



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: **MAY 01 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

*for Michael T. Kelly*  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on August 9, 2011. On the Form I-129 visa petition, the petitioner describes itself as a dental office established in 1992, with 10 employees. In order to employ the beneficiary in what it designates as a medical records and billing manager position, the petitioner seeks 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 on February 17, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted an appeal of the decision on March 20, 2012. On appeal, counsel for the petitioner states that the director's basis for denial of the petition on the specialty occupation issue was erroneous. In support of this position, counsel for the petitioner submitted a brief and additional documentation.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice denying the petition; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

For an H-1B petition to be approved, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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, a proposed position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as 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.

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a medical records and billing manager to work on a full-time basis at a salary of \$60,000 per year. In the Form I-129 Supplement H, at Section 1 on page 11, the petitioner described the proposed duties of the proffered position, as follows:

Plan, develop and manage the health information system including medical records and medical billing operations of the dental clinic. See detailed job description for more information.

In its undated job description, submitted along with the petition, the petitioner provided the following description of the scope and the duties of the proffered position:

Plan, develop and manage the health information system including medical records and medical billing operations of the dental clinic. Develop and implement policies and procedures for documenting, storing, and retrieving information, and for processing medical-legal documents, insurance data, making sure that data is maintained, secure, accessible and accurate for billing purposes and in conformance with federal, state and local statutes. Direct and coordinate the activities of the medical record staff (data entry, medical coding) in maintaining patient records and the medical billing staff in the overall billing functions to ensure the maximization of cash flow while improving patient, physician and customer relations.

- Implement data storage method and retrieval system for patient records to track, maintain and secure patient records.
- Participate in the development and design of computer software for computerized health information system and keep abreast of the latest software technology used to maintain and protect confidentiality of patient records.
- Analyze patient data for reimbursement, planning, quality of patient care, risk management, and research.
- Oversee the entire patient account services program. Plan and direct registration, patient insurance, billing and collections and data-processing to ensure accurate patient billing and efficient account collection.

- Oversee the activities of billing staff in entering, organization and coding of patient medical information in the computer system, to ensure that data is secure, accurate and appropriate codes are used to generate proper billing.
- Oversee collections processing, going over insurance pre-authorizations and verifications and tracking payment and payment plans.
- Develop and implement controls to ensure appropriate billing and payment cycles, timely billing in accordance with internal and third party payor requirements.
- Establish and implement billing policy procedures, including follow-up on third-party approvals and collection of overdue patient accounts.
- Monitor charge posting, billing, and collection operations for compliance with established policies, regulations, procedures and standards.
- Manage actions relating to delinquent accounts, collection agencies, special adjustments, and/or write-off.
- Prepare and maintain reports on billing and collection activities.

In addition, the petitioner claims that the requirements for the proffered position are the following:

- Bachelor's Degree or Equivalent in Computer Science or Information Systems, or related field [and]
- Six months to one year of experience in medical or dental billing or a related field.

With the initial petition, the petitioner submitted a copy of the beneficiary's foreign academic credentials, as well as a credential evaluation from [REDACTED] dated July 16, 2010. The evaluation states that the beneficiary's foreign education is equivalent to a U.S. bachelor of arts degree, with a dual major in foreign service and information technology.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Medical and Health Services Managers" – SOC (ONET/OES Code) 11-9111.00, at a Level I wage.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on November 4, 2011. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On January 26, 2012, counsel for the petitioner responded to the RFE and submitted a response letter and additional evidence. In the letter submitted in response to the RFE, dated January 25, 2012, counsel provided the following revised description of the "job duties related to coursework, training and experience" of the proffered position:

1. Plan, develop and manage the health information system including medical

records and medical billing operations of the dental clinic. Percentage of time to be spent on this duty – 50%.

Specific Duties: The Medical Records and Billing Manager will participate in the development and design of computer software for computerized health information system and keep abreast of the latest software technology used to maintain and protect confidentiality of patient records. He will analyze patient data for reimbursement, planning, quality of patient care, risk management, and research. The Medical Records and Billing Manager will oversee the entire patient account services program. Further, he will plan and direct registration, patient insurance, billing and collections and data-processing to ensure accurate patient billing and efficient account collection.

Credentials of Beneficiary:

- Bachelor's Degree in Information Systems.
- Three years of experience in dental billing.

Relevant Coursework from Bachelor degree in Information Technology for this duty:

Information Technology Management  
Data Communication and Networking  
Computer Programming  
Discrete Structures  
Systems Analysis and Design  
Software Engineering

Relevant Coursework from Healthcare (E-Commerce) Career Program for this duty:

Medical Terminology  
Procedural Coding System I – IV  
Diagnostic & Procedural Classifications  
Medical Insurance & Reimbursement I & II  
Hospital Coding and Billing  
Microsoft Applications

2. Develop and implement policies and procedures for documenting, storing, and retrieving information, and for processing medical-legal documents, insurance data, making sure that data is maintained, secure, accessible and accurate for billing purposes and in conformance with federal, state and local statutes. Percentage of time to be spent on this duty – 40%.

Specific Duties

The Medical Records and Billing Manager will implement data storage method and retrieval system for patient records to track, maintain and secure patient records. He will develop and implement controls to ensure appropriate billing and payment cycles, timely billing in accordance with internal and third party payor requirements. The Medical Records and Billing Manager will establish and implement billing policy procedures, including follow-up on third-party approvals and collection of overdue patient accounts.

Credentials of Beneficiary:

- Bachelor's Degree in Information Systems.
- Three years of experience in dental billing.

Relevant Coursework from Bachelor degree in Information Technology for this duty:

Information Technology Management  
Data Communication and Networking  
Computer Programming  
Discrete Structures  
Systems Analysis and Design

Relevant Coursework from Healthcare (E-Commerce) Career Program for this duty:

Medical Terminology  
Procedural Coding System I – IV  
Diagnostic & Procedural Classifications  
Medical Insurance & Reimbursement I & II  
Hospital Coding and Billing  
Microsoft Applications

3. Direct and coordinate the activities of the medical record staff (data entry, medical coding) in maintaining patient records and the medical billing staff in the overall billing functions to ensure the maximization of cash flow while improving patient, physician and customer relations. Percentage of time to be spent on this duty – 10%.

Specific Duties:

The Medical Records and Billing Manager will oversee the activities of billing staff in entering, organization and coding of patient medical information in the computer system, to ensure that data is secure, accurate and appropriate codes are used to generate proper billing. He will oversee collections processing, going over insurance pre-authorizations and verifications and tracking payment and payment plans. In addition, he will monitor charge posting, billing, and

collection operations for compliance with established policies, regulations, procedures and standards. He will manage actions relating to delinquent accounts, collection agencies, special adjustments, and/or write-off. In addition, he will oversee the preparation and maintenance of reports on billing and collection activities.

Credentials of Beneficiary:

- Bachelor's Degree in Information Systems.
- Three years of experience in dental billing.

Relevant Coursework from Bachelor degree in Information Technology for this duty:

Information Technology Management  
Data Communication and Networking  
Computer Programming

Relevant Coursework from Healthcare (E-Commerce) Career Program for this duty:

Procedural Coding System I – IV  
Diagnostic & Procedural Classifications  
Medical Insurance & Reimbursement I & II  
Hospital Coding and Billing

On February 17, 2012, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition.

On appeal, counsel for the petitioner asserts that USCIS erroneously denied the petition and that the petitioner's evidence demonstrates that the proffered position is a specialty occupation.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. The AAO agrees with the director and finds that the evidence of record fails to establish that the position as described is more likely than not a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

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

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the job title "medical records and billing manager" and the occupational category "Medical and Health Services Manager."

The *Handbook* describes this occupational category as follows:

Medical and health services managers, also called healthcare executives or healthcare administrators, plan, direct, and coordinate medical and health services. They might manage an entire facility or specialize in managing a specific clinical area or department, or manage a medical practice for a group of physicians. As healthcare changes, medical and health services managers must be able to adapt to changes in laws, regulations, and technology.

#### **Duties**

Medical and health services managers typically do the following:

- Work to improve efficiency and quality in delivering healthcare services
- Keep up to date on new laws and regulations so the facility complies with them
- Supervise assistant administrators in facilities that are large enough to need them

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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/ooh/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Manage finances of the facility, such as patient fees and billing
- Create work schedules
- Represent the facility at investor meetings or on governing boards
- Keep and organize records of the facility's services, such as the number of inpatient beds used
- Communicate with members of the medical staff and department heads

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

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

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

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

**Health information managers** are responsible for the maintenance and security of all patient records. They must stay up to date with evolving information technology and current or proposed laws about health information systems. Health information managers must ensure that databases are complete, accurate, and accessible only to authorized personnel.

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

U.S. Dep't. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Medical and Health Services Managers," <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited March 11, 2013).

According to the *Handbook*, medical and health services managers plan, direct, coordinate, and supervise the delivery of healthcare, and are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system. In this matter, the description of

the proffered position in the Form I-129 indicates that the beneficiary will be responsible for primarily “[p]lan[ning], develop[ing] and manag[ing] the health information system including medical records and medical billing operations of the dental clinic.”

A review of the *Handbook's* education and training requirements for this occupational category, however, indicates that it does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into this occupation in the United States. Therefore, this classification, does not, by virtue of this categorization, satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), it must be established that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. According to the *Handbook*, the educational requirements of a “Medical and Health Services Manager” are as follows:

Most medical and health services managers have at least a bachelor's degree before entering the field; however, master's degrees also are common. Requirements vary by facility.

### **Education**

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees in health services, long-term care administration, public health, public administration, or business administration also are common.

Prospective medical and health services managers have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

### **Work Experience**

Although bachelor's and master's degrees are the most common educational pathways to work in this field, some facilities may hire those with on-the-job experience instead of formal education. For example, managers of physical therapy may be experienced physical therapists who have administrative experience. For more information, see the profile on physical therapists.

### **Important Qualities**

**Analytical skills.** Medical and health services managers must be able to understand and follow current regulations and be able to adapt to new laws.

**Communication skills.** These managers must be able to communicate effectively with other health professionals.

**Detail oriented.** Medical and health services managers must pay attention to detail. They might be required to organize and maintain scheduling and billing information for very large facilities, such as hospitals.

**Interpersonal skills.** Medical and health services managers need to be able to discuss staffing problems and patient information with other professionals, such as physicians and health insurance representatives. They must be able to motivate and lead staff.

**Problem-solving skills.** These managers are often responsible for finding creative solutions to staffing or other administrative problems.

**Technical skills.** Medical and health services managers must be able to follow advances in health care technology. For example, they may need to use coding and classification software and electronic health record (EHR) systems as their facility adopts these technologies

### **Advancement**

Medical and health services managers advance by moving into more responsible and higher paying positions. In large hospitals, graduates of health administration programs usually begin as administrative assistants or assistant department heads. In small hospitals or nursing care facilities, they may begin as department heads or assistant administrators. Some experienced managers also may become consultants or professors of healthcare management. The level of the starting position varies with the experience of the applicant and the size of the organization.

For those already in a different healthcare occupation, a master's degree in health services administration or a related field might be required to advance. For example, nursing service administrators usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration. For more information, see the profile on registered nurses.

### **Licenses**

All states require nursing care facility administrators to be licensed; requirements vary by state. In most states, these administrators must have a bachelor's degree, pass a licensing exam, and complete a state-approved training program. Some states also

require administrators in assisted-living facilities to be licensed. A license is not required in other areas of medical and health services management.

*Id.* at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited March 11, 2013).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the prevailing wage for the proffered position as wage for a Level I (entry level) position on the LCA.<sup>2</sup> This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.<sup>3</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the

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<sup>2</sup> Wage levels should be determined only after selecting the most relevant Occupational Information Network (O\*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

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

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

<sup>3</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

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

*Id.*

beneficiary would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. In the instant case, this is further signified by the fact that the offered salary of \$60,000 per year to the beneficiary is approximately \$24,000 less than the 2010 median annual wage of \$84,270 for medical and health services manager positions (as listed in the *Handbook*).

The *Handbook* does not report that a medical and health services manager needs, as a standard entry requirement, at least a bachelor's degree in a specific specialty or its equivalent. Although counsel relies on the *Handbook's* statements that indicate that a bachelor's degree may be adequate for entry-level positions, the AAO notes that the *Handbook* also indicates that "some facilities may hire those with on-the-job experience instead of formal education." In addition, it indicates that those with general degrees in business administration may enter the occupation.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

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 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)).

The AAO will now discuss O\*NET's designation of a "Job Zone of 5" for the occupation of "Medical and Health Services Managers" referenced by the petitioner in its letter in response to the RFE, dated January 25, 2012.

A designation of Job Zone 5 in the O\*NET indicates that a position requires "extensive preparation." The O\*NET provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. A Job Zone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Thus, the O\*NET does not demonstrate that at least a bachelor's degree in any specific specialty or its equivalent is required, and does not, therefore, indicate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).<sup>4</sup>

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)(I).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This first alternative prong 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 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)).

In response to the RFE, the petitioner and counsel submitted copies of three job vacancy announcements to support their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a dental office with 10 employees. Thus, the record is devoid of sufficient information regarding the three advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, job advertisements submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses

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<sup>4</sup> See the O\*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 4 does not indicate any requirements for degrees in specific specialties) (last visited March 11, 2013).

only organizations that are similar to the petitioner. When determining whether the petitioner and another organization share the same general characteristics, information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements) may be considered. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

As previously mentioned, in support of their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted copies of three job vacancy advertisements. The advertisements provided do not establish that a bachelor's degree or the equivalent in a *specific specialty* is required by the advertising employers. For instance, the first advertisement for a "Health Information Management Manager" with [REDACTED] in California requires a "Bachelor's Degree in Business, Records Management or related field." The second advertisement for a "Senior Health Information Specialist" for [REDACTED] in North Carolina requires "[g]raduation from a four-year college or university with a major in medical record science or medical record administration and five years of experience in medical record work; or graduation from a recognized medical record technician program and ten years of experience in medical record work, or an equivalent combination of education and experience." The third advertisement for a "Health Information Manager" with [REDACTED] in Louisiana requires a "Bachelor's degree in Healthcare or Business Administration or related field." However, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty, or its equivalent, were required, the petitioner fails to establish that the submitted advertisements are relevant as the record does not indicate that the posted job advertisements are for parallel positions in similar organizations in the same industry.

Furthermore, as the advertising entities include diverse businesses such as a large health insurance provider, North Carolina's largest managed care organization, and a healthcare company, they cannot be found to be similar organizations to the petitioner (a dental office) in terms of the type of business and size. Thus, for the reasons discussed above, the petitioner's reliance on the job vacancy advertisements is misplaced. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>5</sup>

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<sup>5</sup> Further, although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just three job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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 medical records and billing

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not 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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of medical records and billing manager within the operations of its dental office. Rather, the AAO finds, the duties as presented in the record are not developed with sufficient specificity and substantive detail to comprise a position that is more complex or unique than positions in the occupational category that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

While some of the courses listed on the copies of the beneficiary's transcripts for (1) the bachelor's degree in consular and diplomatic affairs from [REDACTED] in the Philippines, and (2) the bachelor of arts degree in information technology from [REDACTED] in the Philippines may be beneficial in performing certain duties of a medical records and billing manager position, the petitioner has failed to demonstrate how completion of an established curriculum of such courses culminating in the attainment of a baccalaureate (or higher) degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than medical and health services management positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other medical records and billing manager positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it

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manager at a dental office required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *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.

normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position. Of course, the AAO will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that 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 position.

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 petitioner 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 388. In other words, if a petitioner's stated degree-requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

In the instant case, the record indicates that the proffered position is a new position and the record is thus devoid of any documentary evidence regarding the petitioner's past employment practices to satisfy this criterion. Therefore, as the record of proceeding lacks any evidence for consideration under the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), there is no basis for finding that this criterion has been satisfied.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that 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 in a specific specialty, or its equivalent.

Upon review of the record of the proceeding, the AAO notes that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

As the petitioner has not established that the duties of the position are 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, the AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO notes that, on appeal, counsel for the petitioner references (without citation) several decisions by the AAO from 2004, 2006, 2007, 2009, 2010, 2011, and 2012 in support of the contention that a position can qualify as a specialty occupation even though there is more than one academic major cited as a minimum requirement for entry into the field. When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190. Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was not required to request and/or obtain a copy of the unpublished decisions referenced by counsel.

If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. In the instant case, the petitioner failed to submit a copy of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. In any event, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Finally, the AAO notes that, on appeal, counsel references (without citation) the proposition from *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be

the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.<sup>6</sup> The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

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.

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<sup>6</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.