



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **MAY 20 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: Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a for-profit enterprise engaged in rehabilitation services. In order to employ the beneficiary in what it designates as a rehab director 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 proffered position was not a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

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 granted, 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), 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.

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

The petitioner operates four outpatient rehabilitation centers and claims that it requires the services of the beneficiary as a rehab director in order to enable the petitioner to provide its clients with the best services possible. Regarding the job duties of the proffered position, the petitioner stated:

As a Rehab Director with [the petitioner], [the beneficiary] will be responsible for the following duties:

- Plan, administer, and direct operation of health rehabilitation services such as physical, occupational, recreational, and speech therapies, etc.
- Consult with medical and professional staff and professionals from associated health care fields to plan and coordinate joint patient management objectives.
- Review patient data related to disabilities or medical limitations and maintain liaison with primary health care provider.
- Conduct staff conferences and plan training programs to maintain proficient staff in therapy techniques and use of new methods and equipment to meet patient's needs.
- Represent, advocate[,] and promote the discipline throughout the Health Center and encourage broad staff participation.
- Participate in the recruitment, orientation[,] and performance management of staff in collaboration with Patient Care Managers. Allocate personnel on basis of work load, space, and equipment available.
- Planning and marketing of services including, monitoring the fiscal administration.
- Prepare various reports and analyses, setting forth progress, adverse trends[,] and appropriate recommendations or conclusions.
- Maintain confidential and secure records of rehabilitation cases in accordance with the Standard for rehabilitation.
- Ensure that all therapy services are provided in accordance [with] policies and procedures in compliance with [state] and federal regulations.
- Analyze operating costs and prep department's budget, recommended patient [fees] for therapy based on use [of] equipment and therapy.

The petitioner concluded by stating that, as a result of the high level of tasks sought to be performed, the petitioner hired only individuals with at least a bachelor's degree in physical therapy or its equivalent and experience in related fields. The petitioner further indicated that the beneficiary possessed a bachelor's degree in physiotherapy. The petitioner concluded by stating that, since the beneficiary would not be providing any services directly to patients, she did not require a state license.

On June 4, 2009, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary. The director specifically requested information pertaining to the beneficiary's specific job duties and the percentage of time devoted to such duties, as well as an organizational chart demonstrating the composition of the petitioner's company.

In response to the RFE, the petitioner submitted a letter, dated June 25, 2009, addressing the director's queries. Regarding the duties of the beneficiary, the petitioner restated the list of duties provided in the March 30, 2009 support letter, but added the percentage of time she would devote to each such task. Specifically, the petitioner indicated that the beneficiary's time would be divided as follows:

- Plan, administer and direct operation of health rehabilitation services such as physical, occupational, recreational, and speech therapies, etc. – 20%
- Consult with medical and professional staff and professionals from associated health care fields to plan and coordinate joint patient management objectives. – 8%
- Review patient data related to disabilities or medical limitations and maintain liaison with primary health care provider. – 10%
- Conduct staff conferences and plan training programs to maintain proficient staff in therapy techniques and use of new methods and equipment to meet patient's needs. – 5%
- Represent, advocate[,] and promote the discipline throughout the Health Center and encourage broad staff participation. – 5%
- Participate in the recruitment, orientation[,] and performance management of staff in collaboration with Patient Care Managers. Allocate personnel on basis of work load, space, and equipment available. – 15%
- Planning and marketing of services including, monitoring the fiscal administration. – 7%
- Prepare various reports and analyses, setting forth progress, adverse trends[,] and appropriate recommendations or conclusions. – 12%
- Maintain confidential and secure records of rehabilitation cases in accordance with the Standard for rehabilitation. – 5%
- Ensure that all therapy services are provided in accordance [with] policies and procedures in compliance with state and federal regulations. – 5%

- Analyze operating costs and prep department's budget, recommended patient [fees] for therapy based on use [of] equipment and therapy. – 8%

The petitioner also indicated that, contrary to its initial claims in the March 30, 2009 letter, the petitioner required the incumbent to possess a “[b]achelor’s degree in science, physical therapy or its equivalent and at least one year of experience in [a] relevant field.”

In response to the RFE, the petitioner also submitted, *inter alia*, a job posting and two letters from other organizations in the industry attesting to the degree requirement for the proffered position, as well as a copy of the petitioner’s own vacancy announcement for the proffered position.

On July 22, 2009, 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 a timely appeal of the denial of the H-1B petition. 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. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes 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)(I), 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 rehab director 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 evidence in the record of proceeding establishes that performance of the particular proffered 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.¹ The director found that the proffered position was most akin to that of an “Administrative Services Manager” as described in the *Handbook*. However, on appeal, counsel for the petitioner asserts that the proffered position is that of a physical therapy manager² and falls under the occupational category “Medical and Health Services Managers.”

The AAO notes that the *Handbook* does not identify “rehab director” as an occupational category. Therefore, the AAO will review both sections of the *Handbook* as discussed above in order to make a proper determination of the proffered position’s classification.

The subchapter of the *Handbook* entitled “What Administrative Services Managers Do” states the following about this occupational category:

Administrative services managers plan, direct, and coordinate supportive services of an organization. Their specific responsibilities vary by the type of organization and may include keeping records, distributing mail, and planning and maintaining facilities. In a small organization, they may direct all support services and may be called the *business office manager*. Large organizations may have several layers of administrative managers who specialize in different areas.

Duties

Administrative services managers typically do the following:

- Buy, store, and distribute supplies
- Supervise clerical and administrative personnel
- Recommend changes to policies or procedures to improve operations, such as changing what supplies the organization keeps and improving how the organization handles records
- Plan budgets for contracts, equipment, and supplies
- Monitor the facility to ensure that it remains safe, secure, and well maintained
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems
- Ensure that facilities meet environmental, health, and security standards and comply with government regulations

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. An organization may have

¹ 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.

² The AAO notes that on appeal counsel contends that the job offered is that of a “physical therapy manager,” whereas on the Form I-129 and on the LCA, the petitioner asserted that the proffered position is that of a “rehab director.” No explanation for the variance was provided.

several managers who oversee activities that meet the needs of multiple departments, such as mail, printing and copying, recordkeeping, security, building maintenance, and recycling.

The work of administrative services managers can make a difference in employees' productivity and satisfaction. For example, an administrative services manager might be responsible for making sure the organization has the supplies and services it needs. Also, an administrative services manager who is responsible for coordinating space allocation might take into account employee morale and available funds when determining the best way to arrange a given physical space.

Administrative services managers also ensure that the organization honors its contracts and follows government regulations and safety standards.

Administrative services managers may examine energy consumption patterns, technology usage, and office equipment. For example, managers may recommend buying new or different equipment or supplies to lower energy costs or improve indoor air quality.

They also plan for maintenance and the future replacement of equipment, such as computers. A timely replacement of equipment can help save money for the organization, because eventually the cost of upgrading and maintaining equipment becomes higher than the cost of buying new equipment.

The following are examples of types of administrative service managers:

Contract administrators handle buying, storing, and distributing equipment and supplies. They also oversee getting rid of surplus or unclaimed property.

Facility managers oversee buildings, grounds, equipment, and supplies. Their duties fall into several categories, including overseeing operations and maintenance, planning and managing projects, and dealing with environmental factors.

Facility managers may oversee renovation projects to improve efficiency or ensure that facilities meet government regulations and environmental, health, and security standards. For example, they may influence building renovation projects by recommending energy-saving alternatives or efficiencies that reduce waste. In addition, facility managers continually monitor the facility to ensure that it remains safe, secure, and well maintained. Facility managers also are responsible for directing staff, including maintenance, grounds, and custodial workers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Administrative Services Managers, <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2> (last visited May 15, 2013).

A review of the description of administrative services managers indicates that this occupational category incorporates several of the stated duties of the proffered position. Administrative services

managers, according to the *Handbook*, “plan, direct, and coordinate supportive services of an organization.” This phrase corresponds generally to the petitioner’s claim that the beneficiary will “plan, administer[,] and direct operation of health rehabilitation services such as physical, occupational, recreational, and speech therapies, etc.” for at least 20% of the time. Moreover, as indicated by the petitioner, the beneficiary will also be responsible for such tasks as records management (i.e., maintaining confidential and secure records of rehabilitation cases in accordance with the standard for rehabilitation), and ensuring therapy services are provided in accordance with policies and procedures in compliance with state and federal regulations. Therefore, the AAO concurs in part with the director’s finding that the proffered position is akin to that of an administrative services manager.

However, a review of the occupational category of “Medical and Health Services Managers” also reveals similarities to the proffered position. According to the *Handbook*, this occupational category is described as follows:

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

Duties

Medical and health services managers typically do the following:

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

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

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.

Id., Medical and Health Services Managers, <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-2> (last visited May 15, 2013).

According to the *Handbook*, medical and health services managers “plan, direct, and coordinate medical and health services. They might manage an entire facility or specialize in managing a specific clinical area or department. . . .” In this matter, the description of the proffered position indicates that the position of rehab director also seems akin to that of a medical and health services manager, since the beneficiary will be tasked to coordinate the physical therapy department of the petitioner. Moreover, the subheading of “health information managers” in this section also applies to the proffered position, since such employees are responsible for the maintenance and security of patient records, another task attributed to the beneficiary. However, as discussed above, the beneficiary is also tasked with administrative duties not incorporated into the description of a medical and health services manager.

Consequently, the AAO finds that the proffered position encompasses duties of both an administrative services manager and a medical and health services manager. A review of the *Handbook's* education and training requirements for both of these occupations, however, indicates that neither requires a bachelor's degree in a specific specialty, or its equivalent, for entry into the position. Therefore, despite the two differing classifications of the proffered position as contended by the director and counsel, neither classification would warrant approval in this matter under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The subchapter of the *Handbook* entitled “How to Become an “Administrative Services Manager” states the following about this occupational category:

Educational requirements vary by the type of organization and the work they do. They must have related work experience.

Education

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, some administrative services managers need at least a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

Certification

The International Facility Management Association offers a competency-based professional certification program for administrative services managers. Completing this program may give prospective job candidates an advantage. The program has two levels: the Facilities Management Professional (FMP) certification and the Certified Facility Manager (CFM) certification. People entering the profession can get the FMP as a steppingstone to the CFM. For the CFM, applicants must meet certain educational and experience requirements.

Work Experience

Administrative services managers must have related work experience reflecting managerial and leadership abilities. For example, contract administrators need experience in purchasing and sales, as well as knowledge of the variety of supplies, machinery, and equipment that the organization uses. Managers who are concerned with supply, inventory, and distribution should be experienced in receiving, warehousing, packaging, shipping, transportation, and related operations.

Advancement

Advancement of facility managers is based on the practices and size of individual organizations. Some facility managers transfer among departments within an organization or work their way up from technical positions. Others advance through a progression of facility management positions that offer additional responsibilities. Advancement is easier in large organizations that employ several levels and types of administrative services managers.

A master's degree in business administration or a related field can enhance a manager's opportunities to advance to higher level positions, such as director of administrative services. Some experienced managers may join or establish a management consulting firm to provide administrative management services to other organizations on a contract basis.

Important Qualities

Analytical skills. Administrative services managers must be able to review an organization's procedures and find ways to improve efficiency.

Communication skills. Much of an administrative services manager's time is spent working with other people. Therefore, communication is a key quality.

Detail oriented. Administrative services managers must pay attention to details. This quality is necessary across a range of tasks, from ensuring that the organization complies with building codes to managing the process of buying equipment.

Leadership skills. In managing workers and coordinating administrative duties, administrative services managers must be able to motivate employees and deal with issues that may arise.

Id., Administrative Services Managers, <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4> (last visited May 15, 2013).

As indicated above, the *Handbook* reports that administrative services managers do not require a bachelor's degree in a specific specialty.

The subchapter of the *Handbook* entitled "How to Become a Medical and Health Services Manager" states the following about this occupational category:

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., Medical and Health Services Managers, <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited May 15, 2013).

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

Furthermore, although the *Handbook* states that medical and health services managers typically need at least a bachelor’s degree to enter the occupation, the *Handbook* does not indicate that such a degree must be in a specific specialty. The narrative of the *Handbook* reports that a master’s degree in health services, long-term care administration, public health, public administration, or business administration also are common for entry into the occupation. Thus, the *Handbook* indicates that degrees in disparate fields (e.g., long-term care administration, public administration, business administration) are acceptable for entry into the occupation. Notably, the *Handbook* states that a degree in business administration is acceptable. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.³ See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a medical and health services manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, the *Handbook* does not support the claim that the proffered position falls under an occupational group that categorically qualifies as a specialty occupation.

Therefore, regardless of the category in which the proffered position is classified, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a requirement of a bachelor's degree 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 submitted (1) a letter from [REDACTED] (Mission), and (2) a letter from [REDACTED] in support of the contention that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. The AAO concurs with the director's finding that these letters are inadequate to establish that a degree requirement is common in the petitioner's industry.

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 two organizations are similar in size and scope to that of the petitioner, a 14-person rehabilitation services business. While both [REDACTED] claim to be rehabilitation clinics, they include no additional evidence to support the contentions set forth in their letters. Specifically, while they each claim to employ rehab directors, and likewise claim that they require their rehab directors to possess a degree [REDACTED] claims to require a bachelor's degree in physiotherapy and [REDACTED] claims to require a bachelor's degree in physical therapy, science, or the equivalent), there is no independent evidence in the record of their business operations, that the duties of their rehab director positions are similar to those of the

proffered position, and that they are employing individuals in these positions, in order to support these claims. Thus, the record is devoid of sufficient information regarding the two organizations to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, letters submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and another organization share the same general characteristics, information regarding the nature 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

It is noted that, on appeal, counsel submitted the H-1B approval notices and educational credentials for the claimed rehab directors employed by [REDACTED]. The AAO, however, will not consider this evidence.

The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. *See* 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted for the first time on appeal.

In response to the RFE, the petitioner also submitted a job posting from [REDACTED] for the position of Director of Outpatient Rehab. This posting is also deficient. The posting contains no information regarding the nature of [REDACTED]'s business. Although the description of the job vacancy appears to be akin to the proffered position, the posting contains no discussion or information pertaining to the size, scope, and location of the poster. Therefore, based on this one-page printout, [REDACTED] cannot be considered an organization similar in size and scope to the petitioner.

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.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment.

Consequently, as the petitioner fails to demonstrate how the proffered position of rehab director is so complex or unique relative to other rehab director 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 AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position.

The petitioner claimed in the response to the RFE that it did not employ any other person in the position of rehab director. Since the petitioner acknowledges that it has not hired any degreed individuals to fill the position of rehab director in the past, the petitioner has failed to satisfy this criterion.⁴

Although the petitioner claims that the proffered position requires the candidate to possess a bachelor's degree in physical therapy or its equivalent, in addition to experience in the industry, and submits a copy of its current job posting in support of this contention, this claim is not persuasive, since the record does not document that the duties of the proffered position require a baccalaureate or higher level of education in a specific specialty to perform them. The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion

⁴ It is noted that, on appeal, counsel asserts that “[i]n past employer has hired Rehab Director with Bachelor’s Degree in Physical Therapy AS REQUIREMENT.” (Emphasis in original.) This statement, however, contradicts the petitioner’s claim in response to the RFE where it states that it had not previously employed a rehab director, and moreover is not supported by documentary evidence of the petitioner’s hiring history. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 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").

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

Finally, the AAO turns to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which 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. Moreover, upon review of the record, there is insufficient evidence to establish that the duties of the rehab director position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

The AAO finds that the petitioner has not provided probative 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.

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. That is, the petitioner has not established that the nature of the duties of the position 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. 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

(b)(6)

Page 19

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.

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