d)(6) of the California Community Care Licensing Manual indicates that while all facilities shall employ a certified administrator, an administrator need only possess a high school diploma or equivalent to qualify for certification. Moreover, Section 87405(e) and (f) indicate that, when a facility has more than sixteen residents, the administrator must have either fifteen (15) college or continuing education semester or equivalent quarter units, or two years of college, depending on the total number of residents in a facility. Therefore, there is no indication, as claimed by the petitioner and counsel, that the California administrator certification requirements establish that a bachelor's degree or its equivalent in a specific specialty is routinely required among parallel positions in similar organizations. While residential care facilities may be required to hire only certified administrators, this standard certification requirement does not equate to the requirement of a common specialty degree as a prerequisite for entry into the occupation.

For the reasons set forth above, the petitioner has failed to establish that there is a common, specialty-degree requirement for parallel positions in organizations similar to the petitioner. The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a bachelor's or higher degree in a specific specialty or its equivalent can perform the duties associated with the position. 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 now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Although evidence of the petitioner's past hiring practices was requested in the RFE, the petitioner failed to submit any evidence that related to this criterion. For the first time on appeal, counsel asserts that the petitioner's current health services manager, Diana Kenez, holds a degree in bookkeeping and agrarian economics from her native Romania. Although a copy of her foreign degree certificate and transcript is provided, this evidence will not be considered. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition

was adjudicated. The petitioner failed to submit the requested evidence and now submits it for the first time on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

There is no evidence in the record that the petitioner currently or has previously employed other persons in the position of health services manager. It should be noted that, even if the degree certificate of [REDACTED] was considered, there is no evidence establishing the nature of her position with the petitioner, and it is further noted that she is identified as the "owner" of the petitioner, and not as its health services manager, on the Form I-129 petition and supporting letters. Moreover, there is no evaluation of foreign educational credentials equating [REDACTED] degree to that of a U.S. bachelor's degree. Since the record is devoid of sufficient evidence that the petitioner currently or previously hired and employed directly-related, specialty, baccalaureate-degreed individuals to fill the proffered position, the petitioner has failed to satisfy this criterion.

The AAO further notes 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 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 required the individual to have a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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 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.¹ 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).

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 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.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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

¹ 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 specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).