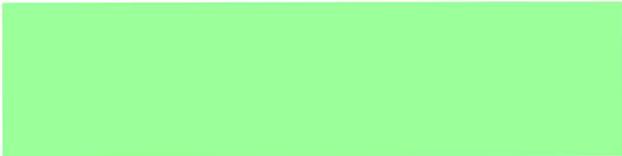
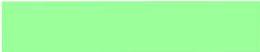


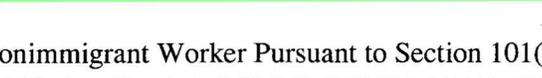


U.S. Citizenship
and Immigration
Services

(b)(6)

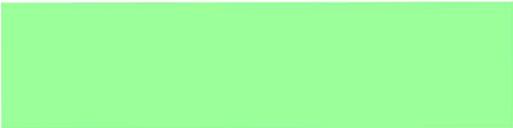


Date: **JUN 20 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The 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 stated that it is a provider of healthcare services with ten employees. In order to employ the beneficiary in what it designates as a "quality improvement manager" 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 the petition, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the proffered position qualifies as a position in a specialty occupation and that the beneficiary is qualified for it. Counsel submitted a brief and additional evidence.

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 brief and attached exhibits in support of the appeal.

The petitioner asserted that the proffered "quality improvement manager" position fits within the occupational category of Medical and Health Services Managers.

As an initial matter, the AAO will first examine the record to determine whether the proffered position is that of a specialty occupation. A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

The AAO takes exception to, and hereby withdraws, the statement in the director's decision that implies that Medical and Health Services Managers comprise an occupational group for which entry requires at least a bachelor's degree in a specific specialty. While the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* indicates that "bachelor's and master's degrees are the most common educational pathways to work in this field," it qualifies that observation by stating that "some facilities may hire those with on-the-job experience instead of formal education."¹ 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 19, 2013). As discussed below, the proffered position does not require a baccalaureate or higher degree in a specific specialty, or its equivalent.

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

¹ "For example," states the *Handbook* "managers of physical therapy may be experienced physical therapists who have administrative experience."

- (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, counsel submitted a letter, dated May 19, 2009, from the petitioner's director of nursing, who stated, as to the duties of the proffered position:

[The beneficiary] is being offered a full-time employment as Quality Improvements Manager. Specifically, she will coordinate quality activities for more than 100 patients, i.e., staff education, clinical risk management/patient satisfaction, analyze outcome reports, determine areas for improvement, track trends and compile information for management, prepare/review procedural manual.

The petitioner's director of nursing also stated, "The normal minimum requirements for the performance of the above job duties are a bachelor's degree in Nursing or related field with at least one year work experience."

In an RFE issued on July 6, 2009, the service center requested, *inter alia*, that the petitioner provide a more detailed description of the duties of the proffered position. In a response dated August 3, 2009, counsel stated:

Specifically, [the] beneficiary is expected to perform the following duties among others---

1. Develop and implement petitioner's quality improvement plan in accordance with the mission and strategic goals of petitioner as well as prevailing federal and state laws and regulations
2. Coordinate with the facilities medical doctors involved in the care of patient clients and follow-up any change in the respective care plans
3. Undertake arrangements for proper coordination of care between referring medical doctors and petitioner
4. Develop and implement systems, policies and procedures for the identification, collection and analysis of performance measurement data
5. Analyze customer survey data to identify opportunities or needs for improvement and present findings other to management or concerned individuals.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the decision of denial, the director found that the duties of the proffered position, as described in the petitioner's director of nursing's May 19, 2009 letter, show that the proffered position is a Health Services Manager position, as described, in the *Handbook* chapter entitled "Medical and Health Services Managers," 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

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- 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 19, 2013).

However, the *Handbook* also states, in the chapter pertinent to registered nurses:

What Registered Nurses Do

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

patients and their family members.

Duties

Registered nurses typically do the following:

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

Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides. For more information, see the profiles on licensed practical and licensed vocational nurses; nursing aides, orderlies, and attendants; and home health and personal care aides.

Registered nurses sometimes work to promote general health by educating the public on warning signs and symptoms of disease. They might also run general health screenings or immunization clinics, blood drives, or other outreach programs.

Most registered nurses work as part of a team with physicians and other healthcare specialists.

Some nurses have jobs in which they do not work directly with patients, but they must still have an active registered nurse license. For example, they may work as nurse educators, healthcare consultants, public policy advisors, researchers, hospital administrators, salespeople for pharmaceutical and medical supply companies, or as medical writers and editors.

Registered nurses' duties and titles often depend on where they work and the patients they work with. They can focus on the following specialties:

- A specific health condition, such as a diabetes management nurse who helps patients with diabetes or an oncology nurse who helps cancer patients
- A specific part of the body, such as a dermatology nurse working with patients who have skin problems
- A specific group of people, such as a geriatric nurse who works with the elderly or a pediatric nurse who works with children and teens

- A specific workplace, such as an emergency or trauma nurse who works in a hospital or stand-alone emergency department or a school nurse working in an elementary, middle, or high school rather than in a hospital or doctor's office.

Some registered nurses combine one or more of these specialties. For example, a pediatric oncology nurse works with children and teens who have cancer.

Many possibilities for specializing exist. The following list includes just a few other examples of ways that some registered nurses specialize:

Addiction nurses care for patients who need help to overcome addictions to alcohol, drugs, tobacco, and other substances.

Cardiovascular nurses treat patients with heart disease and people who have had heart surgery.

Critical care nurses work in intensive care units in hospitals, providing care to patients with serious, complex, and acute illnesses and injuries that need very close monitoring and treatment.

Genetics nurses provide screening, counseling, and treatment of patients with genetic disorders, such as cystic fibrosis and Huntington's disease.

Neonatology nurses take care of newborn babies.

Nephrology nurses treat patients who have kidney-related health issues that are attributable to diabetes, high blood pressure, substance abuse, or other causes.

Rehabilitation nurses care for patients with temporary or permanent disabilities.

Advanced practice registered nurses may provide primary and specialty care, and, in most states, they may prescribe medicines. All states specifically define requirements for registered nurses in these four advanced practice roles:

- **Clinical nurse specialists** provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health.
- **Nurse anesthetists** provide anesthesia and related care before and after surgical, therapeutic, diagnostic, and obstetrical procedures. They also provide pain management and emergency services.
- **Nurse-midwives** provide care to women, including gynecological exams, family planning advice, prenatal care, assistance in labor and delivery, and care of newborns.
- **Nurse practitioners** serve as primary and specialty care providers, providing a blend of nursing and primary care services to patients and families.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Registered Nurses, <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm> (last visited June 19, 2013).

Although the description of the duties of the proffered position suggests that the position is supervisory, the petitioner has never made clear which employees the beneficiary would supervise. This determination is not clarified by the organizational chart, which appears to indicate that all of the petitioner's employees are supervisory, and have no other employees to supervise.³

The distinction between registered nurses with supervisory responsibilities and a medical and health services manager appears to be that, while a registered nurse may supervise nurses and aides, a medical and health services administrator manages on a larger scale. For instance, the *Handbook* indicates that a medical and health services manager may manage all of the health services personnel, presumably including the doctors, at a large hospital.

The petitioner is a home health care provider with ten employees. Under these circumstances, the AAO finds that the proffered position is more likely than not a registered nurse position with supervisory responsibilities.⁴

³ The petitioner is a home health care firm, and must, presumably, employ some nurses, physical therapists, and/or other direct providers of health care. The petitioner's organizational chart is believed to be all-inclusive, as the petitioner claimed to employ ten workers, and the organizational chart lists ten employees, in addition to the proffered position. Although the exhaustive list of the petitioner's employees includes four positions, including the proffered position, that are labeled as positions for registered nurses, they all appear to be administrative or supervisory, rather than actual nursing positions. That the petitioner must employ some direct care providers and lists none on its exhaustive employee list suggests that the petitioner may be misrepresenting some of its nursing positions, including the proffered position in the instant case, to be managerial, when they are not.

Further, on appeal, counsel stated that the beneficiary would report directly to the petitioner's "Health Care Administrator." However, the organizational chart does not list a Health Care Administrator. This casts doubt on counsel's assertion that the beneficiary would report to the petitioner's Health Care Administrator.

Because the petitioner has not been accorded an opportunity to address either of these discrepancies, however, this decision will not rely upon them, even in part.

⁴ The AAO notes, however, that even if the position were demonstrated to be a medical and health services manager position, this would not have changed the decision on appeal, as the *Handbook* does not indicate that medical and health services manager positions require a minimum of a bachelor's degree in a specific specialty or the equivalent. See 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 19, 2013). While the *Handbook* 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. Although a general-purpose bachelor's degree, such as a degree in business administration, may be

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*,⁵ 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 will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO has found that the proffered position is a registered nurse position. The *Handbook* states the following about the educational requirements of registered nurse positions, including those with supervisory responsibilities:

How to Become a Registered Nurse

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

Education

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include

a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education.

⁵ 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/>.

clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

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

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

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

Important Qualities

Critical-thinking skills. Registered nurses must be able to assess changes in the health state of patients, including when to take corrective action and when to make referrals.

Compassion. Registered nurses should be caring and sympathetic, characteristics that are valuable when treating patients.

Detail oriented. Registered nurses must be responsible and detail oriented because they must make sure that patients get the correct treatments and medicines at the right time.

Emotional stability. Registered nurses need emotional stability to cope with human suffering, emergencies, and other stresses.

Organizational skills. Nurses often work with multiple patients with various health needs, and organizational skills are critical to ensure the patient is given proper care.

Patience. Registered nurses should be patient so they can provide quality care under stressful or hectic circumstances.

Speaking skills. Registered nurses must be able to talk effectively with patients to correctly assess their health conditions. Nurses need to clearly explain how to take medication or give other instructions. They must be able to work in teams with other health professionals and communicate the patients' needs.

Licenses

In all states, the District of Columbia, and U.S. territories, registered nurses must have a nursing license.

To become licensed, nurses must graduate from an approved nursing program and pass the National Council Licensure Examination, or NCLEX-RN.

Other requirements for licensing vary by state. Each state's board of nursing can give details. (For more on the NCLEX-RN examination and a list of state boards of nursing visit the National Council of State Boards of Nursing.)

Certification

Nurses may become credentialed through professional associations in specialties such as ambulatory care, gerontology, and pediatrics, among others. Although certification is usually voluntary, it demonstrates adherence to a higher standard, and some employers may require it. Certification is required for all registered nurses serving in any of the four advanced practice registered nurse roles.

Advancement

Most registered nurses begin as staff nurses in hospitals or community health settings. With experience, good performance, and continuous education they can move to other settings or be promoted to positions with more responsibility.

In management, nurses can advance from assistant unit manager or head nurse to more senior-level administrative roles, such as assistant director, director, vice president, or chief of nursing. Increasingly, management-level nursing positions require a graduate degree in nursing or health services administration. Administrative positions require leadership, communication and negotiation skills, and good judgment.

Some RNs choose to become advanced practice registered nurses (APRNs). APRNs work independently or in collaboration with physicians. They may provide primary care, and, in most states, they may prescribe medications. APRNs require at least a master's degree. Each state's board of nursing can provide the specific regulations regarding APRNs.

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home-based, and chronic care businesses.

Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need registered

nurses for jobs in health planning and development, marketing, consulting, policy development, and quality assurance.

Other nurses work as postsecondary teachers in colleges and universities. For more information, see the profile on postsecondary teachers.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited June 19, 2013).

The *Handbook's* information on the educational requirements for the occupational classification "Registered Nurses" indicates that a bachelor's or higher degree in a specific specialty or its equivalent is not a normal minimum entry requirement. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

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 in the provision of health care services, 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.

The petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

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

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, the petitioner's reliance upon the job vacancy advertisements it submitted in response to the RFE and on appeal is

(b)(6)

Page 14

misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of 13 advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree in a specific specialty or the equivalent. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry.

One of the announcements was placed by [REDACTED] for a Coordinator, Quality Improvement. It states that the position requires a bachelor's degree in a healthcare field, preferably nursing.

The petitioner provided one page of another vacancy announcement, which was placed by [REDACTED] of [REDACTED] Illinois, for a Director, Quality Improvement. It contains no indication of the education required by the position.

Another vacancy announcement was placed by [REDACTED] for a Quality & Patient Safety Improvement Manager. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed by an employment agency for an unidentified employer for a Manager, Quality Improvement to work in [REDACTED] Rhode Island. It states that the position requires a bachelor's degree in a health-related field. The AAO observes that is not a requirement for a degree in a specific specialty.

Another announcement was placed by [REDACTED] for a Project Manager – Medicare Quality Improvement to work in [REDACTED], New York. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another vacancy announcement was placed by the [REDACTED] for a Manager Quality and Performance Improvement to work in [REDACTED] Rhode Island. It states that the position requires a bachelor's degree in a clinical health related field, which is not a requirement of a degree in a specific specialty.

Another announcement was placed by [REDACTED] for a Clinical Quality Improvement Manager, RN to work in [REDACTED] Texas. It states that a bachelor's degree is preferred, rather than required, and does not indicate that the degree should be in any specific specialty.

Another announcement was placed by [REDACTED] for a Registered Nurse/Quality Improvement Manager to work in [REDACTED] Virginia. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another vacancy announcement was placed by [REDACTED] for a Patient Safety/Quality Outcomes Manager to work in [REDACTED] New Jersey. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed by [REDACTED] for a Performance Improvement Liaison to work in an undisclosed location. It states that the position requires, "Equivalent to a Bachelor of Science Degree in Nursing from an NLN-approved school of nursing or Bachelor of Science Degree in Physical Therapy or Bachelor Degree in Occupational Therapy." The AAO observes that is not a requirement of a degree in a specific specialty. That announcement also states that the position requires recent home health care experience, which suggests that the position may be in the home health care industry.

Another vacancy announcement was placed by [REDACTED] for a Quality and Regulatory Manager to work in [REDACTED] California. It states that the position requires a bachelor's degree in nursing.

Another announcement was placed by [REDACTED] for a Quality Assurance Manager to work in [REDACTED]. It states that the position announced requires a bachelor's degree in "Medical Technology or related field." Whether that is a requirement of a bachelor's degree in a specific specialty depends upon what array of fields the advertising employer would consider to be sufficiently closely related to medical technology.

The final vacancy announcement was placed by [REDACTED] for a RN, Nurse Manager to work in [REDACTED], New Jersey. It states that the position offered requires a bachelor's degree in nursing. That announcement also indicates that [REDACTED] specializes in home health care.

The majority of those vacancy announcements do not indicate that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, they are not, taken together, evidence sufficient to show that such positions require a minimum of a bachelor's degree in a specific specialty or the equivalent.

Further, only two of the vacancy announcements provided appear to have been placed by organizations in the home health care industry. Whether those positions are truly parallel to the proffered position is not clear from the vacancy announcements. Further, of those two vacancy announcements only the announcement placed by [REDACTED] indicates that the position announced requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

Further still, even if all 13 positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree in a specific specialty or the equivalent, the submission of the six announcements is statistically insufficient to demonstrate an industry-wide requirement.⁶ The record contains no

⁶ 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 13 job postings with regard to determining the

independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the home health care industry.

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 criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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 petitioner and counsel claim that the duties of the proffered position are complex, unique, and specialized. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its equivalent. Duties such as coordinating patient activities, staff education, clinical risk management, and patient satisfaction; analyzing outcome reports, determining areas for improvement, tracking trends and compiling information for management, and preparing and reviewing the company's procedural manual contain no indication that the proffered position is so complex or unique that it can be performed only by a degreed individual. The petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence pertinent to any previous recruitment attempts or to anyone the petitioner has ever previously hired anyone to fill the proffered position. The petitioner has not,

common educational requirements for entry into parallel positions in similar home health care 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 "quality improvement manager" at a home health care organization 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.

therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁷

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

However, the duties of the proffered position, as described in the petitioner's response to the RFE, contain no evidence of specialization and complexity such that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or the equivalent.

Developing and implementing the petitioner's quality improvement plan, coordinating care with doctors, collecting and analyzing performance, and analyzing customer survey data might, if sufficiently developed to demonstrate a high degree of specialization and complexity, be shown to require knowledge associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty. In the instant case, however, they have not been so developed.

The AAO finds that the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than supervisory registered nurse positions that are not usually associated with a degree in a specific specialty. The duties as described contain no indication of complexity and specialization that would require knowledge usually associated with at least a bachelor's degree in a specific specialty or the equivalent, especially relative to other supervisory registered nurse position that, according to the *Handbook*, may not have such a minimum entry requirement. The petitioner has not 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.

⁷ 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").

The AAO will now consider the original basis for the director's decision of denial; that is, her finding that the petitioner has not demonstrated that the beneficiary is qualified for the proffered position.

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 degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *See Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁸
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience

With the visa petition, counsel submitted the beneficiary's résumé, which states that she has a bachelor's degree in nursing from the [REDACTED] and a bachelor's degree in organizational communication from the [REDACTED] in Manila. Counsel submitted evidence sufficient to corroborate that the beneficiary has the nursing degree. A partially legible

⁸ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

transcript in the record indicates that the beneficiary attended the [REDACTED] and that she majored in organizational communication. Whether it indicates that she earned a bachelor's degree in that subject is unclear.

An evaluation of the beneficiary's education states that her nursing degree, earned in the Philippines, is equivalent to a bachelor's degree in nursing earned in the United States. That evaluation also states, "The [beneficiary] graduated with the Degree of Bachelor of Arts major in Organizational Communication in April 2001," but does not offer any evaluation of that degree to show that it is equivalent to any U.S. degree.

Because the proffered position has not been shown to be a specialty occupation position, the beneficiary's qualifications are not directly relevant to the approvability of the visa petition. The AAO notes that the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree in a specific specialty, or its equivalent, also cannot be determined. The AAO observes, however, that even if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or the equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree *in that specific specialty* or the equivalent. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

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.