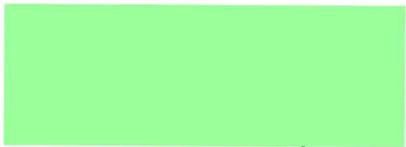




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 04 2013**

Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition the petitioner stated that it is a home health services firm with 30 employees. To employ the beneficiary in what it designates as a clinical manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's 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 submissions on appeal.

The issue on appeal is before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meet the following statutory and regulatory requirements.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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

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

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

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

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

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

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

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.

With the visa petition, counsel submitted evidence sufficient to show that the beneficiary has a bachelor's degree in nursing awarded by the [REDACTED]

Counsel also submitted (1) a letter, dated April 5, 2010, from the petitioner's administrator; and (2) a description of the proffered position.

In his April 5, 2010 letter, the petitioner's administrator stated:

The [proffered position] supervises our Registered Nurses, Licensed Vocational Nurses, and other home health aides. Our Registered Nurses have associate [sic] degrees in nursing.

The petitioner's administrator further stated:

At a minimum, we require that the applicant for the Clinical Manager position must have graduated with at least a bachelor's degree in Nursing and must be licensed as a Registered Nurse in the State of Colorado. In the alternative, we will accept applicants who graduated with an Associate [sic] degree in Nursing plus at least six years Nursing experience.

The description of the proffered position contains the following list of duties:

1. Management and Supervision

- Establish and implement policies, objectives and procedures for his/her team.
- Supervise the delivery of care and services by the interdisciplinary team (which consists of nursing staff, the social worker, chaplain, home health aide, volunteer and physician) to the patients and their families.
- Staff scheduling[.]
- Monitor the re-certification/re-authorization process.
- Participate in Interdisciplinary Team Meetings as indicated.

- Prepare budget for his/her department. Ensure and document appropriate use of the medications, durable medical equipment and supplies.
- Appropriately utilize the skills and resources of contract personnel such as Physical Therapist, Occupational Therapist, Speech Therapist, Medical Social Worker, Home Health Aide, and Personal Caregiver[.]
- Supervise the preparation of appropriate care plan and integrate care plans as needed.
- Perform on[-]site evaluations of HHAs and volunteers.
- Prepare and submit reports to management as required.
- Participate in the on-call rotation and weekends as needed[.]

2. Quality Improvement

- Plan and evaluate clinical service delivery by his/her team[.]
- Evaluate staff and work quality. Prepare performance reports on a periodic basis.
- Integrate QI results into the established plan of care.
- Supervise routine QI assessment[.]
- Supervise routine chart reviews.

3. Professional Development

- Supervise the orientation of new team members as assigned by the Director of Clinical Services or designee[.]
- Attend regularly scheduled in-services and educational conferences.
- Develop and achieve professional growth goals and objectives reviews with the Director of Clinical Services or designee.
- Enforce and follow all safe practices in the performance of job duties[.]
- Represent professional nursing exhibiting compassion[.]
- Friendly and approachable demeanor for management and employees[.]
- Actions taken with the employee, patient and company's interests in mind[.]
- Perform other duties as assigned[.]

The job description also states that the proffered position requires, "At least a Bachelor's degree in Nursing, or in the alternative, an Associate [sic] degree in Nursing plus six years Nursing experience."

On August 31, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center also specifically requested a more detailed description of the duties of the proffered position.

In response, the petitioner submitted, *inter alia*, (1) four vacancy announcements; (2) a letter, dated October 1, 2010, from an assistant administrator at [REDACTED] in Aurora, Colorado;

(3) a letter, dated October 5, 2010, from the petitioner's administrator; and (4) counsel's own letter, dated October 11, 2010. The vacancy announcements will be addressed below.

In response to the request for a more detailed description of the duties of the proffered position, the petitioner's administrator stated, in his October 5, 2010 letter, that the petitioner had already submitted a detailed description of the duties of the proffered position, and submitted a copy of the description previously provided in his April 5, 2010 letter with the addition of percentages of time to be spent on the duties. While the petitioner's administrator's job descriptions and initial letter specified that the petitioner would accept an associate's degree in nursing plus six years of nursing experience, he indicates in his October 11, 2010 letter that an "associate Nursing degree plus at least six months experience" was sufficient to perform the duties of the proffered position.

In her own October 11, 2010 letter, counsel contended that the petitioner "has clearly met two of the four criteria" at 8 C.F.R. § 214.2(h)(4)(iii)(A). Specifically, counsel contended that 1) the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*) states that "Health Service Manager positions require at least a bachelor's degree, but some employers even require a master's degree," and 2) the duties of the proffered position are "complex and unique, thus requiring a bachelor's degree for entry into the occupation."

The director denied the petition on November 5, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that because, (1) the proffered position is a health services manager position and it requires a minimum of a bachelor's degree in nursing, and (2) the beneficiary has a bachelor's degree in nursing, the visa petition should be approved. Counsel also submitted a letter, dated December 1, 2010, from the petitioner's administrator, and counsel's own letter, dated December 6, 2010.

In his December 1, 2010 letter, the petitioner's administrator stated that either a bachelor's degree in nursing or an associate's degree in nursing and six years of experience would qualify one for the proffered position.

In her December 6, 2010 letter, counsel asserted that the duties of the proffered position "are specialized and complex by their very nature."

As a preliminary matter, the AAO notes that the petitioner has not shown how an associate's degree in nursing and six years of nursing experience is equivalent to a bachelor's degree in nursing pursuant to the salient regulations. Specifically, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires that for experience or training, other than formal education, to be shown to be equivalent to a bachelor's degree in a specific specialty, recognition of expertise in the specialty must be demonstrated by (1) recognition of expertise in the specialty occupation by at least two recognized authorities in the

same specialty occupation; (2) membership in a recognized foreign or United States association or society in the specialty occupation; (3) published material by or about the alien in professional publications, trade journals, books, or major newspapers; (4) licensure or registration to practice the specialty occupation in a foreign country; or (5) achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The description of the proffered position and the petitioner's administrator's letter both indicate that the petitioner would accept an associate's degree and six years of nursing experience as a sufficient educational qualification for the proffered position, without insisting, in addition, on one of those five types of supplementary evidence. Without one of those five types of supplementary evidence, an associate's degree and six years of experience would not be demonstrably equal, pursuant to the salient regulation, to a bachelor's degree in nursing.

The petitioner has indicated that it would not require a bachelor's degree, or the equivalent, to fill the proffered position, which is tantamount to an admission that the proffered position is not a specialty occupation position. This is sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

The AAO will now discuss the application of the additional, supplemental standards at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the "Medical and Health Services Manager" chapter, the *Handbook* provides the following description of the duties of those positions:

Medical and health services managers, also called healthcare executives or healthcare administrators, plan, direct, and coordinate medical and health services. They might

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

manage an entire facility or specialize in managing a specific clinical area or department, or manage a medical practice for a group of physicians. As healthcare changes, medical and health services managers must be able to adapt to changes in laws, regulations, and technology.

Duties

Medical and health services managers typically do the following:

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

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

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

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

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

Health information managers are responsible for the maintenance and security of all patient records. They must stay up to date with evolving information technology and current or proposed laws about health information systems. Health information

managers must ensure that databases are complete, accurate, and accessible only to authorized personnel.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited February 27, 2013).

In the "Registered Nurses" chapter, the *Handbook* provides the following description of the duties of those positions:

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

Duties

Registered nurses typically do the following:

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

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

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

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

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

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

- A specific health condition, such as a diabetes management nurse who helps patients with diabetes or an oncology nurse who helps cancer patients
- A specific part of the body, such as a dermatology nurse working with patients who have skin problems
- A specific group of people, such as a geriatric nurse who works with the elderly or a pediatric nurse who works with children and teens
- A specific workplace, such as an emergency or trauma nurse who works in a hospital or stand-alone emergency department or a school nurse working in an elementary, middle, or high school rather than in a hospital or doctor's office.

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

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

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

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

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

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

Neonatology nurses take care of newborn babies.

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

Rehabilitation nurses care for patients with temporary or permanent disabilities.

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

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

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-2> (last visited February 27, 2013) (emphasis added).

The duties attributed to the proffered position are consistent with the duties of a registered nurse in a supervisory and administrative position as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a registered nurse position, and, more specifically, an administrative and supervisory registered nurse position, as described in the *Handbook*.²

The *Handbook* states the following about the educational requirements of registered nurse positions:

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

² The AAO observes that if the petitioner had demonstrated that the proffered position qualified as a Medical and Health Services Manager, it would not have demonstrated that the position is a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. The *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty. While it indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, it also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, it also indicates that a degree in a general field, such as business administration, is common. Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education. U.S. Dept't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Medical and Health Services Managers." <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited February 27, 2013).

Neither an associate's degree in nursing nor a hospital diploma is equivalent to, or superior to, a bachelor's degree in nursing. The *Handbook* does not support the proposition that the proffered administrative and supervisory registered nurse position categorically requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

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

Further still, as was noted above, the petitioner and counsel have repeatedly acknowledged that an associate's degree in nursing, combined with six years' experience (or six months of experience), could be substituted for the requirement of a bachelor's degree in nursing. An associate's degree and six years' experience is not necessarily equivalent to a bachelor's degree. The petitioner and counsel have, in effect, conceded that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, 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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent.

As was noted above, the record does contain a letter from an assistant administrator at [REDACTED]. The body of that letter states, in its entirety:

This is to certify that [REDACTED] a Medicare licensed and accredited by [REDACTED] free standing hospice agency is actively hiring Clinical

Managers. Clinical manager is an integral part of the hospice operation. They audit charts and monitor patient census, monitor compliance and uphold high standard of deliverance of care. Part of the qualification and requirement of a Clinical Manager is a BS Nursing degree.

This is issued upon request.

There is no indication that [REDACTED] is an organization similar to the petitioner within the meaning of the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). It is only within the petitioner's industry if that phrase is widely construed to include all organizations in health care. Such a construction would include, for example, organizations providing ambulatory care, behavioral healthcare, hospice care, long-term care, and even office-based surgery, as well as home health care. The record contains no indication that such diverse organizations should be considered similar to the petitioner, or that their administrators and supervisors would be in positions parallel to the proffered position, with similar duties and educational demands. Furthermore, the duties listed in that letter are so vague and generalized that it cannot be determined that the position described therein is a parallel position in a similar organization; thus, that letter is of little evidentiary weight in demonstrating that a minimum of a bachelor's degree or the equivalent in nursing, or any other specific specialty, in positions parallel to the proffered position, in organizations similar to the petitioner, and in the petitioner's industry, require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Finally, the petitioner's reliance upon the job vacancy advertisements is misplaced.

The first vacancy announcement provided was placed for a Home Care Nursing Manager for [REDACTED] which describes itself as "one of the most comprehensive health care facilities [REDACTED] and one of the largest employers in [REDACTED]" It further claims that it has more than 20 inpatient and outpatient facilities. That self-description does not suggest that [REDACTED] is similar to the petitioner. In describing the duties of that position, the vacancy announcement only states, "The Home Care Nursing Manager is responsible for providing high quality care for patients of all ages through the management and supervision of all clinical services Additional duties include, compliance with Medicare conditions of participation and CHAP standards and other regulations pertinent to Home Care." Even if a more concrete description of the duties of the proffered position had been provided, that description of the position with [REDACTED] would be insufficiently specific to demonstrate that the position it announces has duties sufficiently similar to the proffered position that the two positions should have the same educational requirements.³ Finally, that vacancy announcement states that the position announced requires a bachelor's degree, but not that the degree must be in any specific specialty.

The second vacancy announcement is for a Clinical Manager – RN – Nursing Manager – Home Health Care, and was placed by [REDACTED] As to the duties of the position announced, it states:

³ A discussion of the abstract nature of the description provided of the duties of the proffered position appears below.

Clinical Managers work in the office and lead field staff in delivering exceptional client service and high[-]quality care. Clinical Managers are an integral part of the team, who focus on training, mentoring and staff development. Clinical managers supervise internal case management, episodic utilization, field staff competencies for skilled services, and participate and oversee in Performance Improvement projects and clinical initiatives.

Again, even if the record contained a more specific description of the duties of the proffered position, that description of the duties of the position at [REDACTED] would be insufficient to allow a meaningful comparison of the two positions, such as might permit a conclusion that the two positions are parallel and likely have the same educational requirement. The announcement also states that [REDACTED] has "170 offices in 18 states." Therefore, the position announced by [REDACTED] too, cannot be found to be a parallel position in a similar organization.

The third vacancy announcement was placed by [REDACTED] for an RN Home Health Supervisor. It contains no description of [REDACTED]. As such, whether it is similar to the petitioner is unclear. It contains no description of the duties of the position is announces. As such, whether the position is parallel to the proffered position, and requires the same education, cannot be determined. Finally, although it states that the position requires a bachelor's degree, it does not state that the degree must be in nursing or in any other specific specialty.⁴

The final vacancy announcement was placed by a staffing agency for an RN Home Health Supervisor to work for an unidentified healthcare organization in Cement, Oklahoma. As that announcement does not further describe the hiring organization, whether the hiring organization is similar to the petitioner is unclear. That announcement states the following as the duties of the position announced:

- Assist in the **development of clinical policies and procedures** while ensuring that written clinical materials are accurate and updated regularly
- Supervise, teach and Implement **evaluation of staff** to ensure a high quality of care
- Coordinate the clinical record review and keep the clinical procedure resource materials current
- Hire or assist in **hiring clinical staff**

Even given the description of the duties of the proffered position, the description of the duties of the position in Oklahoma is insufficiently specific to permit a comparison that would show that the two positions are parallel and would have the same educational requirement. Finally, although that

⁴ Although the announcement stipulates that it is for a registered nurse position, the AAO observes that a registered nurse with a bachelor's degree would not necessarily have a bachelor's degree in nursing.

announcement states that the position it announces requires a bachelor's degree, it does not state that the degree must be in nursing, or in any other specific specialty.

None of those announcements has been shown to be for a position at an organization similar to the petitioner and none has been shown to be for a position parallel to the proffered position. Further, even if all four positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the four announcements is insufficient to demonstrate an industry-wide requirement.⁵ The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

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

The 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, notwithstanding that otherwise similar positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The duties of the proffered position are so abstractly phrased that they contain insufficient indices of complexity or uniqueness. For instance, establishing and implementing policies, objectives, and procedures; supervising delivery of care and services; scheduling staff; monitoring recertification; participating in meetings; preparing a departmental budget; ensuring and documenting appropriate

⁵ 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 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 Manager for a small home health care company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

use of medications, equipment, and supplies; and appropriately utilizing contract personnel, may or may not be so complex or unique that they require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, the petitioner and counsel have both indicated that the proffered position may be filled by a person with an associate's degree in nursing and six years of experience, making clear that the particular position offered in this case is not so complex or unique that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

For the reasons discussed above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In his October 5, 2010 letter, the petitioner's administrator stated that the proffered position is a new position in the petitioning company. As such, the record contains no evidence pertinent to anyone the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁶

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

Again, however, the duties of the proffered position are too abstractly phrased to contain any indication of specialization and uniqueness. None of the duties of the proffered position, performing personnel evaluations; preparing and submitting reports to management; participating in the on-call rotation; planning and evaluating clinical service delivery; evaluating staff and work quality; preparing performance reports; integrating quality improvement results into the established plan of care; supervising routine quality improvement assessments; supervising routine chart reviews; supervising the orientation of new team members; attending in-service meetings and educational conferences; developing and achieving professional growth goals and objectives; enforcing and following safe practices; representing professional nursing; exhibiting compassion, etc., have been described with specificity sufficient to show that their nature is so specialized and complex that they

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

require knowledge usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence, nor even an assertion, that a registered nurse without a minimum of a bachelor's degree in nursing or the equivalent would be unable to perform the duties of the proffered position.

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than registered nursing positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner and counsel have acknowledged that the proffered position could be performed by a person with an associate's degree in nursing and six years of experience. This suggests that the nature of its duties is not so specialized and complex that those duties are usually associated with at least a bachelor's degree.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

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

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