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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: JUN 2 7 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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 nonimmigrant visa petition was denied by the service center director, 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 petition, the petitioner describes itself as a hospital which provides comprehensive healthcare services, with 781 employees.[1] It seeks to employ the beneficiary in a position to which it assigned the job title "Clinical Nurse Coordinator." The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in an H-1B specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of his determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation. The text of the decision indicates that its crux is the director's determination that the evidence in the record of proceeding establishes that the duties of the proffered position comprise no more than that of a registered nurse, which is generally not considered to be a specialty occupation.

On appeal, the petitioner contends that the director's findings were erroneous and submits a brief and previously submitted evidence in support of this contention. In particular, the petitioner claims that, in light of the supervisory nature of the proffered position, the director clearly erred in characterizing the proffered position as that of an entry-level staff nurse. Counsel's brief on appeal addressed each of the four alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and concluded by stating that the petitioner has established that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the appeal, consisting of the Form I-290B, a brief submitted by counsel, and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the director was correct in his ultimate determination, that is, that the evidence of record does not establish the proffered position as a specialty occupation. Therefore, the appeal will be dismissed, and the petition will be denied.

While the AAO finds that the evidence of record supports the director's ultimate determination that the petition must be denied because it did not establish the proffered position as a specialty occupation, the AAO's decision will note its disagreement with some aspects of the director's analysis. The petitioner should understand that where the AAO disagrees with the director's analysis, the AAO's analysis prevails and supersedes the conflicting analysis.

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[1] In the petitioner's letter in support, dated August 30, 2011, the petitioner noted it "is part of [redacted] hospital facility, and has been in operation for nearly 30 years.

To meet its burden of proof with regard to the specialty occupation issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the

statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

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

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

In this matter, the petitioner indicated on the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a clinical nurse coordinator to work on a full-time basis at a salary of $31.60 per hour.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to

the occupational classification of "Medical and Health Services Managers" - SOC (O*NET/OES) Code 11-9111, at a Level I wage (that is, the lowest of the four assignable wage-rate levels).

At the outset, the AAO concurs with the petitioner that the constellation of duties that it ascribes to the proffered position comports with the general spectrum of duties that the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* attributes to the "Medical and Health Services Managers" occupational classification. Accordingly, the AAO withdraws the director's finding that the proffered position is that of a registered nurse; substitutes its finding that, as claimed by the petitioner, the petition was filed for a medical and health services manager, and will analyze the position accordingly.

In its letter of support, dated August 30, 2011, the petitioner listed the beneficiary's responsibilities as follows:

- Coordinating patient care services provided by staff assigned to the unit;
- Supervising the quality of overall nursing care provided by the staff assigned to the unit including the implementation of programs to improve this quality;
- Guiding, directing and planning the organization and coordination of unit activities with ongoing [assessment of the quality and efficiency of these activities];
- Functioning as a resource person for staff members and assists in necessary education of individual member of nursing staff with a focus on promoting clinical competence in the provision of nursing;
- Providing technical supervision of nursing personnel assigned in the area of responsibility;
- Assessing multiplicity of patient care needs to coordinate assignment of nursing staff to facilitate patient attainment of expected outcomes;
- Coordinating the time requests and schedules for nursing staff assigned to the areas of responsibility in collaboration with the Clinical Director;
- Providing continuous employee assessments with written evaluations at designated intervals and as required based on staff performance;
- Participating in discipline of staff in accordance with Hospital Administrative Standards;

- Participating in hiring of staff in accordance with Hospital Administrative Standards;
- Participating in termination of staff in accordance with Hospital Administrative Standards;
- Ensuring adherence to standards in the designated [unit] based on Hospital Administrative Standards, Department of Nursing Standards, and unit standards;
- Reviewing length of patient stay that is greater than GLOS. Meeting with each doctor in regards to those patient stays;
- Participating in budgetary formulation and control for areas of responsibility in collaboration with the Clinical Director;
- Maintaining effective utilization of manpower, equipment and supplies;
- Interpreting and implementing operational standards as applicable to areas of responsibility;
- Ensuring that required patient assessments and reassessments are completed in a timely manner with use of assessment data in the formulation of individualized nursing diagnosis or patient needs/problems;
- Ensu[r]ing that nursing interventions and patient responses are communicated to responsible practitioners as indicated and that required components of the nursing process are documented in accordance with standards of practice; and
- Coordinating development and implementation of educational programs [t]o meet the specific needs of the areas of responsibility and participating in cooperative planning with other Hospital Departments as needed.

The AAO notes that, as reflected in the above-quoted list, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, such as, by way of illustrative examples: "[c]oordinating patient care services" within the nursing unit; "[s]upervising the quality of overall nursing care provided by the staff assigned to the unit"; "implementation of programs to improve" the quality of overall nursing care; "[p]roviding technical supervision of nursing personnel assigned in the area of responsibility"; "[p]articipating in budgetary formulation and control for areas of responsibility in collaboration with the Clinical Director; and [m]aintaining effective utilization of manpower, equipment and supplies."

The AAO finds that neither these quoted examples, nor any other duty descriptions in the record of proceeding, nor any documentation supplementing such generalized and relatively abstract descriptions, provide sufficiently specific and substantial information to establish the substantive nature of the matters upon which the beneficiary would focus, or whatever practical and theoretical applications the beneficiary would have to employ in actually performing the generally described functions related to those particular matters, or whatever educational level of highly specialized knowledge in nursing or any other specific specialty the beneficiary would have had to have attained in order to employ those applications.

In its letter of support, the petitioner also stated the following:

> It is the position of the employer that an individual would need, at a minimum, a Bachelor's Degree to adequately perform the duties herein. The Petitioner attests that it has not hired any individuals in the above-described position who did not have a minimum of a Bachelor's Degree or equivalent.

The petitioner also stated that the beneficiary has a Bachelor of Science in Nursing degree from

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on October 3, 2011. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

In response to the RFE, the petitioner and counsel submitted the following: (1) counsel's letter in response to the RFE, dated December 22, 2011; (2) the petitioner's letter in response to the RFE, dated December 22, 2011; (3) a copy of the petitioner's "Nursing Organizational Chart," indicating that the petitioner has 12 clinical nurse coordinator positions; (4) a copy of a document that states, "Date of Survey: 11/29/2011," and "Survey Conducted By: Human [R]esources," (hereinafter, the CNC Survey Document) listing the educational and experience qualifications for seven clinical nurse coordinator positions and indicating that some clinical nurse coordinators only possess an Associate's Degree in Nursing (ADN)[2]; (5) copies of four job vacancy announcements; and (6) a copy of an opinion letter, dated November 30, 2011, by Texas, regarding the "Educational Requirements for the Position of Clinical Nurse Coordinator."

In its letter in response to the RFE, the petitioner provided the same description of duties that was submitted with the petition and listed the number of persons that the beneficiary would supervise in the proffered position. In addition, the petitioner stated that "[g]iven the complexity of these duties, a bachelor[']s degree is not only the normal hiring practice for the Petitioner for this position, it is the only hiring practice of the Petitioner for this position." However, contrary

[2] The CNC Survey Document indicates that two clinical nurse coordinators only possess an ADN and that a third clinical nurse coordinator possesses an ADN, BBA and MBA.

to the petitioner's statements in (1) the RFE-response letter that "a bachelor's degree . . . is the only hiring practice of the Petitioner for this position," and (2) in the letter of support, attesting that it has "not hired any individuals in the above-described position who did not have a minimum of a Bachelor's degree or equivalent," the CNC Survey Document appears to indicate that, at the time the survey was taken on November 29, 2011 (less than a month before the RFE-response letter), some clinical nurse coordinators only possessed an ADN.[3] It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Moreover, the AAO notes that the petitioner's "Nursing Organizational Chart" appears to indicate that the petitioner has 12 clinical nurse coordinator positions, but the CNC Survey Document only lists seven clinical nurse coordinator positions. As noted above, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* at 591-92.

The petitioner also stated the following regarding the proffered position:

> [T]he position . . . is primarily management in nature, but requires a nursing degree in order for the manager to properly understand and manage the duties of the nurses being supervised. The Clinical Nurse Coordinator will spend the majority of time involved in administrative activities.
>
> This is a petition for manager of a nursing unit, a position which requires significant and extensive management responsibilities. This is not a petition for an individual to act as a nurse. Any responsibilities related to nursing would occur only tangentially in the course of the supervision of other nurses, and in the implementation of policies and procedures and training for the unit.

On January 18, 2012, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition.

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[3] As previously noted, the CNC Survey Document indicates that two clinical nurse coordinators only possess an ADN and that a third clinical nurse coordinator possesses an ADN, BBA and MBA.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1),* which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position that is the subject of the petition.

On the Form I-129, the petitioner stated that the beneficiary would be employed in a clinical nurse coordinator position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation, as required by the Act.

In this matter, the petitioner claims that the duties of the proffered position can be performed only by an individual with, at a minimum, a bachelor's degree. The AAO notes that an entry requirement of at least a bachelor's degree for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in the specific specialty or its equivalent that is directly related to the proposed position. Accordingly, as the petitioner fails to establish a minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[4] As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Medical and Health Services Managers." The AAO reviewed the chapter of the *Handbook* entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category.[5] However, the *Handbook* does not

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

[5] For additional information regarding the occupational category "Medical and Health Services Managers," *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-*

indicate that "Medical and Health Services Managers" comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The "Medical and Health Services Managers" chapter of the *Handbook* describes the duties of such positions 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.

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*13 ed.*, Medical and Health Services Managers, on the Internet at http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-1 (last visited June 25, 2013).

> 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," available on the Internet at http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2 (last visited June 25, 2013).

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

> 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**
>
> Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees in health services, long-term care administration, public health, public administration, or business administration also are common.
>
> Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees.

> Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.
>
> **Work Experience**
>
> Although bachelor's and master's degrees are the most common educational pathways to work in this field, some facilities may hire those with on-the-job experience instead of formal education. For example, managers of physical therapy may be experienced physical therapists who have administrative experience. For more information, see the profile on physical therapists.

*Id.*, Medical and Health Services Managers, http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4 (last visited June 25, 2013).

When reviewing the *Handbook*, the AAO must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.[6] This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.[7] That is, in

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[6] Wage levels should be determined only after selecting the most relevant Occupation Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

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

> **Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These

accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.[8]

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

Furthermore, although the *Handbook* states that medical and health services managers typically need at least a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be in a specific specialty. The narrative of the *Handbook* reports that a master's degree in health services, long-term care administration, public health, public

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> employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

*See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

[8] The petitioner and counsel repeatedly claim that the duties of the proffered position are complex, unique, advanced and/or specialized. The petitioner claims that the proffered position is an upper-level administrative position that entails a high level of responsibility, as well as highly complex and advanced duties. The petitioner claims that the proffered position requires in-depth knowledge and an advanced level of comprehension of various principles, in addition to management skills. However, the AAO notes that this characterization of the position and the claimed duties and responsibilities conflicts with the wage-rate element of the LCA, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

administration, or business administration also are common for entry into the occupation. Thus, the *Handbook* indicates that degrees in disparate fields (e.g., long-term care administration, public administration, business administration) are acceptable for entry into the occupation. Notably, the *Handbook* states that a degree in business administration is acceptable. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.[9] *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook*'s recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a medical and health services manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, the *Handbook* does not support the claim that the proffered position falls under an occupational group that categorically qualifies as a specialty occupation.

In support of the assertion that the proffered position is a specialty occupation, the petitioner submitted a two-page opinion letter, dated November 30, 2011, from in which she opines that, by virtue of the managerial nature of the proffered position, "the normal minimum educational requirement for entry into [the] position is a bachelor[']s degree in the nursing or health services management field, or the equivalent of a bachelor[']s degree obtained through the combination of a lesser degree and relevant work experience in the field."

Based upon a complete review of letter, the AAO notes that while she may, in fact, be a recognized authority on various topics, she has failed to provide sufficient information regarding the basis of her claimed expertise on this particular issue. indicates that she is qualified to comment on the minimum educational requirements for the proposed position because of her position as Human Resources Director at and her "familiar[ity] with the requirements at [that] facility, as well as throughout the industry in our region of the United States, and the State of Texas in particular." It is noted that did not provide a copy of her curriculum vitae.

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

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

*Id.*

Despite claim of "ten years of experience in the human resource management field," she has not established her expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how her education, training, or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of a hospital which provides comprehensive healthcare services (as designated by the petitioner in the Form I-129 and supporting documentation) similar to the petitioner for clinical nurse coordinator positions (or parallel positions).

opinion letter does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has published any work or conducted any research or studies pertinent to the educational requirements for *clinical nurse coordinators* (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that she is an authority on those specific requirements. The opinion letter contains no evidence that it was based on scholarly research conducted by in the specific area upon which she is opining. In reaching her determination, provides no documentary support for her ultimate conclusion regarding the education required for the position (i.e., statistical surveys, authoritative industry publications, or professional studies). asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement.

Upon review of the opinion letter, there is no indication that possesses any knowledge of the petitioner's proffered position beyond the job description. The fact that she attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion. does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Her opinion does not relate her conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. There is no evidence that has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. provides general conclusory statements regarding clinical nurse coordinator positions, but she does not provide a substantive, analytical basis for her opinion and ultimate conclusions.

claims that the duties of the proffered position are "so specialized and complex." However, it must be noted that there is no indication that the petitioner and counsel advised Ms. that the petitioner characterized the proffered position as a low, entry-level position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). As previously discussed, the wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. It appears that

would have found this information relevant for her opinion letter. Moreover, without this information, the petitioner has not demonstrated that possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.
In summary, and for each and all of the reasons discussed above, the AAO concludes that the advisory opinion rendered by is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which she reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record.

The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International,* 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO will discuss the petitioner's claims that the proffered position meets the first criterion of 8 C.F.R. 214.2(h)(4)(iii)(A), because the O*NET OnLine Internet site relevant to 11-9111.00 - Medical and Health Services Managers - lists this occupational classification with a Specific Vocational Preparation (SVP) rating of 8.

The AAO finds that O*NET does not support the assertion that assignment of an SVP rating of 8 is indicative of a specialty occupation. This is obvious upon reading Section II of the *Dictionary of Occupational Title*'s (*DOT*) Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system.[10] The section reads:

> II. SPECIFIC VOCATIONAL PREPARATION (SVP)
>
> Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.
>
> This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new

[10] O*NET has fully adopted the *DOT's* SVP definitional content, which can be found at the *DOT's* Appendix C, Components of the Definition Trailer, and is accessible on the Internet at http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM.

job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);

b. Apprenticeship training (for apprenticeable jobs only);

c. In-plant training (organized classroom study provided by an employer);

d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

| Level | Time |
|---|---|
| 1 | Short demonstration only |
| 2 | Anything beyond short demonstration up to and including 1 month |
| 3 | Over 1 month up to and including 3 months |
| 4 | Over 3 months up to and including 6 months |
| 5 | Over 6 months up to and including 1 year |
| 6 | Over 1 year up to and including 2 years |
| 7 | Over 2 years up to and including 4 years |
| 8 | Over 4 years up to and including 10 years |
| 9 | Over 10 years |

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation to which this rating is assigned.[11] Therefore, the O*NET information is not probative of the proffered position being a specialty occupation.

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[11] Next, the AAO considers counsel's claim that the requirement of a minimum of two years of specific vocational preparation is equivalent to a bachelor's degree, citing the *Handbook for Analyzing Jobs*

The AAO will next consider whether O*NET supports the proposition that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. Counsel asserts that O*NET states a requirement for a bachelor's degree. Here, however, the relevant inquiry is whether the bachelor's degree requirement is in a specific specialty.

Counsel states that O*NET assigns the "Medical and Health Services Manager" occupation a Job Zone Five rating and that many occupations in this Job Zone require graduate school. However, a Job Zone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Thus, the O*NET does not demonstrate that at least a bachelor's degree in any specific specialty or its equivalent is required, and does not, therefore, indicate that a position with a Job Zone Five rating is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).[12] Therefore, the O*NET is not probative of the proffered position being a specialty occupation or of satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or another reliable, authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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(1972) and *Garland Community Hospital*, 89-INA-271 (June 20, 1991). Counsel's reliance on the *Handbook for Analyzing Jobs* and on *Garland Community Hospital* is misplaced because at issue here is whether the proffered position requires a bachelor's degree in a specific specialty, and neither source is on point.

[12] *See* the O*NET OnLine Help Center, at http://www.onetonline.org/help/online/zones (confirming that Job Zone 5 does not indicate any requirements for degrees in specific specialties) (last visited June 25, 2013).

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*, or other authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Moreover, the AAO acknowledges again that the record of proceeding contains an opinion letter from However, as previously discussed, the AAO finds that the opinion letter does not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as a specialty occupation.

In response to the RFE, the petitioner submitted four Internet job postings for positions it asserts are parallel to the proffered position in similar organizations to that of the petitioner. Upon review of the documents, however, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a hospital which provides comprehensive healthcare services, with 781 employees. For instance, the first posting is for the position of "RN Clinical Care Coordinator" with program. There is no evidence included in the record to establish that the petitioner would place the incumbent in the proffered position within a hospitalist group, or that is comparable to the petitioner in terms of its size, services, or areas of expertise. Therefore this posting is not persuasive. The second posting is for the position of "Coordinator, Bariatric Services" with As with the first posting analyzed above, there is no evidence to demonstrate that the advertising entity is akin the petitioner in terms of its size, services, or areas of expertise. Additionally, the petitioner has not established the position as one that would involve bariatric services. Also, the posting does not state a requirement for a bachelor's degree in a specific specialty, or its equivalent. Therefore, this posting also will be discounted. The third posting is for a "Bariatric Program Coordinator" for The record of proceeding is devoid of evidence that this entity is similar to the petitioner in its size and scope, or that the beneficiary would be expected to coordinate a bariatric program. Finally, the fourth posting is for the position of "Bariatric Coordinator" at in its bariatric surgical program. Based on this description, this posting also cannot be deemed to be for a parallel position with a similar organization. In addition, the petitioner has not established the proffered position as one that necessarily focuses on bariatric coordination. Also, the posting does not state a requirement for a bachelor's degree in a specific specialty, or its equivalent.

Here, the petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. In addition, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employer's recruiting history for the types of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Thus, the record is devoid of sufficient information regarding the advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, job announcements submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and another organization share the same general characteristics, information regarding the nature and type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements) may be considered. It is not sufficient for the petitioner to simply claim that an organization is similar and in the same industry without providing a legitimate basis and sufficient corroborating evidence to support such an assertion. 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)).

On appeal, counsel states that the organizations are facilities in the State of Texas, but fails to demonstrate that they are similar to the petitioning entity. Counsel also fails to acknowledge why the advertising entities should be deemed representative of an industry-wide hiring standard among medical facilities. For the reasons set forth above, all four of these postings are insufficient to establish eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).[13]

[13] 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 just four job postings with regard to determining the common educational requirements for entry into parallel positions in similar 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 clinical nurse coordinator for a similarly sized hospital which provides comprehensive healthcare services 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 appear to have been consciously selected could credibly refute the findings of the

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

As discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty or its equivalent. Furthermore, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Medical and Health Services Managers" at a Level I (entry level) wage. The wage level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner also has failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial or in some cases even required to perform certain duties of a clinical nurse coordinator position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the petitioner's proffered position.

Therefore, the evidence of record does not establish that this position is significantly different from other medical and health services manager positions such that it refutes the *Handbook's* information to the effect that on-the-job experience instead of a formal education is acceptable for entry into medical and health services manager positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than medical and health services manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

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*Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other medical and health services manager positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO would necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

As previously noted, in the letter in response to the RFE, the petitioner claims that it "has not hired anyone for [the proffered] position without a Bachelor[']s degree or its equivalent." In addition, as discussed earlier, the petitioner submitted a copy of the CNC Survey Document, which lists the educational and experience qualifications for seven of the petitioner's clinical nurse coordinator positions and indicates that the petitioner accepts less than a bachelor's degree for the proposed position. Further, in the RFE-response letter, the petitioner states that for its clinical nurse coordinators that only have an ADN, the CNC Survey Document shows "the amount of experience they had prior to being hired for the position, and the fact that none of them were hired without the equivalent of a [Bachelor's Degree in Nursing]." However, the petitioner has provided no evidence documenting any empirical and objective measure by which it may have determined that this degree-and-experience combination is equivalent to a bachelor's degree in nursing or any related specialty. Moreover, the petitioner did not provide the job duties and day-to-day responsibilities of these positions in order for the AAO to determine whether these positions are the same as the proffered position. The AAO finds that the CNC Survey Document is not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

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

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(*4*) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Upon review of the record of the proceeding, the AAO notes that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. While the petitioner and counsel assert that the duties are specialized and complex, the

proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupational category of "Medical and Health Services Managers." The petitioner designated the position as a Level I position (out of four possible wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."

Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence to establish that the proffered position requires a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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