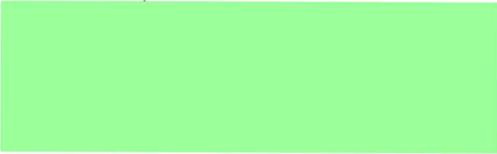


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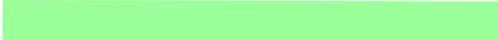
U.S. Citizenship  
and Immigration  
Services



Date: **MAR 05 2013**

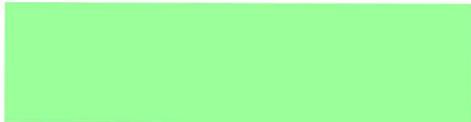
Office: CALIFORNIA SERVICE CENTER

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 long-term care facility. To employ the beneficiary in what it designates as a compliance officer 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 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 meets the following statutory and regulatory requirements.

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 provided evidence that the beneficiary was awarded a bachelor's degree in nursing by the [REDACTED], in Manila, the Philippines. An evaluation submitted states that the beneficiary's degree is equivalent to a bachelor's degree in nursing earned in the United States.

Counsel also submitted a letter, dated March 31, 2010, from the petitioner's administrator, which contains the following description of the duties of the proffered position:

The Compliance Officer (CO) is responsible for the development, implementation, and monitoring of the Compliance Program to ensure its effectiveness. The CO is a qualified professional who provides direction and oversight of the Compliance Program. The CO also functions as the HIPAA Privacy Officer. The CO promotes the organization's mission, vision and culture of excellent performance and compliance. The CO reports to the Chief Executive Officer (CEO) and the Board of Directors (BOD).

As to the educational qualifications necessary for the proffered position, the petitioner's administrator stated, "The normal minimum requirement for the performance of the above job duties is a bachelor's degree preferably in Nursing or related discipline."

A preference is not a minimum requirement. The requirement of a bachelor's degree *preferably* in nursing is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent and does not qualify a position as a specialty occupation position.

On September 3, 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 specifically requested "a more detailed description of the work to be performed." The RFE also requested:

Provide, in layman's terms, a clear explanation of what differentiates the proffered position from other related "non-specialty occupation" positions. Compare and contrast those duties to be performed that are more discretionary, demanding, complex, highly advanced, specialized, or sophisticated – exceeding industry or normal positions standards – such that a baccalaureate level of education in a specific field of study is a realistic prerequisite for entry into the proffered position. Be exact and provide documentation to substantiate the claims of complexity.

In response, counsel submitted (1) nine vacancy announcements; (2) a more detailed description of the duties of the proffered position; and (3) counsel's own letter, dated September 29, 2010. The vacancy announcements provided will be addressed below.

The more detailed description of the proffered position reads as follows:

Responsible for the development, implementation, and monitoring of the Compliance Program to ensure its effectiveness

Designs, develops, implements and monitors a compliance plan and related policies, procedures and reporting mechanisms 10%

Promotes safe and high quality medical care and compliance with regulatory requirements 10%

Identifies and responds to reports of compliance concerns, errors, or risks 10%

Researches, analyzes and resolves compliance issues with various departments 5%

Provides direction and oversight of the Compliance Program

Identifies functions, clinical practices and potential compliance risks requiring compliance and risk management related activities, prioritizes attention thereto and recommends solutions 10%

Investigates parties in matters of compliance reports or concerns, risk identification and error reporting 10%

Sets direction for compliance education and focused projects 5%

Documents compliance requirements, implements correction plans, monitor compliance to plan provisions, policies and regulations 5%

Functions as the Health Insurance Portability and Accountability Act (HIPAA) Privacy Officer

Responsible for the development and implementation of the policies and procedures necessary for compliance 5%

Responsible for providing information, receiving complaints and handling the administration of patients' records rights 5%

Keeps abreast of current changes in compliance requirements for government programs and other third party payers 5%

Promotes the organizations mission, vision and culture of excellent performance and compliance

Develops education, training and communication programs for all staff members on elements and requirements of clinic compliance, policies, procedures and reporting mechanisms 5%

Implements and communicates all compliance policies to all staff members and participates in meetings and/or seminars to enhance knowledge and skills 5%

Reports to the Chief Executive Officer (CEO) and the Board of Directors (BOD).

Regularly reports to senior officers on the findings, conclusions, policies and procedures, and plans with regards to investigations, corrective actions, remediation programs, new legal or regulatory requirements and plan or program modifications 5%

Provides guidance to concerned individuals with accountability for the implementation of policies and procedures related to compliance and risk management 5%

In his own September 29, 2010 letter, counsel cited the vacancy announcements provided, the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, and O\*NET OnLine as evidence that the proffered position qualifies as a specialty occupation. In his analysis, counsel compared the proffered position to Medical and Health Services Manager positions as described in the *Handbook*.

Rather than provide a more detailed description of the proffered position's duties, as requested, counsel simply reiterated the previously provided description of those duties. Counsel stated, "The normal minimum requirement for the performance of such complex and specialized duties is a Bachelor's degree in Nursing, or similar health care related studies." The AAO notes that this differs from the initial description of the educational requirements of the proffered position provided by the petitioner's administrator in her March 31, 2010 letter. That letter stated that the position requires a bachelor's degree, and that a bachelor's degree in nursing is *preferred* for the proffered position. Counsel did not reconcile those discrepant descriptions of the claimed, minimum educational requirements of the proffered position, which are directly relevant to the main issue in this case.

The director denied the petition on March 22, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. 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 the evidence in the record demonstrates that the proffered position is a specialty occupation position. In his appeal brief, counsel analyzed the proffered position as a medical and health services manager.

The AAO will now discuss the application of the additional, supplemental standards 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 is 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.

To determine whether a particular job qualifies as a specialty occupation position, however, the AAO does not solely rely on the job title. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity that will ultimately determine the work's content.

The duties of the proffered position, succinctly expressed, include monitoring the petitioner's operations for safety and regulatory compliance and developing programs to teach staff members about regulatory compliance.

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.<sup>1</sup> In the "Medical and Health Services Managers" chapter, the *Handbook* provides the following descriptions 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 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.

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/> (last visited February 27, 2013).

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

However, the *Handbook* chapter on "Registered Nurses" states, "Some registered nurses oversee licensed practical nurses, nursing aides, and home care aides." The *Handbook* further states, pertinent to registered nurse positions:

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Registered Nurses," <http://www.bls.gov/ooh/healthcare/registered-nurses.htm> (last visited February 27, 2012).

The duties the petitioner's administrator attributed to the proffered position are entirely consistent with the duties of some registered nurses as described in the *Handbook*, especially those with training/educational and administrative duties. Further, the duties of a medical and health services manager position appear to involve more general managerial control over all aspects and all personnel of a medical facility, such as a hospital or clinic, clinical area or department, or medical practice. It does not describe the duties of medical and health services managers to include those of a function manager and to be directly involved in assessing regulatory compliance issues and directly training staff in how to comply with those requirements. In any event, counsel has provided no evidence that distinguishes the proffered position from a supervisory and/or nurse educator registered nurse position. On the balance, the AAO finds that the proffered position is a registered nurse position and, more particularly, a supervisory registered nurse position, with nurse educator duties, as described in the *Handbook*.<sup>2</sup>

As to the educational requirements of registered nurse positions, the *Handbook* states, "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."

A diploma from a nursing program has not been shown to be equivalent to a bachelor's degree, and an associate's degree is clearly *not* equivalent to a bachelor's degree. The *Handbook* does not indicate that registered nursing positions normally require, as a category, a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. It does not, therefore, indicate that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position proffered in the instant case.

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<sup>2</sup> The AAO observes, however, that if the position had been determined to be a medical and health services manager position as described in the *Handbook*, this would not demonstrate that it is a specialty occupation position, as the *Handbook* does not indicate that such positions categorically require 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 knowledge of health care, 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. In addition, there is insufficient evidence in the record to establish that knowledge of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and general training of staff pertinent to its disclosure rules requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty or its equivalent.

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 in a specific specialty or its equivalent, 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 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 a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

As was noted above, counsel did submit vacancy announcements. The nine vacancy announcements provided are for positions entitled Senior Health Compliance Specialist; Healthcare Compliance & Investigations Director; Regulatory Compliance Manager; Senior Director of Compliance and Risk Management; Coding and Compliance Manager; Compliance Auditor/Consultant; Resource & Foster Home Licensing Compliance Specialist; and Senior Manager, Radiology Regulatory

Compliance.<sup>3</sup> One of the vacancy announcements does not make clear whether it announces a position for a Quality Assurance Manager or a Compliance Officer.

None of the duty descriptions that accompany those vacancy announcements are sufficiently detailed, and sufficiently similar to the duties attributed to the proffered position, to demonstrate that any of the positions announced are positions parallel to the proffered position.

As to the entities posting these positions, they are a benefits and human resources consulting firm; the [REDACTED]; a healthcare compliance and investigations company; two hospitals; two multi-specialty medical and surgical clinics; a company that specializes in measuring health care quality; and the [REDACTED] of Illinois, which places children in foster homes and provides other resources. None of those organizations have been shown to be in the petitioner's industry, and most are clearly not in the long-term care home industry.

As for the claimed educational requirements, two of the vacancy announcements provided state that the positions they announce require bachelor's degrees in nursing. Both of those positions state a minimum requirement of a bachelor's degree in a specific specialty or its equivalent.

One of those announcements states that the position it announces requires a minimum of an undergraduate degree, and preferably a Juris Doctorate (JD). Because the announcement indicates that an unspecified bachelor's degree is a sufficient educational qualification for the position, that announcement does not indicate that a bachelor's degree in any specific specialty is a minimum requirement for the position announced.

Another announcement states, "Bachelor's degree in science, health care or related field[;] MBA, MPH, JD or similar graduate degree preferred." Because a bachelor's degree in any of a wide array of fields, including any of the sciences, would be a sufficient educational qualification for that position, the position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states that the position requires a bachelor's degree in business, finance, nursing or a health-related field. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For both reasons, that announcement does not state that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

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<sup>3</sup> In fact, counsel provided two nearly identical vacancy announcements for positions entitled Healthcare Compliance & Investigations Manager. Entire paragraphs of those two announcements are identical. The AAO believes that they are for the same position and has counted them as announcements for one position.

Five of the announcements provided state that the positions they announce require bachelor's degrees, but not that the degrees must be in any specific specialty. Clearly, those announcements do not indicate that the positions they announce require a minimum of a bachelor's degree in any specific specialty or its equivalent.

None of the nine announcements has been shown to be in the petitioner's industry. None have been shown to be for positions parallel to the proffered position. Of the nine announcements, only two unequivocally call for a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if all of the vacancy announcements were in the petitioner's industry, which they are not, and all were for positions parallel to the proffered position, which they have not been shown to be, and all indicated a bachelor's degree or the equivalent in a specific specialty to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from nine announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>4</sup>

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied 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 other supervisory registered nurse or nurse educator positions in the petitioner's industry may not require a minimum of a bachelor's

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<sup>4</sup> 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 nine job postings with regard to determining the common educational requirements for entry into parallel positions in similar long-term care homes. 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 a supervisory nurse or nurse educator position with a long-term care home 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 does not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States.

degree in a specific specialty or its equivalent, 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.

As the description of the duties of the proffered position is abstract and lacks sufficient detail as to what performance of the position would entail on a day-to-day basis, it cannot be determined whether the proffered position 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. The record contains no other evidence that would differentiate the work of the proffered position from the work of supervisory registered nurse or nurse educator positions in general. Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In a footnote to an April 14, 2001 letter submitted on appeal, counsel stated that the proffered position is a new position. In any event, the petitioner has not provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>5</sup>

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Monitoring the petitioner's operations for safety and regulatory compliance and developing programs to teach staff members about HIPAA compliance have not been shown to be inherently so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than supervisory nursing or nurse educator positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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<sup>5</sup> 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").

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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.