

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **JUL 22 2013** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on September 6, 2011. In the Form I-129 visa petition, the petitioner describes itself as a home health agency established in 2000. In order to employ the beneficiary in what it designates as a clinical case manager position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on September 6, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. Counsel submitted a brief and additional evidence in support of this assertion.

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

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

In this matter, the petitioner stated in the Form I-129 petition that it seeks the beneficiary's services as a clinical care manager to work on a full-time basis. In a support letter dated August 12, 2011, the petitioner stated that the beneficiary will perform the following duties in the proffered position:

- Provide intensive case management services to elder patient, women and children after surgery
- Overseeing coordination of clinical treatment with help of clionical staff and therapist.
- Identify strengths and needs of individuals and families as they relate to the overall plan of care which has to be certified from Physician taking care of the patient.
- Make appropriate referrals to address social, environmental, medical and emotional problems;
- Respond to crisis situations and intervene to resolve immediate problems;
- Maintain up-to-date records for documentation of case activity to include electronic case management data entry; follow administrator's guidance.
- Attend the QA/QI meeting to meet JCHAO, HIPPA compliance.

(Errors in the original.) In its letter of support accompanying the initial I-129 petition, the petitioner

asserts that the minimum requirements for the proffered position are "a Bachelor's degree in Science or Nursing or a related area with relevant work experience." The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of his degree, his licenses and certifications, and his professional experience. The petitioner provided a copy of the beneficiary's diploma and transcript from [REDACTED] indicating that he was granted a Bachelor of Science in Nursing in May 2010. The petitioner also submitted the beneficiary's resume, in which he claims to hold a Registered Nurse (RN) license in Virginia and Washington, D.C., as well as other certifications.

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Medical and Health Services Managers" - SOC (ONET/OES) code 11-9111, at a Level I (entry level) wage.

Along with the Form I-129, the petitioner provided evidence in support of the petition, including its city business license and printouts from its website. The petitioner also submitted a copy of an undated job offer letter issued to the beneficiary. In this letter, the petitioner states the following regarding the duties of the proffered position:

As Clinical Case Manager, you will be responsible for overseeing all aspects of the coordination of clinical treatment for the individuals served by our company. Your duties will include directing the development of treatment plans for patients being transferred from hospital to home; overseeing the coordination of home patient care with home care nurses, speech therapist, rehabilitation personnel and other paramedical staff.

You are required to facilitate the transfer of patients and their plan of treatment from hospital to home, and ensuring constant communication with physicians, hospital discharge planners, and in-home staff nurses; directing and monitoring the in-home care staff in order to ensure proper execution of treatment plans. Your participation is expected in the development and implementation of procedures to comply HIPPA regulations. You are expected to coordinate the training seminars for home care nursing staff. You are required to attend QA/QI meeting and follow the instruction given by QA/QI coordinator.

(Errors in the original.) The AAO notes that the duties as outlined in the job offer letter differ from those provided by the petitioner in its August 12, 2011 letter of support. No explanation for the discrepancy was provided.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 31, 2012. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation. In the request, the petitioner was asked to provide, among other evidence, (1) a more detailed description of the work to be performed by the beneficiary, along with the percentage of time to be spent on each duty; (2)

documentation of the petitioner's hiring history for the proffered position; and (3) job descriptions for the other positions within the petitioner's employment and the approximate number of individuals occupying such positions.

On August 24, 2012, the petitioner responded to the director's RFE by providing a letter and additional evidence. In its letter, dated August 22, 2012, the petitioner provided the following description for the proffered position:

- ❖ Provide intensive case management services to Adult, geriatric patients, Women and children after Surgery (approximately 60% of his time will be spent for this activity).
 - Our 60% patient load is coming through discharge from Hospital and remaining 40% is coming from Physicians' offices. More than 50% from Hospital discharged patients have undergone surgery since we have large no. of orthopedic patients. When there is critical case after orthopedic or cardiac surgery, (whether adult, pediatric or psychiatric conditioned patient) [the beneficiary] will be responsible to manage some of those intensive case.
 - In addition to the above mentioned case, it is critical for Home Health Company to minimize the re-hospitalization rate for its patients in order to get appropriate reimbursement from Medicare and other insurance companies as well as to maintain the standard to participate for JCAHO.

- ❖ Overseeing coordination of clinical treatment with help of clinical staff and therapist (approximately 7% of his time will be spent for this activity)
 - In order to balance the therapy utilization rate, it is required to provide specific therapy to obtain the goal as per plan of treatment as well as limit the utilization rate so it can be comparable to national average.
 - Supervise the various discipline case managers for clinical aspect.

- ❖ Identify strengths and needs of individuals and families as they relate to overall plan of care which has to be certified from Physician taking care of patient (approximately 5% of his time will be spent for this activity)
 - This sentence requires more clarification. The Physician certifies the plan of care / Treatment for each patient. Since [the petitioner] serves variety of patients, we do hire various specialty case managers like Psychiatry case manager, Wound certified case manager, and Pediatric case manager. When patient has several diagnoses, [the beneficiary] has to allocate the patient to the specific specialty case manager based on patient OASIS (Outcome And Assessment Information Set). During recertification period if OASIS changes [the beneficiary] will allocate new discipline case manager if required. (Simple Example: Patient comes to [the petitioner] with primary wound diagnosis. If after recertification Patient has primary Psych diagnosis, then wound

certified case manager will pass on the case to Psychiatric case manager who has good Wound care experience. This process would be accomplished by [the beneficiary's] supervision and guidance.

- ❖ Make appropriate referrals to address social, environmental, medical and emotional problems. (approximately 3% of his time will be spent for this activity)
 - To obtain goal as per Plan of care / treatment patient requires additional help which needs to be addressed.
- ❖ Respond to crisis situations and intervene to resolve immediate problems (approximately 15% of his time will be spent for this activity)
 - When case manager could not meet the goal as per plan of care / Treatment or any case manager is on unannounced leave of absence [the beneficiary] will manage the case.
- ❖ Maintain up to data records for documentation of case activity to include electronic case management data entry, follow administrator's guidance (approximately 5% of his time will be spent for this activity)
 - In order to participate with Medicare and JCAHO home health agency has to maintain various updated reports like re-hospitalization report, infection control report, PT /INR report, OASIS report, Face to face report, patient satisfaction survey report.
- ❖ Attend the Quality assurance / Quality Improvement meeting to meet JCAHO, Health Insurance Portability and Accountability Act (HIPPA) compliance. (approximately 5% of his time will be spent for this activity)

(Above text appears as provided by the petitioner.) The petitioner also stated the following regarding the proffered position:

We want to clarify that the offered position is not Case manager but **Clinical Case Manager**. We have Clinical Case Managers to manage critical cases, coordinate with clinical staff, therapists and physicians, and to supervise skilled case services provided by Case managers. Since Case managers are RN and certified in specific discipline, Clinical case managers required to have advanced theoretical and practical knowledge to supervise Case managers.

* * *

The [proffered position] requires at least a bachelor's degree in Nursing plus demonstrated knowledge of the healthcare industry.

In response to the RFE, the petitioner provided additional documentation, including (1) evidence regarding the beneficiary's prior employment; (2) copies of the beneficiary's Virginia and

Washington, D.C. registered nurse licenses; (3) copies of certificates in the beneficiary's name; (4) documents regarding the qualifications of other individuals employed in the proffered position; (5) tax documents; (6) evidence related to the petitioner's business operations (including a certificate of accreditation, a deposit notice, a printout of the petitioner's corporate information); (7) job descriptions for several of the petitioner's positions; (8) several job postings; and (9) copies of previously submitted documents.

The director reviewed the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on September 6, 2012. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition. In support of the appeal, counsel submitted a brief and additional evidence.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge gained through the attainment of at least a baccalaureate degree in a specific discipline.¹ The AAO finds that the petitioner has not done so.

¹ The AAO notes that in the letter dated August 12, 2011, the petitioner indicated that it seeks to classify the beneficiary as "a Non-Immigrant of distinguished merit and ability." Prior to April 1, 1992, the H-1B category applied to persons of "distinguished merit and ability." The standard of "distinguished merit and ability" was defined in the regulations as "one who is a member of the professions or who is prominent in his or her field." On October 1, 1991, the *Immigration Act of 1990* ("IMMACT 90") deleted the term "distinguished merit and ability" from the general H-1B description; however, the implementation of this change was delayed until April 1, 1992. The *Miscellaneous and Technical Immigration and Naturalization Amendments of 1991* ("MTINA"), which was enacted on December 12, 1991, restored the standard of "distinguished merit and ability" to the H-1B category, but only as the qualifying standard for fashion models. There is no evidence that the proffered position in the instant case is for a fashion model.

While the petitioner has identified its position as that of a clinical case manager, the description of the beneficiary's duties in the record of proceeding lack the specificity and detail necessary to support the petitioner's contention that the position is a specialty occupation. The job description fails to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. Moreover, the petitioner's assertions with regard to the various educational requirements it identifies for the position are conclusory and unpersuasive, as they are not supported by the job description or substantive evidence.

The AAO observes that the petitioner has provided several job descriptions for the proffered position, none of which adequately convey the specific tasks the beneficiary is expected to perform to establish eligibility for H-1B classification.² The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will spend 60% of his time "provid[ing] intense case management services to Adult, geriatric patients, Women and Children after Surgery." The petitioner does not sufficiently explain how the beneficiary will be "providing" the provision of such services. On appeal, counsel asserts that "[t]he beneficiary does not directly provide treatment to patients"; however, the AAO observes that the record does not establish, the specific duties and tasks involved in the provision of providing "case management services."³ The petitioner further claims in its August 22, 2012 letter that the beneficiary will spend 7% his time "overseeing coordination of clinical treatment with help of clinical staff and therapist," 3% of his time "mak[ing] appropriate referrals," and 5% of his time maintaining records and entering electronic case management data. The AAO observes that 15% of the beneficiary's time involves the coordination of clinical treatment, making referrals, and maintaining records. Thus, the 60% of the beneficiary's time that the petitioner has allocated to "intense case management services" involves something other than these duties. Here, the petitioner has failed to demonstrate how the performance of the duties of the proffered position, as

² The AAO observes that with the original Form I-129 submission, the petitioner provided a letter dated August 12, 2011 containing a brief list of job duties of the proffered position, and an undated "job offer letter" addressed to the beneficiary that outlined the duties of the proffered position. In response to the RFE, the petitioner provided a description of the duties of the proffered position in a letter dated August 22, 2012, and also provided a separate job description of the proffered position. While there are similarities between the duties described in the various descriptions, the AAO observes that the duties differ substantially from document to document. For example, according to the job offer letter, the beneficiary is responsible for "directing the development of treatment plans for patients being transferred from hospital to home" and "coordinat[ing] the training seminars for home care nursing staff." These duties do not appear in the other documents.

³ The AAO notes that, 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).

described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

Additionally, the petitioner claims that the beneficiary will "[a]ttend the Quality assurance / Quality Improvement meeting to [comply with regulatory requirements]" and "[i]dentify strengths and needs of individuals and families as they relate to overall plan of care." As so generally described, the duties do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. That is, the overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations.

The job duties of the proffered position, as provided by the petitioner, do not convey the substantive nature of actual work that the beneficiary would perform. Rather, the job descriptions convey only generalized functions of the occupational category at a generic level. This type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

The AAO notes the various descriptions of the proffered position provided by the petitioner, and observes that the totality of the evidence fails to establish the substantive nature of the proffered position such that the AAO can ascertain in what capacity the beneficiary will actually be employed. Consequently, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation, and the appeal may be dismissed and the petition denied on this basis alone.

Further, in the instant case, the petitioner has provided inconsistent information regarding the requirements of the proffered position. The petitioner's various statements regarding the academic requirements for the clinical case manager position do not establish that the position qualifies as a specialty occupation.

That is, in a letter submitted with the Form I-129 petition, the petitioner initially asserted that the minimum requirements for the proffered position are "a Bachelor's degree in Science or Nursing or a related area with relevant work experience." Later in the letter, the petitioner stated that performance of the duties of the proffered position requires "a Baccalaureate degree."

In response to the RFE, the petitioner stated that "[t]he [proffered position] requires at least a bachelor's degree in Nursing plus demonstrated knowledge of the healthcare industry." Also in response to the RFE, the petitioner provided a document entitled "Job Description Clinical Case Manager," which describes the requirements for the proffered position as a "baccalaureate degree (BSN) from an approved school of professional nursing, who is licensed as a registered nurse by Virginia Board of Nursing"; "one (1) year of clinical experience in large in – patient / acute care

facility"; and "Advanced Cardiac Life Support (ACLS) certification." The petitioner did not provide an explanation for the discrepancies in the requirements for the position.

According to the petitioner, the proffered position can be performed by an individual with a "Bachelor's degree in Science" or by an individual with "a Baccalaureate degree" (without further specification). The AAO observes that the minimum educational requirements stated by the petitioner for the proffered position do not establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate 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. 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 (including a "Bachelor's degree in Science" or "a Baccalaureate degree" without further specification) 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).⁴

Again, the petitioner in this matter has provided inconsistent information as to the requirements for the proffered position of clinical case manager. Within the record of proceeding, the petitioner claims that the duties of the proffered position can be performed by an individual who possess (1) a bachelor's degree (no specific specialty); (2) a bachelor's degree in science; or (3) a bachelor's degree in nursing. No explanation for the inconsistent information was provided. Notably, the petitioner's assertion that the duties of the proffered position can be performed with only a general-purpose degree are tantamount to an admission that the proffered position is not in fact a specialty

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Id.

occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In the instant case, the petitioner has failed to establish nature of the proffered position and in what capacity the beneficiary will actually be employed. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an

issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, assuming, *arguendo*, that the duties of the proffered position as described by the petitioner would in fact be the duties performed by the beneficiary, the AAO will analyze them and the evidence in the record of proceeding to determine whether the proffered position as described would qualify as a specialty occupation. To make its determination as to whether the employment described by the petitioner qualifies as a specialty occupation, the AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a clinical care manager position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ As previously discussed, the petitioner designated the proffered position in the LCA under the occupational category "Medical and Health Services Managers."

The AAO reviewed the chapter of the *Handbook* entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Medical and Health Services Managers" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled "How to Become a Medical and Health Services Manager" states, in pertinent part, the following about this occupational category:

Education

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.

⁵ 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/>.

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Medical and Health Services Managers, on the Internet at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited July 19, 2013).

When reviewing the *Handbook*, the AAO must note that the petitioner designated the wage level of the proffered position as a Level I position on the LCA.⁶ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant U.S. Department of Labor (DOL) explanatory information on wage levels, the beneficiary will be closely

⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance indicates that a job offer for a research fellow, a worker in training, or an internship indicates that a Level I wage should be considered. Thus, the petitioner's designation of the proffered position as a Level I (entry) position strongly suggests that the beneficiary will not serve in a high-level or senior position in the occupation.

The *Handbook* does not support the assertion that at least a bachelor's degree *in a specific specialty* is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that although possession of an advanced degree is a common pathway to work in this field, some facilities hire those with on-the-job experience instead of formal education. The *Handbook* does not state that such experience must be equivalent to at least a bachelor's degree in a specific specialty. The narrative of the *Handbook* provides as an example that managers of physical therapy may be experienced physical therapists who have administrative experience. Thus, for this occupation, a baccalaureate or higher degree in a specific specialty or its equivalent is not normally the minimum requirement for entry.

Although the *Handbook* states that medical and health services managers typically need at least a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be in a specific specialty. The narrative of the *Handbook* reports that a degree in health services, long-term care administration, public health, public administration, or business administration are common for entry into the occupation. Notably, a degree in nursing is not listed in the *Handbook* as an acceptable field of study for these positions.

The *Handbook* indicates that degrees in disparate fields (e.g., health services, long-term care administration, public health, public administration, and business administration) are acceptable for entry into the occupation. Thus, it does not appear that a degree in a specific specialty, or its equivalent, is necessary for entry into this occupation. For example, absent evidence to the contrary, the fields of health services and business administration are not closely related specialties.⁷

⁷ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is

Accordingly, as such evidence fails to establish a minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Notably, the *Handbook* states that a degree in business administration is acceptable. 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. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

Thus, for the reasons discussed above, the AAO does not find that the *Handbook* supports a claim that "Medical and Health Services Managers" comprise an occupational group for which at least a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation.

The director reviewed the job descriptions provided by the petitioner and found that the proffered position falls under the occupational classification of "Registered Nurses." The subchapter of the *Handbook* entitled "How to Become a Registered Nurse" states, in pertinent part, the following about this occupational category:

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

directly related to the duties and responsibilities of the particular position.

experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Registered Nurses, on the Internet at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4> (last visited July 19, 2013).

The *Handbook* does not report that, as an occupational group, "Registered Nurses" require at least a bachelor's degree in a specific specialty, or its equivalent. The *Handbook* states that 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. In addition, there are programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field. Thus, the *Handbook* does not indicate that a bachelor's degree (or higher) in nursing, or its equivalent, is normally the minimum requirement for entry into the occupation.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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'r 1972)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding 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 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. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The record of proceeding does not contain any evidence from an industry professional association to indicate that a degree is a minimum entry requirement. The petitioner did not submit any letters or affidavits from firms or individuals in the industry.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner provided several job postings. The AAO reviewed the evidence submitted, but finds that the documentation does not establish that the petitioner has met this prong of the regulations.

In the Form I-129 petition, the petitioner describes itself as a "home health agency providing personal and skilled care to patient[s] at home according to [p]hysicians' order[s]." ⁸ The petitioner indicated that it was established in 2000 and has 500 employees. While the petitioner reported its gross annual income as approximately \$11.2 million, it listed its net annual income as "Unknown." No explanation was provided.

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence,

⁸ The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541511. The North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed July 19, 2013).

According to the U.S. Department of Commerce, Census Bureau website, the NAICS code 541511 corresponds to "Custom Computer Programming Services," which is comprised of "establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer." U.S. Dep't of Commerce, U.S. Census Bureau, 2007 NAICS Definition, 541511-Custom Computer Programming Services, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed July 19, 2013). No explanation for this designation was provided.

postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

The AAO reviewed the job advertisements submitted by the petitioner. The petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Upon review of the documentation, the petitioner fails 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.

More specifically, some of the advertisements do not state a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent. For example, the advertisement from Riverside Community Services seeks an individual with an "RN Degree (BSN, Associate Degree or Diploma)." Thus, it is evident that a bachelor's degree is not required for this advertised position. The advertisement for a registered nurse at Sentara (Home Care-Chesapeake) stated that a "BSN is preferred." Similarly, the advertisement for a home health RN clinical manager at Lorian Health states that all applicants must hold a California RN license. It further states that the "[i]deal candidate will have at least 4 years of nursing Degree." Obviously, a *preference* for a degree (or in the case of Lorian Health, a certain number of years in a degree program) is not an indication of a requirement for at least a bachelor's degree in a specific specialty, or its equivalent. The posting for RNs, case managers, and RN clinical liaisons at Gentiva Health Services does not list the requirements for each position. Instead, it is listed under the monster.com educational level of "bachelor's degree." No specific specialty is indicated. As previously discussed, 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 bachelor's degree, 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).

Moreover, as the petitioner has failed to adequately establish the duties of the proffered position, the AAO is unable to ascertain what duties render another position "parallel" to the proffered position. However, the AAO notes that the advertisement for infection control practitioner indicates that the duties of the advertised position involve "the provision and oversight of an effective Infection Control, Risk Reduction Program." Such duties do not appear in any of the job descriptions provided by the petitioner. The AAO also observes that the advertisement from Gentiva Health Services does not provide a description of any of the positions it is seeking to fill through the advertised recruitment event.

Finally, none of the advertisements contain sufficient information regarding the advertising organizations such that the AAO can conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

The AAO observes that even if all of the job postings indicated that a requirement of bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.⁹ 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").

Thus, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty, or its equivalent, for organizations that are similar to the petitioner, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty (or its equivalent) for entry into the occupation in the United States.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions to the proffered position, among similar organizations to the petitioner.

The documents provided do not establish that a requirement of a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

⁹ According to the *Handbook's* detailed statistics on Medical and Health Services Managers, there were approximately 303,000 persons employed in this occupation in 2010. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Medical and Health Services Managers, on the Internet at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-1> (last visited July 19, 2013).

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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted tax documents, a certificate of accreditation, a deposit notice, a printout of the petitioner's corporate information, printouts from its website, and job descriptions for several of its positions. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of clinical case manager.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. The petitioner has not established that the duties of the proffered position require at least a baccalaureate degree in a specific specialty, or its equivalent. Additionally, the AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition.

More specifically, the LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, the wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁰

The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or is equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that

¹⁰ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf

directly relates to the proffered position. Specifically, the petitioner fails to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, 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 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. 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.

The AAO observes that the petitioner has indicated that the beneficiary's educational background, certifications, and prior nursing experience will assist him in carrying out the duties of the proffered position. However, 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. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner fails to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In response to the director's RFE, the petitioner submitted documents related to three individuals who the petitioner states are currently employed in the proffered position. Specifically, the petitioner provided a copy of a diploma from [REDACTED] indicating the [REDACTED] was conferred a Bachelor of Science degree in May 2010. The AAO notes that no specific specialty is stated on the diploma, and no supplemental evidence was provided to establish that the degree is in a particular specialty. Furthermore, the petitioner provided a copy of a diploma from [REDACTED] indicating that [REDACTED] was conferred a BSN in July 2011. In addition, the petitioner provided a copy of a diploma indicating that [REDACTED] was conferred a BSN in May 2008.¹¹ The petitioner submitted a pay statement and Form W-2, Wage and Tax Statements, issued to the individuals. While such documentation indicates that the petitioner employs the individuals, the AAO notes that the petitioner failed to submit sufficient evidence to establish that the individuals are employed as clinical case managers.

The petitioner stated in the Form I-129 petition that it has 500 employees and was established in 2000 (approximately eleven years prior to the filing of the H-1B petition). Notably, the petitioner

¹¹ The petitioner also submitted documentation indicating that two of the individuals are enrolled in master degree programs. However, the petitioner does not claim and has not provided documentation to establish that a master's degree is required for its proffered position.

did not specify the total number of individuals that have held the proffered position and how many of them had a bachelor's degree in a specific specialty, or its equivalent. The petitioner has presented evidence indicating that two individuals hold BSN degrees. Without further information, evidence regarding two employees over an eleven year period is not persuasive to establish the petitioner's normal hiring practices.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the 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 AAO acknowledges that the petitioner may believe that the nature of the specific duties of the position in the context of its business operations is so specialized and complex that the 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 AAO reviewed all of the evidence in the record that was before the director, including the job descriptions and the evidence regarding the petitioner's business operations, such as a certificate of accreditation, a deposit notice, a printout of the petitioner's corporate information, printouts from its website, job descriptions for several of its positions, and tax documents. The AAO finds that the petitioner's statements and the submitted documentation fail to support the assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, the AAO also reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the 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 AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

A 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 has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.