

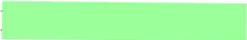
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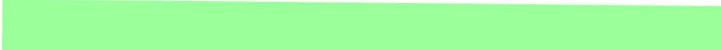
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **JUN 19 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

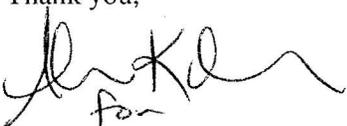
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

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

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

Thank you,

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a health care services provider. In order to employ the beneficiary in what it designates as a "Continuous [sic] Quality Improvement Supervisor" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied this H-1B petition, finding that the petitioner (1) failed to establish that it would employ the beneficiary in a specialty occupation position, and (2) failed to demonstrate that the beneficiary is qualified for the proffered position. On appeal, counsel asserts that the director's bases for denial were erroneous and that the petitioner satisfied all evidentiary requirements.

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

The AAO will first address the specialty occupation basis of denial.

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

The Labor Condition Application (LCA) submitted to support the visa petition is certified for a "Continuos [sic] Quality Improvement Supervisor" position pursuant to occupational code 079, a prevailing wage of \$33,738, and a wage rate of \$40,000. The record also contains evidence that the beneficiary received a bachelor's degree in nursing from [REDACTED] in the Philippines. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in nursing.

With the visa petition, counsel submitted a letter, dated April 13, 2009, from the petitioner's vice president, which contains the following description of the duties of the proffered position:

The [beneficiary] will be responsible for implementing quality assurance standards for the [petitioner] to ensure quality care to patients. She will review quality assurance standards, study existing policies and procedures, and interview personnel and patients to evaluate effectiveness of quality assurance programs. Further, she will write quality assurance policies and procedures; review and evaluate patients' medical records, applying quality assurance criteria; select specific topics for review, such as problem procedures, drugs, high volume cases, high risk cases, or other factors; and compile statistical data and write narrative reports summarizing quality assurance findings. Further, with assistance of licensed staff, she will review patient records, applying utilization review criteria, to determine need for further treatment.

The beneficiary will also all [sic] Medicare clients' charts and files to assure proper documentation to maximize reimbursement, including performing verification checks of appropriate documentation; ensure utmost quality of care is provided; establish recommendations to improve quality of card [sic] standards; and review visit utilization, appropriate orders of physicians and ensure adherence to the care plan. The beneficiary[']s job duties will also consist of serving as a resource and support system to nursing and support staff in the absence of [the] Director of Clinical Services, in matters of client care and other matters which cannot be differed [sic]. Further, the job duties of the preferred [sic] position will encompass working closely

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with all members of interdisciplinary teams and community agencies; promoting public relations with clients, families, physicians and referring individuals or organizations; reviewing initial and recertification plans of care and other documentation as required to assure accuracy and appropriateness of care rendered.

In addition [the beneficiary] will be in charge of conferring with staff on a regularly scheduled basis to review appropriateness of care for recertification in order to assist staff in fulfilling responsibilities and to assure standards of care are maintained. The beneficiary will supervise the completion of documentation deficiencies and coordinate assignment of appropriate clinicians to cases. Further, she will oversee records supervision and will promote, arrange and perform yearly assessment of clinical skills of all field staff. Moreover, she will manage audits of charts to ensure completeness and compliance with Medicare guidelines. [The beneficiary] will also direct orientation of new field staff; plan, implement and evaluate in-service and continuing education programs; conducted [sic] scheduled staff meetings, in-service education programs, client care conferences and client care review.

The petitioner's vice president also stated, "An individual without college specialization in Nursing would be unable to handle the job duties of the proffered position as specified above," and, "an individual lacking an educational background in Nursing or a closely[-]related area would lack the required expertise in clinical health care procedures and quality, and the evaluation of medical programs and the implementation thereof." She further stated that the requirement of a minimum of a bachelor's degree in nursing or the equivalent is required for continuous quality improvement supervisors throughout the petitioner's industry.

On July 17, 2009, the service center issued an RFE in this matter. The director outlined the specific evidence to be submitted. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted (1) descriptions of various positions with the petitioner, including the proffered position (Labeled Exhibit 11); (2) an announcement of the proffered position (Labeled Exhibit 8); (3) the contract of employment between the petitioner and the beneficiary (Labeled Exhibit 9); (4) a letter, dated July 2, 2009, from the staffing manager of a healthcare staffing service (Labeled Exhibit 4); (5) an affidavit, dated July 18, 2009, from the president of a healthcare staffing service (Labeled Exhibit 3); (6) an evaluation, dated August 1, 2009, of the proffered position (Labeled Exhibit 2); (7) a diploma and pay stub pertinent to [redacted]; (8) another letter, dated August 14, 2009, from the petitioner's vice president; and (9) six vacancy announcements.

In her August 14, 2009 letter, the petitioner's vice president stated:

Enclosed herewith as Exhibit 8 is a copy of a notice of job opportunity posted by the [petitioner] to request applicants for the proffered position of Continuous Quality Improvement Supervisor with the [petitioner].

Exhibit 8, which purports to be an announcement of a vacancy in the proffered position, describes the duties of the position as follows:

Review quality assurance standards; establish standards for the delivery and management of health care services; interview personnel and patients to evaluate effectiveness of quality assurance programs; review and determine needs of patients; write quality assurance policies and procedures; write reports analyzing performance and continuous quality improvement (CQI) issues; monitor compliance with regulatory requirements; oversee and maintain the medical record process while driving continuous improvements; assure adherence to applicable regulatory and accreditation requirements; determine personnel requirements; hire and train personnel; implement personnel training programs; train staff in health care quality assurance issues and procedures; conduct programs geared to new staff members and advanced classes in CQI matters; attend seminars and conferences on healthcare CQI; keep apprised of developments in the field of quality assurance management to maintain current; work in conjunction with Education Department to develop and present training programs and resource materials for staff development, provider education, and client awareness; plan delivery and management of health care services; create plans for delivery of health care services; research health care requirements, analyze health care needs, determine the most suitable means of assisting patients; implement health care service plans; provide data analysis, trending, reporting and presentation on individual and departmental statistics as related to identifying areas of improvement; recommend and implement changes to improve efficiency and effectiveness in delivering and inspection of healthcare services; collaborate with multidisciplinary teams to ensure excellence in resident and patient care.

The employment contract, labeled Exhibit 9, reiterates that description of the duties of the proffered position.

The healthcare staffing service's staffing manager's July 2, 2009 letter states:

I have worked with and observed companies in the healthcare industry and Continuous Quality Improvement Supervisors . . . [have] all had bachelor's degree specialized in areas such as nursing or healthcare administration, or equivalent thereof.

She did not make clear how many companies she has observed or how many Continuous Quality Improvement Supervisors she has known and whose educational qualifications she has had occasion to be aware of. Further, she provided no evidence to corroborate her assertion pertinent to the educational qualifications of the continuous quality improvement supervisors she has allegedly observed.

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In her July 18, 2009 affidavit, the other healthcare staffing service's president stated that her company always employs at least one continuous quality improvement supervisor, and has only hired people with college degrees in nursing, healthcare administration, or a related field, and she expected that practice to continue. She did not provide any evidence to corroborate her statements pertinent to her company's employment of a continuous quality improvement supervisor, or the educational qualifications of its continuous quality improvement supervisors, past or present.

In his August 1, 2009 evaluation of the proffered position, the evaluator stated:

Based on my review of [the duties of the proffered position], and my extensive knowledge of the hiring patterns of providers of healthcare services and related employers, I believe that the position of "Continuous Quality Improvement Supervisor" is a specialty occupation requiring a bachelor's-level educational background in Nursing, Healthcare Administration, or Operational Management, as well as the application of specialized knowledge in these fields.

As to his expertise in the requirements of such positions, the evaluator stated that as the owner of a consulting firm he has had numerous engagements with companies in the healthcare sector, that he has "substantial familiarity" with the typical duties of continuous quality improvement supervisor positions within healthcare, and that "[a]ccordingly, [he believes] that he is qualified to opine on the requirements of the [proffered position]"

The evaluator did not reveal the nature of his consulting business or the nature of his engagements with healthcare companies. He provided no evidence to corroborate his claimed experience. The evaluator's résumé states that he is a professor of marketing at the [redacted] and that his academic background is in marketing, accounting, economics, and finance. How he would have occasion to develop any expertise on the subject of the educational requirements of continuous quality improvement supervisor positions is unclear.

The diploma of [redacted] shows that she received a bachelor's degree in nursing from [redacted] in the Philippines. The pay stub shows that, for the pay period from August 9, 2008, to August 15, 2008, the petitioner paid [redacted] for 35 hours of work at the rate of \$37 per hour. Her year-to-date earnings as of the end of that pay period were \$24,189.38. That pay statement contains no indication of the position in which [redacted] was employed.

The petitioner's vice president's August 14, 2009 letter cites the other documents provided in response to the RFE as evidence that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. That letter also contains various descriptions of the proffered position. Those descriptions do not add any substantive duties to those described above, nor do they provide any additional detail that would demonstrate that the duties require a minimum of a bachelor's degree or the equivalent in a specific specialty.

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The petitioner's vice president also stated that it had employed [REDACTED] since 2007 and that she was then employed as a continuous quality improvement supervisor. She further stated:

The enclosed copies consisting of [REDACTED] diploma and recent pay stub confirm that the [petitioner] actually requires a minimum educational prerequisite a bachelor's degree in Nursing, Healthcare Administration, Operations Management or a closely related health care discipline for the proffered position of Continuous Quality Improvement Supervisor.

The record contains no evidence to corroborate the petitioner's vice president's assertion that the petitioner employed [REDACTED] as a continuous quality improvement supervisor. Further, the petitioner did not provide evidence to corroborate that any other continuous quality improvement supervisors it may have employed have had a minimum of a bachelor's degree in a specific specialty related to the proffered position, or its equivalent.

The director denied the petition on January 20, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that the beneficiary is not qualified for a specialty occupation position because "an administrative nursing position such as the proffered position requires a master's degree for H-1B classification as a specialty occupation."

On appeal, counsel provided (1) an additional evaluation of the proffered position, dated January 21, 2010; (2) an additional letter, dated March 1, 2010, from an administrator of a healthcare facility; (3) an additional affidavit, dated March 2, 2010, from the director of nursing at a hospital; (4) evidence pertinent to [REDACTED] and (5) a brief.

The additional evaluation was provided by an associate professor of therapeutic radiology and oncology at the [REDACTED]. He stated that as a professor of medicine and an oncologist, he has "cultivated substantial familiarity with the typical duties of a Continuous Quality Improvement Supervisor as performed within the healthcare field." He further stated that hiring a Continuous Quality Improvement Supervisor with a bachelor's degree in nursing, healthcare administration, operations management, or a closely related field is a matter of operational necessity for a company engaged in the provision of healthcare services.

The facility administrator stated, in his March 1, 2010 letter, that the position of continuous quality control supervisor with his facility requires a minimum of a bachelor's degree in nursing, healthcare administration, or operations management. He stated that in his experience in healthcare, he has become extremely familiar with the hiring practices necessary to a successful healthcare facility, and that he has observed that such a continuous quality control supervisor is essential to the successful operation of such a facility. He did not provide any evidence to corroborate his assertions pertinent

to his facility's employment of a continuous quality improvement supervisor and, in any event, the AAO observes that the petitioner does not appear to operate such a facility.

The hospital director of nursing stated, in her March 2, 2010 affidavit, that she works for a 228-bed facility with 160 employees. She further stated that the facility employs at least two continuous quality control supervisors at all times; that she is responsible for hiring continuous quality control supervisors; that the facility has always filled the position with people with a degree in nursing, healthcare administration, operations management, or a related field; and that, in her opinion, the position requires a bachelor's degree in such a subject. She did not provide any evidence to corroborate her assertions pertinent to her facility's employment of continuous quality supervisors or their educational qualifications.

A diploma shows that [REDACTED] received a bachelor's degree in nursing from [REDACTED] in the Philippines. A pay stub shows that [REDACTED] paid her gross pay of \$1,220.87 for 44.75 hours of work during the pay period ending September 19, 2009.

A diploma shows that [REDACTED] received a bachelor's degree in nursing from [REDACTED] in the Philippines. The record also contains what appears to be a pay stub issued by [REDACTED] in Dover, New Jersey to [REDACTED] for the pay period from April 6, 2009 to April 19, 2009. However, that pay stub shows no earnings or deductions during that pay period, and no year-to-date earnings through that date.

In his brief, counsel asserted that [REDACTED] worked as a continuous quality improvement supervisor for [REDACTED] and that [REDACTED] worked as a continuous quality improvement supervisor for [REDACTED]. Other than that described above, counsel provided no evidence to corroborate that assertion.

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). Counsel's assertion that [REDACTED] worked as continuous quality improvement supervisors will be accorded no evidentiary weight.

Counsel cited the more recent evaluation of the proffered position provided by the [REDACTED], the letter dated March 1, 2010, and the March 2, 2010 affidavit for the proposition that the proffered position qualifies as a specialty occupation position. Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for that proposition, referring to the chapter pertinent to "Medical and Health Services Managers."

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As a preliminary matter, however,

the AAO disagrees with counsel's assertion that the proffered position has been demonstrated to be that of a Medical and Health Services Manager, as described by the *Handbook*. The *Handbook* describes the occupation of medical and health services manager in relevant part as follows:

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

Duties

Medical and health services managers typically do the following:

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

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

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited June 17, 2013).

The petitioner has failed to submit any corroborating documentary evidence demonstrating that the beneficiary will be performing the duties of a medical and health services manager. The petitioner claims that the beneficiary would implement quality assurance standards; review and evaluate the effectiveness of quality assurance programs; study policies and procedures and produce reports of findings; and review patient records to assure Medicare compliance, to maximize Medicare reimbursement, and to determine the need for further treatment. However, the record contains no evidence to corroborate the nature of the work the beneficiary would perform.

That is, the record contains no description of the quality assurance standards to be implemented, reviewed, and evaluated; no manuals or brochures pertinent to the petitioner's quality assurance programs; and no examples of the types of reports to be produced.

Further, the record contains very little evidence to establish the type of business the petitioner operates. The petitioner originally stated, on the visa petition, that it is a health care services provider. The petitioner also indicated, at that time, that the beneficiary would work at the petitioner's own location. In her April 13, 2009 letter, the petitioner's vice president stated: "The [petitioner] is actively engaged in the provision of health care services and healthcare personnel to medical facilities in the New York metropolitan region and the Tri-State Area."

In response to the RFE request that the petitioner "Submit documentation highlighting the nature, scope, and activity of [its] business enterprise(s) in order to establish that the beneficiary would be [perform the duties described]" the petitioner provided insufficient evidence of the health care services it provides.

Although the petitioner's name, [REDACTED] implies that it provides some type of management services, the evidence in the record is insufficient to what type of services it provides. Although the petitioner has asserted that it provides healthcare personnel to medical facilities, the record contains no contracts, brochures, or other evidence to corroborate that assertion. Although the petitioner indicated that it also provides other health care services, in

addition to supplying healthcare personnel, the nature of any other services it provides is unknown to the AAO. It has not indicated, for instance, that it provides home care to clients, or that it operates a clinic.

In the August 1, 2009 evaluation described above, the evaluator stated:

The [petitioner] also operates a clinical research program involving medical research and efforts to improve the diagnosis and treatment of patients and to assist in the development of cures for cancer and other diseases.

This assertion does not appear elsewhere in the record. The petitioner has only asserted that it provides medical services and medical personnel, not that it operates a clinical research program.

Despite a direct request for a description of its business operations, the petitioner did not provide an adequate description and documentary evidence of its business operations. Therefore, the nature of the duties of the proffered position, if it were to be performed at the petitioner's location, as the petitioner originally asserted, is entirely unclear.

In any event, on appeal, counsel asserted that the beneficiary would work at Palm Gardens Center for Nursing and Rehabilitation. The AAO observes that this contradicts the petitioner's previous assertion, made on the visa petition, that the petitioner would employ the beneficiary at the petitioner's own location. Further, the record contains no evidence to corroborate that Palm Gardens has consented to use the beneficiary's services.

Further still, even if the evidence demonstrated that Palm Gardens had agreed to employ the beneficiary, the record contains no competent evidence of the duties the beneficiary would perform at Palm Gardens. As recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

In this case, the record contains no indication from [redacted] of the duties the beneficiary would perform, or even that [redacted] has agreed to utilize the beneficiary's services. Counsel's basis for asserting that the beneficiary would work at [redacted] is unclear, given that the record contains no corroborating evidence. However, if counsel is correct, then the record contains no competent evidence of the work the beneficiary would perform in the proffered position, as it contains no such evidence from [redacted]

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.” Furthermore, 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)). Given the lack of detail and corroborating evidence, the AAO cannot determine that the proffered position substantially reflects the duties of a medical and health services manager.

Furthermore, as noted above, counsel contends on appeal that the proffered position is akin to that of a medical and health services manager, and cites to the *Handbook's* section addressing that occupation. While it is unclear what occupation the LCA is certified for, a search of the FLC Online Data Center indicates that the LCA is not certified for a medical health services manager. The prevailing wage for the occupational category of "Medical and Health Services Managers" for New York, New York was \$69,181 per year, for a Level I position, at the time the petition was filed in this matter.¹ However, the petitioner claims it will pay the beneficiary only \$40,000.²

Yet further, even if the proffered position were established as being that of a medical and health services manager, a review of the *Handbook* does not indicate that, as a category, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation of medical and health services manager. The information on the educational requirements in the "Medical and Health Services Managers" chapter of the *Handbook* indicates the following:

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.

Education

¹ For additional information on the prevailing wage for "Medical and Health Services Managers" in New York, New York, see the All Industries Database for 7/2008 – 6/2009 for Medical and Health Services Managers at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?area=35644&code=11-9111&year=9&source=1> (last visited June 17, 2013).

² It is also noted that the required wage for an entry level "Registered Nurse" at the time the LCA was certified is \$59,363 per year which is \$19,363 more than what the petitioner is claiming it will pay the beneficiary to perform the duties of a Continuous Quality Improvement Supervisor. Therefore, even if the proffered position were, in fact, a registered nurse position, the petitioner would not be paying the beneficiary the wage required for such a position.

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

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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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited June 17, 2013).

The *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty or its equivalent. 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.³ Finally, the *Handbook* indicates that

³ 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,

some facilities hire individuals who possess on-the-job experience in lieu of formal education. Thus, the *Handbook* is not probative evidence of the occupational category "Medical and Health Services Managers" being a specialty occupation.

Additionally, the AAO notes that as recognized by the court in *Defensor v. Meissner*, 201 F. 3d 384, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. Such evidence must be sufficiently detailed and explained as to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

In the instant case, counsel asserted, on appeal, that the beneficiary would work at the [REDACTED], rather than at the petitioner's own offices, as it claimed on the visa petition. However, the record of proceeding lacks evidence from [REDACTED] or from any other end-user entities that may generate work for the beneficiary and whose business needs would ultimately determine what the beneficiary would actually do on a day-to-day basis.

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 is a specialty occupation under 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;⁴ (2) industry positions which are parallel to the proffered position and thus

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.

⁴ Counsel submitted an evaluation, dated January 21, 2010, to show that the particular position proffered in the instant case requires a minimum of a bachelor's degree in a specific specialty or its equivalent. However, although the evaluation does not specify, it was apparently premised either on the duties described in the petitioner's vice president's April 13, 2009 letter, or on the duties described in Exhibit 8, described above. Both of those descriptions were provided by the petitioner. Because counsel asserted, on appeal, that the end-user of the beneficiary's services would be [REDACTED] whether the beneficiary would actually perform those duties is unclear. As explained above, pursuant to *Defensor v. Meissner*, a competent description of the duties of the proffered position would necessarily be provided by the end-user of the beneficiary's services, which is the entity that would assign the beneficiary's duties to her. Because the record does not demonstrate, by a preponderance of the evidence, that the beneficiary would be the end-user of the beneficiary's services, the January 21, 2010 evaluation is of no weight in demonstrating

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appropriate for review for a common degree requirement, under the first alternate prong of criterion 2;⁵ (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. The appeal will be dismissed and the petition denied for this reason.

Also, although counsel asserted that the beneficiary would work at [REDACTED], the record lacks evidence that when the petitioner filed the petition, the petitioner had secured work of any type for the beneficiary to perform during the requested period of employment at that or any other location. USCIS regulations require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). For this reason also, the appeal will be dismissed and the petition denied.

The remaining issue pursuant to which the visa petition was denied is the director's finding that the petitioner failed to demonstrate that the beneficiary is qualified for the proffered position. 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 a 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 specific degree or its equivalent; therefore, the AAO withdraws the director's findings that (1) "the beneficiary does not qualify for the specialty occupation," and (2) "an administrative nursing position such as the proffered position requires a master's degree for H1B classification as a specialty occupation." The AAO need not and will not address the beneficiary's qualifications further.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

On the visa petition the petitioner stated that the beneficiary would work at the petitioner's own address. On appeal, counsel asserted that the beneficiary would work at [REDACTED]. "The petition will be denied if it is determined that the statements on the petition were inaccurate, fraudulent, or misrepresented a material fact." 8 C.F.R.

that the specific position proffered in the instant case requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

⁵ Counsel submitted letters and an affidavit to show that parallel positions in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent. However, because the record does not make clear what the petitioner's industry is, they have not been shown to be from organizations in the petitioner's industry. Further, because the duties the beneficiary would actually perform have not been established, whether the letters and affidavit are discussing parallel positions is unclear.

§ 214.2(h)(10)(ii). As such, an inaccurate statement anywhere on the visa petition is sufficient basis in and of itself to deny the petition. Absent evidence to establish, by a preponderance of the evidence, that the beneficiary would, in fact, work at the petitioner's premises as the petitioner represented on the visa petition, the visa petition could not be approved.

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

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

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

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