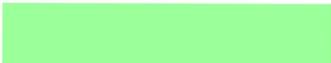


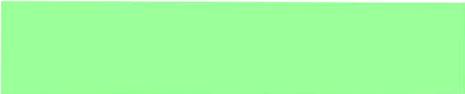
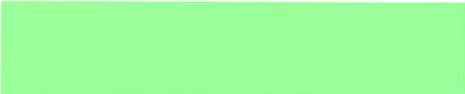


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 13 2013** OFFICE: CALIFORNIA SERVICE CENTER 

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

On the Form I-129 visa petition, the petitioner describes itself as a medical services firm with three employees. In order to employ the beneficiary in what it designates as a Director of Medical Services 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 acting director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, present counsel asserted that the acting director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

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

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a

specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

With the visa petition, previous counsel submitted evidence that the beneficiary has a master's degree in medicine, with a specialty in Traditional Mongolian Medicine bestowed by the National Medical University of Mongolia. An evaluation submitted pertinent to the beneficiary's education states that the beneficiary's education is equivalent to a master's degree in medical science and medicine granted by a U.S. institution.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a director of medical services position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9111.00, Medical and Health Services Managers. The LCA further states that the proffered position is a Level I position.

Counsel also provided an undated letter from the petitioner's president which describes the petitioner as a provider of chiropractic healing, acupuncture, and acupressure. The letter also contains the following description of the duties of the proffered position:

- Develop and implement organizational policies and procedures;
- Establish objectives, evaluative and operational criteria;
- Conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting;
- Establish work schedules and assignments for staff, according to workload, space and equipment availability;
- Direct, supervise and evaluate work activities of medical and other personnel;
- Direct and conduct recruitment, hiring and training of personnel;

- Develop and maintain computerized record management system to store and process data such as personnel activities and information, and to produce reports;
- Monitor the use of diagnostic services and staff to ensure effective use of resources and assess the need for additional staff, equipment, and services;
- Act as a liaison between medical personnel, patients, and physicians.

The petitioner's president also stated, "To be qualified for the position, we require a minimum of a Bachelor's Degree in Healthcare Management, Medical Sciences, Public Health, or related degree."

On June 29, 2010, the service center issued the RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. In that RFE, the service center appeared to assert that the proffered position is an administrative services manager position as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

In response, counsel submitted an expanded description of the duties of the proffered position. He also asserted that the proffered position is not an Administrative Service Manager position as described in the *Handbook*, but a Medical and Health Services Manager position, and cited the *Handbook* for the proposition that such a position requires a bachelor's degree.

The acting director denied the petition on August 9, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or the equivalent. More specifically, the acting director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the acting director again analyzed the proffered position as a position described in the *Administrative Services Managers* chapter of the *Handbook*.

On appeal, present counsel asserted that the proffered position should be analyzed as a medical and health services manager position as described in the *Handbook*, and that such a position requires a bachelor's degree. In support of the appeal, present counsel submitted (1) an evaluation, dated October 5, 2010, of the proffered position; (2) a letter, dated September 20, 2010, from the petitioner's president; and (3) 13 job vacancy announcements. The vacancy announcements will be described and discussed below.

The October 5, 2010 evaluation of the proffered position was prepared by an associate professor of the [REDACTED] New York. The evaluator stated that he had reviewed the descriptions of the duties of the proffered position and concluded that those duties could not be adequately performed by a person without bachelor's-level training in healthcare management, medical sciences, public health, or a related field.

The petitioner's president's September 20, 2010 letter explained various ways in which hiring the beneficiary would benefit the petitioner; and discussed various duties of the proffered position. She stated that her office had hired a chiropractor in July 2010 and intended to hire chiropractic assistants within a year. She further noted various ways in which the beneficiary's work experience had prepared him for the proffered position.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*,<sup>1</sup> on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The AAO has reviewed the *Handbook* chapter pertinent to Administrative Services Managers and finds no flaw in the acting director's finding that the proffered position is such a position or in her finding that, pursuant to analysis as an administrative services manager, the proffered position has not been demonstrated to be a specialty occupation position. Further, counsel did not appear to contest that, if the proffered position were determined to be an administrative services manager position, it would not be a specialty occupation position. For the sake of analysis, though, in order to address counsel's assertions pertinent to the educational requirements of medical and health services manager positions, the AAO will assume, *arguendo*, that the proffered position is a medical and health services manager position, as urged by counsel.

In the chapter entitled "Medical and Health Services Managers," the *Handbook* states the following about the educational requirements of positions:

Most medical and health services managers have at least a bachelor's degree before entering the field; however, master's degrees also are common. Requirements vary by facility.

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<sup>1</sup> The AAO's references to the *Handbook* are to the 2012-2013 edition available online. The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>.

## **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.

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.

## **Important Qualities**

**Analytical skills.** Medical and health services managers must be able to understand and follow current regulations and be able to adapt to new laws.

**Communication skills.** These managers must be able to communicate effectively with other health professionals.

**Detail oriented.** Medical and health services managers must pay attention to detail. They might be required to organize and maintain scheduling and billing information for very large facilities, such as hospitals.

**Interpersonal skills.** Medical and health services managers need to be able to discuss staffing problems and patient information with other professionals, such as physicians and health insurance representatives. They must be able to motivate and lead staff.

**Problem-solving skills.** These managers are often responsible for finding creative solutions to staffing or other administrative problems.

**Technical skills.** Medical and health services managers must be able to follow advances in health care technology. For example, they may need to use coding and classification software and electronic health record (EHR) systems as their facility adopts these technologies

### **Advancement**

Medical and health services managers advance by moving into more responsible and higher paying positions. In large hospitals, graduates of health administration programs usually begin as administrative assistants or assistant department heads. In small hospitals or nursing care facilities, they may begin as department heads or assistant administrators. Some experienced managers also may become consultants or professors of healthcare management. The level of the starting position varies with the experience of the applicant and the size of the organization.

For those already in a different healthcare occupation, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration. For more information, see the profile on registered nurses.

### **Licenses**

All states require nursing care facility administrators to be licensed; requirements vary by state. In most states, these administrators must have a bachelor's degree, pass a licensing exam, and complete a state-approved training program. Some states also require administrators in assisted-living facilities to be licensed. A license is not required in other areas of medical and health services management.

*Id.* at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited June 12, 2013). The *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty. While it indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, it also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, it also indicates that a degree in a general field, such as business administration, is common.<sup>2</sup> Finally, the *Handbook*

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<sup>2</sup> To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position,

indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education.

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

Further still, as was noted above, the petitioner's president stated, "To be qualified for the position, we require a minimum of a Bachelor's Degree in Healthcare Management, Medical Sciences, Public Health, or related degree." The petitioner provided no evidence to demonstrate that the subject matter of healthcare management, medical sciences, and public health curricula are so nearly identical that they, and any related curricula, should be considered to delineate a specific specialty.

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

Next, the AAO will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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.

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

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requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Again, the *Handbook* indicates that most generalist positions in this field can be performed by an individual with only a general-purpose degree, i.e., a degree in "business administration," or on-the-job experience. This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation.

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

Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the 13 job vacancy advertisements submitted in this matter is misplaced.

The positions listed in those vacancy announcements are entitled: Medical Office Manager, Physician Office Manager, Health Service Manager, Clinical Manager, Clinical Manager – Hospice, Clinic Practice Manager, Practice Manager – General Surgery, Health Center Manager, Health Manager, Site Manager, and Management.

Two of those vacancy announcements state that the positions require a bachelor's degree, but not that the requisite degree must be in any specific specialty. Those vacancy announcements do not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One announcement states that a bachelor's degree is "strongly desired," and another announcement states that a bachelor's degree is preferred. A third announcement states that a bachelor's degree is desirable. They do not indicate that a bachelor's degree is a minimum requirement, or that the "preferred," "strongly desired," or "desirable" degree must be in a specific specialty. For both reasons, those announcements do not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One vacancy announcement states that it requires a bachelor's degree, and that, "[A] Bachelor's degree in healthcare administration, business or a medical field [is] preferred." Another states, "Bachelor's Degree in Business and/or Healthcare Management a plus." Those vacancy announcements do not require a minimum of a bachelor's degree in a specific specialty, or the equivalent, both because an educational requirement that can be satisfied by an otherwise undifferentiated degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent, and because a preference is not a minimum requirement.

Another announcement states, "Bachelor's degree in business or clinical discipline required." As has been previously explained, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent. That vacancy announcement does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One vacancy announcement states, "Four[-]year degree in nursing and/or licensed RN or other health[-]related field is required." Because RN licensure is sufficient to satisfy that educational

requirement, and because RN licensure does not require a bachelor's degree, that vacancy announcement does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One announcement states, "Bachelor's degree in specialty area is required." Although that announcement purports to require a bachelor's degree in a "specialty area," it does not specify any particular specialty. As such, the AAO finds that it does not, in fact, require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One announcement states, "Nursing Degree or Bachelor's Degree required." A bachelor's degree in any subject would satisfy that requirement, as would an associate's degree in nursing. That announcement does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

One vacancy announcement states that the position requires a bachelor's degree in nursing. Another states that it requires a master's degree in health services administration, hospital administration, or an equivalent degree. Of the thirteen vacancy announcements submitted, only those two announcements appear to require a minimum of a bachelor's degree in a specific specialty or the equivalent.

Further, even if all of the vacancy announcements indicated a bachelor's degree in a specific specialty or the equivalent to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from thirteen vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>3</sup>

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the

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<sup>3</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from thirteen job postings with regard to determining the common educational requirements for entry into parallel positions in similar healthcare organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of medical and health services managers for a small medical office that is otherwise similar to the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

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

The AAO will next review the record regarding the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for medical and health services manager positions, including degrees not in a specific specialty related to medical and health services management.

To the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of administration, but do not establish the proffered position as unique from or more complex than medical and health services management positions that can be performed by persons without a specialty degree or its equivalent.<sup>4</sup>

Developing and implementing organizational policies and procedures; establishing objectives, evaluative and operational criteria; conducting and administering fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting; and establishing work schedules and assignments for staff, for instance, contain no indication of uniqueness or complexity that they would be beyond the ken of a manager without a specialized degree.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other medical and health service manager positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, 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).

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<sup>4</sup> In fact, as was noted above, the descriptions provided of the duties of the proffered position are insufficient to demonstrate that the proffered position is a medical and health services manager position, rather than an administrative services manager.

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>5</sup>

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

The AAO finds that the generalized and generic terms in which the proposed duties are described do not convey the relative degree of specialization and complexity required to satisfy this criterion. Also, as described in this record of proceeding, the duties do not reveal complexity and specialization above those of positions in the occupation that are not usually associated with knowledge that requires at least a bachelor's or higher degree in a specific specialty.<sup>6</sup> Developing and maintaining a computerized record management system, monitoring the use of diagnostic

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

<sup>6</sup> Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other medical and health service 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 higher level 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).

services and staff, and acting as a liaison between medical personnel, patients, and physicians, for instance, contain no indication of specialization and complexity that would require a specialized degree. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

In addition, the AAO finds no probative value in the October 5, 2010 opinion rendered by [REDACTED]. The opinion is not based upon sufficient information about the position proffered here. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Specifically, the content of the professor's letter does not demonstrate that the professor's opinion is based upon sufficient information about the particular position at issue. First, the letter reveals that the professor's knowledge of the position is limited to the duties submitted by the petitioner to USCIS. Second, the professor does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position. Third, the professor's opinion does not relate his conclusions to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for his conclusions about the educational requirements for the particular position here at issue.

Furthermore, [REDACTED] stated that, after reviewing the duty descriptions provided of the position proffered in this case, he believes that the position could not be properly performed without bachelor's-level training in healthcare management, medical sciences, public health, or a related field. The record contains no indication, however, that those three subjects, and subjects related to them, are so nearly identical as to delineate a specific specialty. As such, the evaluator has not even effectively alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent. Further, he did not specify which of the listed duties could not be performed adequately without such a degree. Without such concrete analysis, the evaluation is accorded very little evidentiary weight in determining whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific

specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that specialty degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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