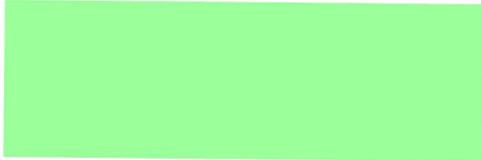




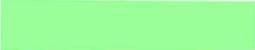
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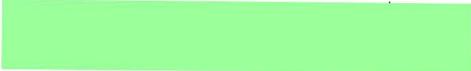
(b)(6)



Date: JUN 28 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:

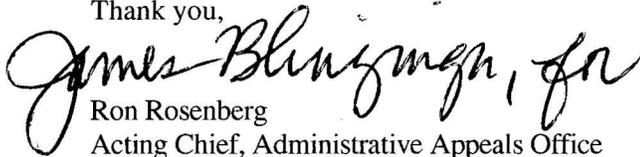


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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 health care firm with 25 employees. To employ the beneficiary in what it designates as a Quality Assurance Administrator position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous, and contends that the petitioner satisfied all evidentiary requirements. In support of these contentions, 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 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.

As will be discussed below, based upon its consideration of all evidence in the record of proceeding, including all of the submissions on appeal, the AAO finds that the director's decision to deny the petition for its failure to establish the proffered position as a specialty occupation was correct.

As a preliminary matter, however, the AAO will first address a fundamental matter, which, although not identified or addressed by the director, materially affects this petition, and that is the conflict between the occupational classification for which the Labor Condition Application (LCA) submitted in support of the petition was certified and the proffered position as described in the record of proceeding.<sup>1</sup>

Counsel argues on appeal that the AAO should analyze the proffered position as one falling within the "Medical and Health Services Manager" occupational category, as described in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). According to counsel, the *Handbook's* "description of a Medical and Health Services Manager" is "exactly parallel to the position described by the petitioner." As will be discussed below, the AAO agrees with counsel's characterization of the proffered position.<sup>2</sup> Despite this characterization, however, the LCA was not certified for a position falling within the "Medical and Health Services Manager"

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this issue.

<sup>2</sup> While the AAO finds that the director was correct to deny the petition on the basis of the petitioner's failure to establish the proffered position is a specialty occupation, the AAO does not concur with the director's statements indicating that the proffered position falls within the "Administrative Services Managers" occupational category.

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occupational category. Instead, the petitioner submitted an LCA certified for a position falling within the "Healthcare Practitioners and Technical Workers, All Other" occupational category.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

DOL has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA. With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

*Certification* means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that "[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA."

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion*

model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

DOL guidance specifies that when ascertaining the proper occupational classification, a determination should be made by “consider[ing] the particulars of the employer’s job offer and compar[ing] the full description to the tasks, knowledge, and work activities generally associated with an O\*NET-SOC occupation to insure the most relevant occupational code has been selected.” *See Prevailing Wage Determination Policy Guidance.*<sup>3</sup> In this case, the petitioner has provided no explanation of its apparently erroneous claim that the position’s primary and essential tasks, knowledge, and work activities are those generally associated with the “Healthcare Practitioners and Technical Workers, All Other” occupational category, rather than “Medical and Health Services Managers.” As such, it has not established that this LCA actually corresponds to this petition.<sup>4</sup>

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure an LCA actually supports the H-1B petition filed on behalf of the beneficiary. The LCA submitted by the petitioner does not. Thus, even if it were determined that the petitioner had overcome the director’s ground for denying this petition (which, as discussed below, it has not), the petition could still not be approved.

Furthermore, the conflict between the petition and the LCA adversely affects the merits of the petition, because it materially undermines the credibility of the petition’s statements made therein with regard to the nature of the work that the beneficiary would perform.

The AAO will now discuss its determination that the director’s decision to deny the petition for its failure to establish a specialty occupation was correct. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the

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<sup>3</sup> Available at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf) (last accessed Jun. 26, 2013).

<sup>4</sup> The AAO notes that obtaining an LCA certified for the “Medical and Health Services Manager” occupational category would have obligated the petitioner to offer the beneficiary a higher wage. At the time the petitioner obtained the certified LCA, the Level I (entry-level) wage for a position falling within the “Healthcare Practitioners and Technical Workers, All Other” occupational category in the petitioner’s area was \$34,403 per year (which is the wage for which the LCA submitted by the petitioner was certified, and also the wage stated on the Form I-129). However, the Level I (entry-level) wage for a position falling within the “Medical and Health Services Manager” occupational category was \$51,542 per year. The Level II (qualified) wage for a position falling within the “Medical and Health Services Manager” occupational category was \$68,557 per year; the Level III (experienced) wage was \$85,550 per year; and the Level IV (fully competent) wage was \$102,565 per year. *See* U.S. Dep’t of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Results New Quick Search, All Industries Database for 7/2008 – 6/2009, <http://www.flcdatacenter.com> (accessed Jun. 26, 2013). The proffered salary, therefore, falls well below the prevailing wage for a position falling within the “Medical and Health Services Manager” occupational category.

term “specialty occupation” as one 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 term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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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 upon a proffered position’s title. The specific duties of the 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 at 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.

Before discussing the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding, the AAO will briefly review certain salient aspects of this petition as it existed at the time of the director’s decision.

The petitioner entered “Quality Assurance Administrator” in the Form I-129’s “Job Title” field.

With the visa petition, counsel provided evidence that the beneficiary received a bachelor’s degree in nursing as well as a doctorate degree in medicine from the [REDACTED] in the Philippines.

Upon review of the petition as initially submitted, the director issued an RFE which requested specific types of documents and information relevant to (1) the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); (2) the beneficiary’s qualifications for serving in the proffered position; and (3) the petitioner and its business operations.

Among other documents submitted in the response to the RFE were (1) counsel's letter of reply; (2) a letter, dated July 8, 2009, from the petitioner's CEO/Administrator; and (3) a July 8, 2009 document entitled "[REDACTED] produced for the petitioner by [REDACTED], Professor of Radiation Oncology and Internal Medicine at the [REDACTED] (4) an organizational chart; and (5) job vacancy announcements.

The petitioner's CEO stated the following in his July 8, 2009 letter:

The [beneficiary] will be responsible for ensuring the quality of care provided by our health care professionals both from the agency's and from our patients' perspective. The position responsibilities will include reviewing medical records, documentation and client care review with all discipline-appropriate personnel of [REDACTED] Inc.'s Quality Assurance Program. [The beneficiary] will work closely with all members of the interdisciplinary team and community agencies. He will review initial and recertification plans of care and other documentation as required to assure accuracy and appropriateness of care is rendered. He will confer with staff on a regular basis to review appropriateness of care for recertification. In doing so, he will assist staff in fulfilling responsibilities as defined in their job descriptions and assure standards of care are maintained. He may receive and assist case referrals and review initial client information. He will accept calls from ancillary staff. He will assist with orientation of new field staff in regards to documentation. And lastly, he will assist in the interpretation of policy with the staff, always keeping management aware of any problems or concerns.

He provided the following additional description of the duties of the proffered position:

- 20% Review and evaluate current quality assurance standards and procedures;
- 20% Implement new and modified quality assurance procedures;
- 20% Review and audit all clinical charts, notes and patient records before forwarding to insurance intermediary auditors for review;
- 20% Analyze data and write reports summarizing quality assurance findings;
- 15% Oversee personnel engaged in quality assurance activities; and
- 5% Make recommendations to management for improving quality assurance program.

The petitioner's president stated that "[a] minimum of a Bachelor's degree in Medicine, Nursing, or a closely[-]related field is [the petitioner's] actual minimum qualification for this position."

The evaluation of the proffered position, dated July 8, 2009, states that, in the opinion of the evaluator, based on the provided descriptions of the duties of the proffered position, the position

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requires a minimum of a bachelor's degree in nursing, medicine, or a related field. The evaluator also stated:

The requirements [of the proffered position] should not be conflated with those of analogous positions at hospitals or other larger healthcare organizations. Indeed, it is difficult to locate precisely analogous positions, due to the different distribution of duties that must exist in smaller organization[s] such as [the petitioner].

The organizational chart provided shows that, when that chart was prepared, of the two members of the petitioner's quality assurance team, only one had a nursing degree. The other had a degree in physical therapy. Whether the petitioner is asserting that physical therapy is a field sufficiently closely-related to nursing that the two constitute a single specific specialty is unclear. The AAO also notes that, according to the organizational chart, the petitioner then employed a medical social worker, a speech pathologist, two home health aids, an occupational therapist, five physical therapists, and a physical therapist assistant, but only four nurses.

The petitioner submitted 48 vacancy announcements.

Three of the vacancy announcements submitted were placed by an employment agency for a Quality/Risk Nurse Coordinator to work at a small hospital and health clinic in South Florida. It indicates a candidate must be a registered nurse, and that a bachelor's of science degree in nursing (BSN) or a master's degree is preferred. The AAO notes that a preference for such a degree is not a minimum requirement.

Another announcement was placed by [redacted] for a Quality Assurance Nurse position in Florence, Alabama. It stated that the position requires a BSN or equivalent.

Another announcement was placed by [redacted] for a Nurse, Quality Assurance Health Services Management to work in South Texas. It states that the position requires a BSN.

Two announcements were placed by [redacted]; for a Quality Assurance Nurse to work in Syracuse, New York, and state that the position requires a BSN or equivalent.

Another announcement was placed by [redacted] for a Quality Assurance Nurse Liaison to work in Shelton, Connecticut. It states that a BSN is preferred for the position, but not required. It states that the required education for the position is "High School."

[redacted] placed another announcement for a Quality Assurance Nurse to work in Foley, Alabama. It states that the position requires a BSN or equivalent.

An announcement placed by [redacted] for a Quality Assurance Coordinator to work in Baltimore, Maryland states that the position requires a Maryland registered nurse (RN) license and a four-year degree, but does not state that the degree must be a BSN. The AAO notes that a BSN is not a requirement for RN licensure.

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Another announcement was placed by [REDACTED] for an Improvement Coordinator to work in Joliet, Illinois. That announcement states that the requisite education is a two-year degree.

[REDACTED] a health insurance provider, placed an announcement for a Quality Improvement Nurse Specialist RN to work in Orange, California. It states that the position requires an RN license, and that a BSN or master's degree is preferred.

The [REDACTED] placed an announcement for a Quality Coordinator – Registered Nurse to work in Oakland, California. It states that the position requires a BSN.

Two of the announcements were placed by a healthcare staffing agency for a Registered Nurse, Quality Improvement Coordinator or Management to work in an unidentified new hospital in [REDACTED] Pennsylvania. They state that the candidate must be an RN and that a bachelor's degree is required, but not that the position requires a degree in any specific specialty.

Three announcements are for a Quality Resource RN to work for the [REDACTED] in Baltimore, Maryland and state that the candidate must be an RN and must have a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement is for a Quality Review Nurse to work at [REDACTED] in Baltimore, Maryland and states that the position requires a BSN.

Another announcement was placed by [REDACTED] for a Clinical Quality Specialist to work in Elgin, Illinois. It states that the position requires a BSN and that a master's degree is preferred.

Another announcement was placed by [REDACTED] for a Nurse Coordinator to work in [REDACTED]. It states that the position requires a minimum two-year nursing degree, which would not be a BSN.

Two of the announcements provided were placed by [REDACTED] for a Quality Improvement Specialist to work in Boca Raton, Florida. They state that the position requires Florida RN licensure, and that a BSN is preferred, but not that it is a minimum requirement.

[REDACTED] placed another announcement for a Quality Assurance Nurse to work in Kent, Washington. It states that the position requires a BSN or equivalent.

One of the announcements provided was placed by the [REDACTED] of [REDACTED] Connecticut for a Quality Improvement Coordinator and states that the position requires a BSN.

[REDACTED] placed an announcement for a Quality Assurance Nurse to work at South [REDACTED]. The announcement states that the position requires a Florida RN license, and that a bachelor's degree in nursing or a related field is preferred.

[REDACTED] placed an announcement for a Quality Assurance Nurse to work at [REDACTED] in Miami, Florida. That announcement states that the position requires a "Diploma or Bachelors

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Degree in Nursing.” The AAO notes that a diploma in nursing is obtained from an approved nursing program in a hospital, and typically takes about three years to complete. It is not equivalent to a bachelor’s degree. *C.f.* U.S. Department of Labor’s (DOL’s) *Occupational Outlook Handbook (Handbook)* chapter on Registered Nurses.

placed an announcement for a Quality Assurance Nurse to work at in Miami, Florida. It states that the position requires a BSN.

placed an announcement for a Quality Assurance Nurse to work at in Coral Gables, Florida. It states that the position requires a BSN.

placed an announcement for a Pool Quality Assurance Nurse to work at in Coral Gables. That announcement states that the position requires graduation from an accredited school of nursing and RN licensure. It further states that a bachelor’s degree is preferred.

Another announcement was placed by for a Clinical Care Coordinator – RN to work in York, Pennsylvania. It states that the position requires Pennsylvania RN licensure and that a BSN is preferred.

Another vacancy announcement was placed by for a Home Care Coordinator to work in San Diego, California. It states that the required education is a two-year degree, and that the position requires graduation from an accredited school of nursing. It further states that a BSN is preferred.

placed an announcement for Nurses and RN Clinical Supervisors to work in Hartford, Connecticut. That announcement states that the supervisory positions require a diploma or associates degree in nursing, and that a BSN is preferred. As was noted above, a diploma in nursing is not equal to a BSN. An associates degree in nursing is also not equivalent to a BSN.

placed an announcement for a Case Review Nurse to work in a specialty pharmacy in Milford, Massachusetts. It stated that the candidate must be a graduate of an approved nursing school, and that a BSN is preferred.

placed an announcement for a Clinical Care Coordinator to work in a “clinical setting” in Fairfield, California. That announcement states that the position requires a graduate from an accredited school of nursing, and that a BSN is preferred.

An announcement placed by for a Clinical Coordinator to work in their of Aurora, Illinois. It states that the candidate must be an Illinois licensed RN and that a BSN is preferred.

placed an announcement for a Director of Professional Services (DOPS) to work Ames, Iowa. It states that the candidate must have a current RN license, and that a BSN is preferred.

also placed a vacancy announcement for a DOPS to work in Chester, Virginia. It states that this position also requires RN licensure and that a BSN is preferred.

An unidentified hospital in [REDACTED] placed an announcement for a Director Quality and Case Management. That announcement states that the position requires a BSN or a master's degree in nursing.

An employment agency placed an announcement for a Director of Quality and Risk Management to work in Dallas, Texas for its client, a nationwide operator of long-term acute care hospitals. It states that a BSN or master's degree is preferred for the position.

[REDACTED] placed an announcement for a Continuous Quality Improvement Manager, RN to work in a Warwick, Rhode Island hospice. That announcement states that RN licensure is required and that a bachelor's degree is preferred.

[REDACTED] a health plan administrator, placed an announcement for a Quality Management Coordinator RN to work in Phoenix, Arizona. Although that announcement states that the position requires "RN license/BSN or related field," it also states that the required education for the proffered position is a two-year degree. This suggests that the RN licensure and the BSN are alternative requirements, rather than being in the conjunctive.

The [REDACTED] placed an announcement for a Nurse Education Specialist, Quality Management and Education. That announcement states that the position requires a BSN.

[REDACTED] placed an announcement for a Regional Director of Quality Improvement to work in Brentwood, Tennessee. It states that the position requires a BSN.

[REDACTED] placed an announcement for an Area Director of Quality Management to work in a hospital in St. Louis, Missouri. That announcement states that the position requires a BSN.

[REDACTED] Specialty Hospitals placed an announcement for a Director of Quality Management—RN to work in [REDACTED] Colorado. It states that the candidate must be RN licensed, and that a BSN is preferred.

[REDACTED] placed a vacancy announcement entitled "Quality Assurance." It states that the candidate must be a graduate of an approved nursing school and have a bachelor's degree, but not that the candidate must have a BSN.

Two of the vacancy announcements provided were placed by [REDACTED] for a Rehab Coordinator to work in Madison Heights, Michigan. They state that the position requires a bachelor's degree in physical therapy.

The vacancy announcements will be further discussed below.

The director denied the petition on August 1, 2009, finding, as was noted above, that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel submits, *inter alia*, a letter from [REDACTED], the petitioner's Clinical Administrator and Director of Nursing describing the duties of the proffered position in additional detail, a letter from Dr. [REDACTED] the chief operating officer of [REDACTED] and a brief.

The AAO finds that the letters from [REDACTED] do not satisfy any of the criteria described above for establishing a proffered position as a specialty occupation. [REDACTED] briefly discussed the duties of the position and stated that, in his opinion, the position requires a bachelor's degree in nursing, medicine, or a related field. [REDACTED] also briefly discussed the duties of the proffered position, stated that his company, and has a Training Supervisor-Nursing Staff position that is similar to the proffered position, and claimed that his company requires an individual with a minimum of a bachelor's degree or the equivalent in medicine, nursing, or a closely-related field to hold that position.

Neither [REDACTED] discussed the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.<sup>5</sup> Their omission of such an important factor severely diminishes the evidentiary value of their assertions, particularly those regarding the complexity of the proffered position and its constituent duties.

Furthermore, their brief descriptions of the duties of the proffered positions do not describe those duties in detail and, in the case of [REDACTED], merely repeat the duties contained in the petitioner's

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<sup>5</sup> As indicated previously, the LCA submitted by the petitioner in support of this petition was certified for a Level I, entry-level position. The aforementioned *Prevailing Wage Determination Policy Guidance* states the following with regard to Level I wage rates:

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

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and her work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

letter. Neither [REDACTED] identify, and their pronouncements do not indicate, that they have considered, substantive evidence of specific matters that would actually engage the beneficiary in the performance of the duties of the particular position that is the subject of this petition.

The AAO may, in its discretion, use as advisory opinion 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).

Having made these initial observations, the AAO will now discuss application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which may be satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, which cited by the petitioner's president, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>6</sup> As noted above, the AAO agrees with counsel that the duties of the proffered position generally align with those of medical and health services managers as outlined in the *Handbook*.

The *Handbook* states the following with regard to the duties of medical and health services managers:

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. . . .

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

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<sup>6</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.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

\* \* \*

Medical and health services managers' titles depend on the facility or area of expertise in which they work. . . .

U.S. Dept. 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> (accessed Jun. 26, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

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. . . .

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.

\* \* \*

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.

*Id.* at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4>.

The information from the *Handbook* does not support a finding that a bachelor's degree or the equivalent, in a specific specialty, is the normal minimum entry requirement for this occupation. The *Handbook* states that "most" medical and health services managers possess at minimum a

bachelor's degree before entering the field,<sup>7</sup> that requirements vary by facility, and that some facilities hire those who have on-the-job experience instead of formal education. However, the *Handbook* does not report that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into the occupational category. Accordingly, inclusion of the proffered position within this occupational category is not in itself sufficient to establish the position as one for which the normal minimum entry requirement is at least a bachelor's or higher degree, or the equivalent, in a specific specialty.

The information from O\*NET OnLine submitted by counsel does not establish that the proffered position satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O\*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as its Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. Additionally, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. 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. For all of these reasons, the O\*NET OnLine excerpt is of little evidentiary value to this issue.

Furthermore, the AAO notes again that the petitioner designated the proffered position as a Level I position on the LCA. That designation is indicative of a comparatively low, entry-level position relative to others within its occupation, and it signifies that the beneficiary is only expected to possess a basic understanding of the occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a

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<sup>7</sup> "Most" does not indicate that a medical and health services manager position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of medical and health services managers positions require at least a bachelor's degree in a specific specialty, it could be said that "most" medical and health services managers positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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. Nor, as indicated above, do the letters from [REDACTED] 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.

The 48 job-vacancy announcements were outlined briefly above. The petitioner has not established that the job-vacancy advertisements relate to positions that, as required by this criterion, are both within organizations similar to the petitioner and are also themselves positions that are parallel to the proffered position.

Of the submitted job vacancy advertisements which require a BSN, some are clearly at hospitals, nursing facilities, insurance companies, and other large healthcare concerns. However, [REDACTED] evaluation indicated that quality control positions at such institutions are different from those at a smaller company, such as the petitioner.

Further, of the four vacancy announcements placed by [REDACTED] with the job title "Quality Assurance Nurse," two positions in Miami do not require a BSN, whereas another position in Miami and one in Coral Gables do. This demonstrates conclusively that, among these positions, the educational requirement cannot be inferred from the job title, as positions with the same company and the same job title, even in the same location, may have different educational requirements.

For all of these various reasons, the vacancy announcements submitted do not show 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.<sup>8</sup>

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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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<sup>8</sup> Furthermore, according to the *Handbook* there were approximately 303,000 persons employed as medical and health services managers in 2010. *Handbook* at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-6> (last accessed Jun. 26, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the 48 submitted vacancy announcements 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 these 48 job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these 48 job-vacancy announcements that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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 establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. The duties proposed for the beneficiary are similar to those outlined in the *Handbook* as normally performed by medical and health services managers, and the petitioner's description of the duties which collectively constitute the proffered position lacks the detail and specificity required to establish that they surpass or exceed the duties performed by typical medical and health services managers in terms of complexity or uniqueness. As noted above, the *Handbook* indicates that the performance of these typical duties does not normally require a bachelor's degree, or the equivalent, in a specific specialty.

Also, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have his work reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next 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's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the

performance requirements of the proffered position.<sup>9</sup> In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The visa petition states that the proffered position is a quality assurance administrator position. The petitioner's CEO represented that it requires a minimum of a bachelor's degree in medicine, nursing, or a related field. The petitioner's clinical administrator/director of nursing asserted that she and two others hold analogous positions in quality assurance. Her job title, however, as shown above, differs from that of the proffered position, and her duties presumably do too. The other two people she cited hold positions designated as rehabilitation coordinator. Again, their duties are likely considerably different from the duties of the proffered position. Further, they do not hold bachelor's degrees in nursing, but in physical therapy. That they have such degrees offers no support for the proposition that the proffered position of quality assurance administrator requires a BSN. In any

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<sup>9</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

event, the standard stated in this criterion is established practice with regard to the proffered position – not with regard to "analogous" positions.

The previously provided organizational chart showed that the petitioner employed another person on its quality assurance team, who was then its administrator/director of nursing. Although she did have a master's degree in nursing, that the petitioner's administrator/director of nursing had such a degree provides no insight into the requirements of the proffered position, other than to call into question the need for a BSN degree in a position subservient to the administrator/director of nursing.

The record contains no other evidence pertinent to the petitioner's previous recruitment and hiring practices for the proffered position. However, even if the record contained such evidence, the AAO would still find that the petitioner failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the record does not, as indicated above, establish that its degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position, a determination which is strengthened by the petitioner's indication in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only “moderately complex tasks that require limited judgment.” The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only “moderately complex tasks that require limited judgment,” is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer’s job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment’s

procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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

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

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

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