

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **MAY 24 2013**

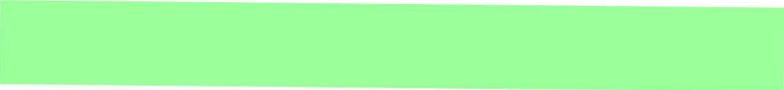
Office: VERMONT SERVICE CENTER

FILE: 

IN RE:

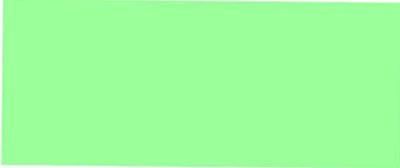
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a health care facility. In order to employ the beneficiary in what it designates as a "Registered Nurse: Supervisor/Nursing Care Coordinator" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and present counsel's submissions on appeal.

The issue on appeal before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens

who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. 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 the specific specialty as the minimum for entry into the occupation, as required by the Act.

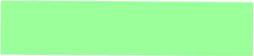
On the Labor Condition Application (LCA) submitted to support the visa petition, the petitioner states that the occupational classification for the proffered position falls under "Registered Nurses" and listed the SOC (O*NET/OES) Code as 29-1111.00. The petitioner further states on the LCA that the proffered position is a Level I, entry-level, position.

The duties of the proffered position as described on an addendum to the visa petition are:

Coordinate optimum nursing regimen via staff and protocols for 80 residents on the assigned units; delegate responsibilities to nursing team and evaluate effectiveness and record-keeping; recommend disciplinary action when needed; follows all nursing and institutional protocols and acts as leader and resource person for staff; serves on committees as assigned by the Director of Nursing; Directs and supervises nurses and CNA's in providing resident care. Assists in new personnel orientation. Communicates with Director of Nursing, physicians, administration and families regarding residents as required. Relieves 7 to 3 p.m. shift Supervisor when necessary per DNS. Prepares forms/care plans and instructs staff how to do so.

In a letter dated April 23, 2010, the petitioner's director of nursing services stated:

In brief, [the beneficiary] will plan/organize/direct activities for 80 residents and their assigned nursing care staff. [The beneficiary] will delegate responsibilities to nurses/aides on the nursing team. She will communicate and collaborate with the unit nursing team of 14 or more to assure continuity of care and preparation of care plans and the proper selection and completion of forms for the unit. [The beneficiary] will observe nursing techniques and the services rendered by our nursing staff to ensure adherence to institutional policy and procedures. [She] will therefore assist in peer



review. To maintain and increase the quality of care, [the beneficiary] will identify problems in unit like understaffing or absenteeism or wastefulness and take corrective action by first reporting same to the Director of Nursing Services. [The beneficiary] will monitor supplies and the equipment to avoid abuses, and requisition supplies as needs. As needed, [the beneficiary] will respond to departments experiencing emergency or requiring other assistance and assign staff appropriately. [The beneficiary] will prepare schedules and assign duties to his [sic] nursing staff to maintain and improve the unit's quality of care. [The beneficiary] will report to the Assistant Director of Nursing Services (ADNS) or to the Director of Nursing Services (DNS).

The director of nursing services further stated that the position requires, "a Bachelor of Science in Nursing or coursework within a Bachelor Degree program qualifying one for nursing licensure . . ."¹

On October 18, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, previous counsel submitted (1) 14 vacancy announcements; (2) an additional description of the duties of the proffered position; (3) an undated letter from the petitioner's director of nursing services; (4) a statement released by the Tri-Council for Nursing dated May 14, 2010; and (5) previous counsel's letter, dated December 1, 2010. The vacancy announcements submitted will be addressed below.

The additional description of the duties of the proffered position states:

Daily Duties and Responsibilities

* * * *

For responsibilities as NURSE SUPERVISOR, a bachelor degree is required because it provides (and a lack of a bachelor degree rarely provides): "The ability to read, analyze, and interpret hospital or institutional policies and procedures, professional journals, technical procedures, or government regulations. Ability to write reports and procedures and document in the medical record. Ability to effectively present information and respond to questions from co-workers, managers, patients, physicians, family members and the general public. Ability to calculate figures and amounts such as weights, dosages, flow rates, proportions, percentages and volume. Ability to apply concepts such as fractions, percentages, ratios, and proportions to practical situations. Ability to define problems, collect data, establish facts, and draw

¹ It is preliminarily noted that the petitioner did not elaborate on the meaning of "coursework within a Bachelor Degree program qualifying one for nursing licensure"

valid conclusions. Ability to interpret an extensive variety of technical instruction in mathematical or diagram form and deal with several abstract and concrete variables. Ability to think critically and solve problems." Below is a list of duties. Please understand, that unlike the world the bureaucracy, multi- tasking and multi – awareness are common.

3-11PM

1. Meets with Unit heads to coordinate shift care
2. Revises and goes over check lists and Plan of Care with Respiratory therapists, medication nurses, Treatment nurses, and CNA's to ascertain compliance with Orders, Treatments and Needs of the residents.
3. Revises changes in resident status with all health care givers
4. Delegates to appropriate staff and oversee the implementation of all interventions.
5. Responsible for assessment, planning, implementation and evaluation of all activities 3-expedient to efficient patient care delivery during the tour of duty.

3-4PM (12.5%)

1. Checks floor staffing for absences and finds possible coverage to provide adequate staffing
2. Gives patients assignments and 24 hour report daily to CNAs, medication nurses and treatment nurse then delegates responsibilities before start of duty
3. Checks Emergency Medication Box if it is available and replaced if necessary for next use
4. Checks Emergency Treatment Cart located in the dayroom of all supplies are available and suction machine is functioning
4. Checks call bells and chair/bed alarms if they are functioning
5. Checks maintenance book and calls maintenance director for appropriate repairs
6. Coordinates with Housekeeping for supplies of diapers, pads, towels and bed sheets
7. Maintains inventories of medicines and supplies
8. Checks air mattress of each resident that they have the correct pressure settings

9. Checks all residents that are on contact isolation that proper precautionary signs are posted before entrance of room and isolation carts with appropriate supplies are available
10. Checks if all residents room, bathroom, corridors and dayroom are clear from clutter and no wet spots
11. Checks the medication refrigerator for their correct temperature settings.

In coordination with the Director of Nursing as needed and Unit personnel

4-4.30PM (6.25%)

1. Conducts round to all residents to assess status prior to assumption of care .
2. Checks Interim Book for previous MD orders from previous shifts if they are carried out and that no orders will be missed
3. Checks MD communication book for problems that previous shifts have encountered and communicates with attending MD
4. Assessment and review of laboratory results then reports it to MD if there are abnormal values and compares it with previous results to elicit improvements

A bachelor degree offers deeper knowledge of contra-indications, systems, and offers informed responsibility and judgment.

4.30-5.30PM (12.5%)

1. Checks patency of residents with feeding tubes and assesses stoma sites for any signs of infection then reports it to attending MD
2. Does rounds to each resident and assessment for any change of status and refers it to attending MD for possible treatment
3. Goes with attending MD during rounds to each resident and discusses plan of care
4. Assessment of respiratory status of residents and relays to respiratory therapist if there are changes and reports it to Respiratory Director
5. Ensures that each resident is repositioned every 2 hours to prevent pressure sores
6. Supervises CNA's in transporting residents from bed to shower then back to bed or to wheelchair/Geri-recliner
7. Helps in dressing of residents wounds and sees to it that it is done aseptically
8. Prepares check lists and assignments based on MD and Unit staff input.
9. Supervises unit staff after delegating tasks necessitated by rounds and report from the previous shift.

A bachelor degree permits more fluid communication with doctors in medical terms, clarity and accuracy in reports, greater trust in communication and better care.

5.30-6.00PM (6.25 %)

As unit administrator:

1. Gives 24 hour report to Director of Nursing about important things that happened during the past 3 shifts.

A bachelor degree demands clear written and verbal communication and the BSN prepares one for the analysis of individual and systemic situations.

6.00-6.30 (6.25 %)

1. Coordinates admission procedures for new admission
2. Transcribes order written by attending MD and faxes it to pharmacy.
3. Coordinates with Respiratory Director and Respiratory Therapists regarding treatment plans of residents

A bachelor degree is required because of the greater depth of medical terminology, treatment regimes, and armamentaria.

A person who had not attained a bachelor degree would be unable to recognize the shift issues, medical terminology, or treatments available at a level commensurate with the life and death issues involved.

6:30-8:30 PM (12.5 %)

Oversees Respiratory Therapists, treatment Nurses, Medication nurses and CNAs:

1. Helps in dressing of residents wounds and ensures asepsis in care
2. Checks if treatment supplies are adequate and orders when needed
3. Inserts Foley catheter, dresses PICC line, starts IV when ordered by MD, makes sure it is done aseptically and assessment of their patency and site for any signs of infection
4. Helps respiratory therapists in suctioning residents as needed
5. Does body check to each resident scheduled for shower for the day then fills up Accident/Incident report if there are skin tears or bruises reported and informs family of incident
6. Checks unit staff if all residents are gotten up from bed and put back to bed at the specified times.
7. Helps maintain airway, monitors vital signs and reports to MD, Respiratory Director for disposition of care

A bachelor degree prepares one in counseling/teaching family members and staff; the degree also demands a high level of accuracy and identification of issues in rounds, whereas a lack of a bachelor degree does not.

8:30-9:30 (25%)

1. Attends Administrative Care Plan Meeting with family, MDS Director, Dietician, Recreation, Social Worker and Rehab and discusses plan of care and if there are significant changes with the resident
2. As part of Administrative staff –attends wound rounds composed of wound care chairman, attending MD, dietician, treatment nurse, rehab and respiratory director and discuss changes in treatment if necessary
2. As part of the administrative staff –arranges schedules of residents clinic consultation, follows up and prepares necessary papers and confirms that family is aware of plan
3. Places orders for Gastric Tube feedings to Dietary
4. Using application of theoretical approach of MDs: reviews and updates monthly cycle of each resident, and checks for any changes in treatment then faxes it to pharmacy
5. Assesses and updates Care Plan of each resident if there are any changes
6. Evaluates and updates ADL status of residents and refers to MDS coordinator if there are any changes.
7. Coordinates with Rehab in assessment and planning of care of residents and refers when there is change in status to prevent from decrease in ADL function
8. Updates family regarding plan of care if there are changes in the status of resident and answers if they have complaints as well
9. Supervises RN's, LPN's and CNAs –inserts Foley catheter, dresses PICC line, starts IV when ordered by MD, makes sure it is done aseptically and checks their patency and site for any signs of infection

9:00- 10:30 PM (12.5%)

As supervisor, confers with Unit staff and:

1. Checks for medications that are nearing expiration and makes orders to pharmacy for replacement
2. Ensures that medications are given on a timely basis and no omissions are made by Medication or Treatment Nurses
3. Assists medication nurses in administration of Gastric Tube feedings by teaching/supervision
4. Sees to it that all orders of attending MD for the day are carried out and faxed to pharmacy as part of administrative duties for the unit and facility
5. Monitors residents on Coumadin treatment, sees to it that laboratory results are up to date, monitors for any episodes of bleeding or bruises and reports to MD for prompt treatment

After conferring with shift personnel, and overseeing reports from Nurses
-updates antibiotic records. Charts it when it was started and when it was completed
-updates treatment notes on each shift

A bachelor degree in nursing is required to perform those job duties because ...of its technicality and proficiency requirements, greater pharmacological knowledge, analysis of systematic regimens and system-wide issues.

Persons who have not attained a bachelor degree could not perform these duties because of the required technical and academic competence would not be present.

10:30- 11:00 pm (6.25%)

As Unit administrator

1. Prepares a comprehensive daily report on residents and endorses it to next shift nurses/supervisors for continuity of care
2. Sees to it that all accountability sheets are filled up accurately before each shift
3. Document the performance of all other nurses within the department and counsel nurses who are lacking in their performance

A bachelor degree is required to perform these duties because it requires a higher level of administrative competence and the report carries the analytical as well as the descriptive clarity earned through a bachelor degree program.

Persons who have not attained a bachelor degree could not perform these duties because of the intricacies of specialized care, the accuracy demanded, and the interplay of written/verbal/medical/analytical communications and records requiring specialized and theoretical knowledge.

[Errors in the original].

In her undated letter, the petitioner's director of nursing services cited the vacancy announcements provided as evidence that a bachelor's degree in nursing is commonly required for positions parallel to the proffered position. The petitioner's director of nursing services further stated that the proffered position is a 075.127-030 Nurse Supervisor position as described in the DOL's *Dictionary of Occupational Titles (DOT)*, and that its assignment to Specific Vocational Code (SVP) 8 indicates that it requires a bachelor's degree or above.

The petitioner's director of nursing services asserted that the issue is not whether all nursing positions require a bachelor's degree, but whether nurse supervisor positions require such a degree. She cited the statement issued by the Tri-Council for Nursing as support of the petitioner's position. The AAO observes that, although that statement abstractly asserts, for instance, that "more nurses with advanced preparation are needed to meet the healthcare demands of an increasingly diverse and aging population," it does not specifically state, for instance, that nurse supervisor positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner's director of nursing services further stated that the petitioner normally requires a bachelor's degree in nursing, or its equivalent, for the proffered position, but provided no evidence to corroborate that assertion. The record contains no evidence pertinent to the number of people the petitioner currently employs as nurse supervisors, or the number of nurse supervisors it has employed in the past, and no evidence pertinent to their educational backgrounds. The petitioner's director of nursing services cited privacy concerns in declining to provide that information.

The petitioner's director of nursing services asserted that someone without a bachelor's degree in nursing would be unlikely to have the skills in leadership and communication, and the logical thought processes to think through various possibilities and outcome for better quality care; would lack the deeper understanding of the medical responsibilities, ethical responsibilities, and communications skills requisite to the proffered position; and would lack the technical skills in ordering communication of standards, ethics, and responsibilities to others. She made various similarly abstract claims pertinent to the difference between nurses with bachelor's degrees in nursing and nurses without bachelor's degrees in nursing, but offered no support for her assertions.

The petitioner's director of nursing services also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that administrative positions in nursing typically require a bachelor's degree.

In his own December 1, 2010 letter, previous counsel reiterated the assertion that the *Handbook* indicates that administrative nursing positions typically require a bachelor's degree. It is noted that much of his letter was taken verbatim from the petitioner's director of nursing services's undated letter.

The director denied the petition on April 12, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, present counsel provided various letters, and a brief.

Some of the letters provided are addressed below. However, one letter, dated June 7, 2011, is from the petitioner's director of nursing services. It provides the following description of duties of the proffered position.

1. Delegates appropriate responsibilities to other members of the nursing team.
2. Communicates with unit nursing team members on all shift information essential to assuming continuity of care.
3. Collaborates with nursing team members to evaluate the effectiveness of nursing care.
4. Directs, counsels and administers disciplinary action to nursing staff when appropriate.
5. Evaluates nursing staff at appropriate intervals.
6. Acts as a skilled resource person and role model for staff members.
7. Follows up with unit-based Quality Improvement Activities. Participates in problem identification and solutions to improve key processes/systems/resident care.
8. Directs and supervises staff nurses and CNA's in providing resident care.
9. Responds appropriately to emergency/crisis situations
10. Communicates activities on a regular basis with DNS/ADNS and notifies appropriate parties of problems, concerns or unusual occurrences.
11. Assists in the orientation of new personnel to the unit, becomes aware of their specific needs and plans cooperatively with Director of Inservice to meet their needs.
12. Makes calls to physicians, administration, families, etc., with information concerning the residents as required.
13. Prepares work schedule and assigns duties to nursing staff in department for efficient use of personnel.
14. Monitors use of supplies and equipment to avoid abuses and requisitions supplies.
15. Responds to various departments requesting emergency assistance and assigns staff accordingly during emergencies.
16. Identifies problem areas in nursing department, such as under staffing, absenteeism, and wastefulness, and takes corrective action.

The petitioner's director of nursing services also stated that the "job responsibilities mentioned requires [sic] that an individual have advanced training and experience to fulfill the duties outlined. A nurse with an advanced degree, such as a BSN, would be highly recommended to fulfill this role." It is preliminarily noted that while she stated that a degree such a Bachelor's of Science in Nursing is "highly recommended," she did not, however, state that a bachelor's degree in nursing is *required* for the proffered position.

In the brief, present counsel reiterated the claim that the proffered position is a supervisory nurse position, and that such positions require a bachelor's degree in nursing. Present counsel cited the *Handbook* in support of this proposition.

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

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

The AAO recognizes the *Handbook*, cited by the petitioner's director of nursing services, present counsel, and previous counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the "Registered Nurses" chapter, the *Handbook* provides the following description of the duties of those positions:

What Registered Nurses Do

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

Duties

Registered nurses typically do the following:

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

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

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

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

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

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

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

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

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

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

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

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

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

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

Neonatology nurses take care of newborn babies.

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

Rehabilitation nurses care for patients with temporary or permanent disabilities.

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Registered Nurses," <http://www.bls.gov/ooh/healthcare/registered-nurses.htm> (last visited May 15, 2013).

The duties the petitioner's included in the various descriptions provided in this matter are consistent with the duties of registered nurses as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a registered nurse position as described in the *Handbook*.

As indicated in the following excerpt from the *Handbook's* chapter on "Registered Nurses," a BSN is neither required for licensure as an RN nor normally required for the general range of RN jobs. In pertinent part, this section reads:

How to Become a Registered Nurse

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

Education

In all nursing education programs, students take courses in nursing, anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and

behavioral sciences, as well as in liberal arts. BSN programs typically take four years to complete; ADN and diploma programs usually take two to three years to complete.

All programs also include supervised clinical experience in hospital departments such as pediatrics, psychiatry, maternity, and surgery. A number of programs include clinical experience in extended and long-term care facilities, public health departments, home health agencies, or ambulatory (walk-in) clinics.

Bachelor's degree programs usually include more training in the physical and social sciences, communication, leadership, and critical thinking, which is becoming more important as nursing practice becomes more complex. They also offer more clinical experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

Generally, licensed graduates of any of the three types of education programs (bachelor's, associate's, or diploma) qualify for entry-level positions as a staff nurse.

Many registered nurses with an ADN or diploma find an entry-level position and then take advantage of tuition reimbursement benefits to work toward a BSN by completing an RN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field.

Important Qualities

Critical-thinking skills. Registered nurses must be able to assess changes in the health state of patients, including when to take corrective action and when to make referrals.

Compassion. Registered nurses should be caring and sympathetic, characteristics that are valuable when treating patients.

Detail oriented. Registered nurses must be responsible and detail oriented because they must make sure that patients get the correct treatments and medicines at the right time.

Emotional stability. Registered nurses need emotional stability to cope with human suffering, emergencies, and other stresses.

Organizational skills. Nurses often work with multiple patients with various health needs, and organizational skills are critical to ensure the patient is given proper care.

Patience. Registered nurses should be patient so they can provide quality care under stressful or hectic circumstances.

Speaking skills. Registered nurses must be able to talk effectively with patients to correctly assess their health conditions. Nurses need to clearly explain how to take medication or give other instructions. They must be able to work in teams with other health professionals and communicate the patients' needs.

Licenses

In all states, the District of Columbia, and U.S. territories, registered nurses must have a nursing license.

To become licensed, nurses must graduate from an approved nursing program and pass the National Council Licensure Examination, or NCLEX-RN.

Other requirements for licensing vary by state. Each state's board of nursing can give details. (For more on the NCLEX-RN examination and a list of state boards of nursing visit the National Council of State Boards of Nursing.)

Certification

Nurses may become credentialed through professional associations in specialties such as ambulatory care, gerontology, and pediatrics, among others. Although certification is usually voluntary, it demonstrates adherence to a higher standard, and some employers may require it. Certification is required for all registered nurses serving in any of the four advanced practice registered nurse roles.

Advancement

Most registered nurses begin as staff nurses in hospitals or community health settings. With experience, good performance, and continuous education they can move to other settings or be promoted to positions with more responsibility.

In management, nurses can advance from assistant unit manager or head nurse to more senior-level administrative roles, such as assistant director, director, vice president, or chief of nursing. Increasingly, management-level nursing positions require a graduate degree in nursing or health services administration. Administrative positions require leadership, communication and negotiation skills, and good judgment.

Some RNs choose to become advanced practice registered nurses (APRNs). APRNs work independently or in collaboration with physicians. They may provide primary

care, and, in most states, they may prescribe medications. APRNs require at least a master's degree. Each state's board of nursing can provide the specific regulations regarding APRNs.

Some nurses move into the business side of healthcare. Their nursing expertise and experience on a healthcare team equip them to manage ambulatory, acute, home-based, and chronic care businesses.

Employers—including hospitals, insurance companies, pharmaceutical manufacturers, and managed care organizations, among others—need registered nurses for jobs in health planning and development, marketing, consulting, policy development, and quality assurance.

Other nurses work as postsecondary teachers in colleges and universities. For more information, see the profile on postsecondary teachers.

Id. at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited May 15, 2013).

That a minimum of a bachelor's degree is often necessary for administrative nursing positions suggests that some administrative nursing positions do not require such a degree. The issue in to be addressed in the analysis pertinent to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is not whether such a degree is often necessary, but whether a bachelor's or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position proffered in the instant case. The *Handbook* does not indicate that administrative nursing positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, and cannot, therefore, indicate that the proffered position in the instant case does.³

Further, as was noted above, the petitioner has designated the proffered position as a Level I registered nurse position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. This is at odds with the petitioner's claimed requirements of a bachelor's degree and "advanced training and experience" for entry into the proffered position of Registered Nurse: Supervisor /Nursing Care Coordinator. Referencing the DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, for example, a position requiring advanced training and work experience and supervisory duties would appear to indicate at least a Level III wage level ("experienced") or more likely a Level IV position ("fully competent"). The classification of the

³ Whether the *Handbook* discussion of administrative nursing positions was meant to include all supervisory nursing positions is unclear. However, the AAO will not analyze this point further, as it would not resolve any issue in this case.

proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* indicates that a minimum of an associate's degree is sufficient to enter such a position.

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

It is also noted that the petitioner and previous counsel asserted that the SVP 8 rating accorded nurse supervisor positions in the *DOT* demonstrates that the proffered position is a specialty occupation position. However, the AAO finds that the *DOT* does not support the assertion that assignment of an SVP rating of 8 is indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the Specific Vocational Preparation (SVP) rating system.⁴ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);

⁴ The Appendix can be found at the following Internet website:
<http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and

recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

Present counsel and previous counsel did provide a statement from a professional association and various letters, as was observed above. The statement by the professional association, Tri-Council for Nursing, does not indicate that it requires supervisory nurses to have a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, it states that health care in general requires more educated nurses. It does not demonstrate that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to positions parallel to the proffered position in similar organizations in the petitioner's industry.

A letter, dated June 7, 2011, from the petitioner's director of social services states:

It is essential that health care facilities employ Bachelor Level Nurses as their advanced training, internship experience and critical care intervention techniques accommodate the needs/services required to care for residents in varying degrees of illness.

A very similar June 7, 2011 letter from the petitioner's assistant director of nursing/infection control coordinator states that as the U.S. population ages, nurses are more in demand. She further stated,

. . . it is essential to employ nurses with BSN degree [sic] as their advanced education, internship experience and critical care interventions can accommodate the needs/services required to care for patients in varying degrees of illness.

Those letters do not appear to assert that all nursing positions or all supervisory nursing positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, and do not address the particular position proffered in the instant case. Further, they did not identify any particular services that registered nurses without a bachelor's degree are unable to provide. They merely abstractly assert that hiring registered nurses with bachelor's degrees is important. Those letters are insufficient to demonstrate that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to positions parallel to the proffered position in the petitioner's industry.

One of the letters submitted on appeal is dated June 3, 2011, and was prepared by the assistant director of nursing at [REDACTED] in Vermont. The writer states that she began her career in nursing without a bachelor's degree and ascended to a nurse manager position and then to her current position prior to receiving her bachelor's degree in nursing. She further stated, "Being a Nurse Leader on a specialized unit such as a Ventilator Dependent Unit is not

determined by their academic achievement but by the true qualities of a leader." The letter does not support the proposition that entry into supervisory nursing positions, or even director of nursing positions, requires a minimum of a bachelor's degree in nursing or its equivalent.

Another letter is dated May 27, 2011, and was prepared on [REDACTED] in Vermont letterhead by the [REDACTED]. [REDACTED] She described her career and ascent from charge nurse to director of nursing and states that in her current position:

I have interviewed candidates for leadership positions who possess a Bachelors Degree and have chosen a candidate with no degree

Again, this letter does not support the proposition that entry into supervisory nursing positions requires a minimum of a bachelor's degree in registered nursing or its equivalent.

As was stated above, previous counsel did provide 14 vacancy announcements. They are for positions entitled Nursing Supervisor, 3-11 Nurse Supervisor, Nursing Supervisor/Nursing Administrator, Nursing Supervisor – Nursing Administration, Assistant Head Nurse, Head Nurse/Nurse Manager – CVT, RN Supervisor, Registered Nurse Unit Manager, House Supervisor, RN House Supervisor, and Clinical Supervisor. None is accompanied by a description of duties detailed enough and similar enough to the duties of the position proffered in the instant case that any of the positions announced could be deemed to be positions parallel to the proffered position.

Four of the 14 vacancy announcements submitted state that a bachelor's degree in nursing is required for the positions announced. Those announcements, therefore, state that the positions announced require a bachelor's degree in a specific specialty. Further, two of those four announcements that require a minimum of a bachelor's degree in a specific specialty or its equivalent are for positions in Saudi Arabia. Section 214(i)(1)(B) of the Act, and the regulations effecting it, are concerned with whether attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent is a minimum requirement for entry into the occupation in the United States. Therefore, only two of those four vacancy announcements are relevant to that issue.

Two of the vacancy announcements submitted state that the positions announced require bachelor's degrees, but not that the degrees must be in any specific specialty. The AAO notes that a nurse with a bachelor's degree would not necessarily have a bachelor's degree in nursing. Those vacancy announcements do not, therefore, indicate that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the vacancy announcements states that a bachelor's degree in nursing is desired, but not that it is required. Four others state that a bachelor's degree in nursing is preferred. A desire or a preference is not a minimum requirement. As such, those vacancy announcements do not indicate that a minimum of a bachelor's degree in a specific specialty or its equivalent is a requirement for the positions they announce.

Another announcement states that a bachelor's in nursing is strongly preferred, but not that it is required, nor that the preferred degree must be in a specific specialty. For both reasons, that vacancy announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement indicates that the position announced requires a bachelor's degree in nursing "and/or equivalent experience." The experience that the hiring authority would deem to be equivalent to a bachelor's degree in nursing is not made explicit, however, and whether it would be equivalent to a bachelor's degree in nursing pursuant to the salient regulations is unknown to the AAO. That vacancy announcement does not unequivocally require a minimum of a bachelor's degree in a specific specialty or its equivalent within the meaning of the regulations.

One of the vacancy announcements does not list any educational requirement. That vacancy announcement does not, therefore, indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if all 14 of the vacancy announcements provided were for positions parallel to the proffered position, which they have not been shown to be; and were with similar organizations in the petitioner's industry, which they have not been shown to be; and all were for vacancies in the United States, which they are not; and unequivocally indicated a bachelor's degree or the equivalent in a specific specialty to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 14 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁵

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the

⁵ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from 14 job postings with regard to determining the common educational requirements for entry into parallel positions in similar health care organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of registered nurse for an organization similar to the petitioner in the petitioner's industry required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

Further still, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in registered nursing or its equivalent, the petitioner would be obliged to demonstrate that other Level I registered nursing positions, entry-level positions requiring only a basic understanding of registered nursing, require a minimum of a bachelor's degree in registered nursing or its equivalent, which proposition appears to be contradicted by the *Handbook*.

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

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other registered nursing positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The record contains no evidence that demonstrates that the proffered position is so complex or unique that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The duties of the proffered position (such as assisting in orienting new personnel; directing and supervising nurses and certified nurse assistants; communicating with nursing team members, the DNS and the ADNS; evaluating nursing care and the nursing staff; preparing the work schedule; counseling and disciplining nursing staff; responding appropriately to emergency/crisis situations; monitoring the use of supplies and equipment; and identifying problems and taking corrective action) contain no indication of complexity or uniqueness beyond the ken of a registered nurse without a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted to support the visa petition is approved for a Level I registered nurse, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of registered nursing. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* states that some registered nurse positions do not require such a degree.

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

The AAO will next consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁶ The petitioner's director of nursing services declined to provide evidence on that point, citing privacy concerns. However, the record does include pertinent evidence.

One of the letters provided on appeal is undated and was signed by the petitioner's Clinical Minimum Data Sets (MDS) Coordinator. She stated that she was originally a licensed practical nurse (LPN); that from 2000 to 2002 she was the petitioner's In-service educator, and oriented new staff to salient Federal and state law and to institutional regulations and policies; that beginning in 2006 she became the petitioner's Wound Care Coordinator/Case Manager, in which position she made recommendations for treatment of wounds and submitted clinical information to insurance companies; and that she became the petitioner's MDS nurse in July 2009; but did not become a registered nurse in February of 2011. She also stated that the proffered position "requires diligent and consistent assessment skills, those that are best offered by a Registered Nurse, who holds Bachelors [sic] in Science degree" which suggests that one is able to enter the proffered position without the minimum of a bachelor's degree in registered nursing or its equivalent, and without being a registered nurse.

No evidence in the record demonstrates that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The undated letter from the petitioner's Clinical MDS coordinator plainly suggests the contrary. The petitioner has not, therefore, satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Many of the duties of the proffered position fit neatly into the description of typical nursing duties. Checking feeding tubes, assessing patients for change in status,

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

repositioning patients to prevent pressure sores, assisting in dressing wounds correctly, inserting urinary catheters, starting intravenous lines when ordered by a doctor, assisting in suctioning respiratory patients, maintaining airway, monitoring vital signs, placing orders for gastric tube feedings, evaluating Activities of Daily Living (ADL) status of residents and referring changes to MDS coordinator, dressing peripherally inserted central catheter (PICC) lines, monitoring patients on anticoagulants for bleeding and checking their lab work results, and various other duties of the proffered position are entirely consistent with the typical duties of registered nurses as described in the *Handbook*.

Other duties, although they may well be delegated to a supervisory nurse, are not supervisory, per se, and do not appear to require any advanced education. For example, checking the Emergency Medication Box, the Emergency Treatment Cart, the call bells and chair/bed alarms; checking the maintenance book and calling for repairs; coordinating with Housekeeping for diapers, pads, towels and bed sheets; maintaining inventories of medicines and supplies and reordering as necessary; checking air mattress settings, checking that isolation signs are in place as necessary, checking the temperature setting in the medication refrigerator, reviewing laboratory results and reporting abnormal results to a physician; assessing each patient for change of status; accompanying a physician on rounds and discussing plans of care; coordinating admission procedures; and checking medication expiration dates may be duties assigned to a supervisory or administrative nurse, but they contain no indication of any inherent requirement for advanced education.

Other duties described, supervising unit staff; delegating duties and patient assignments; overseeing the implementation of all interventions; assessing, planning, implementing and evaluating patient care activities; checking for absences and finding coverage for them; supervising patient transport are inherently supervisory. Even those duties, however, contain no indication that their nature is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

That those duties require leadership, clear communication, logical thought processes, etc. does not qualify them as specialty occupation duties. That they require calculations of weights, dosages, flow rates, proportions, percentages, and volume using fractions, percentages, ration, and proportions similarly does not demonstrate the need for a minimum of a bachelor's degree in a specific specialty or its equivalent, as those are skills typically taught in basic math in primary and secondary school.

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. The requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm'r. 1988).

Further, as was noted above, the petitioner filed the instant visa petition for a Level I registered nurse position, a position with only a basic understanding of registered nursing. This does not support the proposition that the duties of the position are so specialized and complex that their performance is

associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely-related to nursing, notwithstanding that some registered nursing positions require no such degree.

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

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

The AAO observes that even if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petition still would not be approved. The petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968). In the instant case, the proffered position is closely related to nursing. If it were to require a minimum of a bachelor's degree in a specific specialty or its equivalent, that specific specialty would likely be a bachelor's degree in nursing.

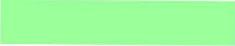
The beneficiary has not been shown to have a bachelor's or higher degree in nursing. Rather, previous counsel submitted various documents pertinent to the beneficiary's Nigerian education and an evaluation that states that it is equivalent to a bachelor's degree in "Health Education (Professional)."

However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not further discuss the issue of the beneficiary's qualifications.

Finally, the AAO notes that if, in fact, the proffered position is a higher level, supervisory nursing position, it would therefore be concluded that the LCA does not correspond to the petition given that the LCA submitted in support of the petition is for a Level I, entry-level, wage. In other words, even if it were determined that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, such that it would qualify as a specialty occupation, the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to a higher level position.

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.

(b)(6)



Page 28

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