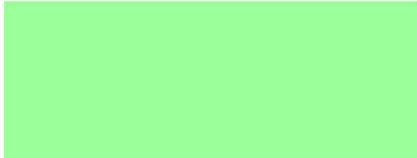
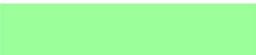


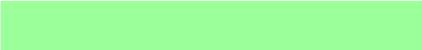


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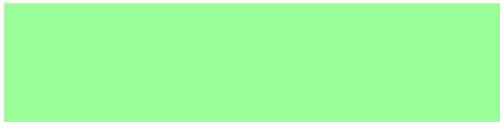


Date: **MAY 31 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner stated that it is a provider of healthcare services with 23 employees. To employ the beneficiary in what it designates as a staff development manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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 counsel's brief in support of the appeal.

The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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 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.

With the visa petition, counsel submitted a letter, dated April 23, 2009, from the petitioner's administrator. That letter contains a description of the duties of the proffered position. That description states:

Specifically, [the beneficiary would] conduct new employee orientation and coordinate competency completion; ensure for or deliver annual mandatory and continuous education for staff using internal and external resources according to state and federal regulations and company policy; teach in-house courses; coordinate employee health program (immunizations, flu shots, physical exams, etc.); monitor and ensure current licensure and certifications of staff; maintain employee education, training and health files; assist in the screening and hiring of nursing and other staff; complete required forms and documents in accordance with company policy and state and/or federal regulations.

The petitioner's administrator further stated, "The normal minimum requirements for the performance of the above job duties is [sic] a bachelor's degree in nursing or [a] related field."

Finding that the evidence submitted did not establish that the beneficiary would be employed in a specialty occupation, the service center issued an RFE in this matter on April 30, 2009. The service center requested, *inter alia*, that the petitioner provide (1) a more detailed description of the duties of the proffered position and an explanation of the need for a bachelor's degree in nursing in order to perform those duties, (2) evidence that similar companies in the petitioner's industry employ staff development managers with bachelor's degrees in nursing,<sup>1</sup> (3) copies of past and/or present announcements of the proffered position, and (4) other evidence to demonstrate that the petitioner has a past practice of hiring only staff development managers with bachelor's degrees in nursing.

In a response dated June 1, 2009, counsel stated that the proffered position "combines the function of health educator [and] training and development manager." Counsel further stated that both of those

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<sup>1</sup> It is noted that the RFE mistakenly referred to the proffered position as a marketing manager position.

positions require bachelor's degrees. Counsel noted that the Occupational Information Network O\*Net OnLine (O\*NET) Summary Report for Training and Development Managers (11-3042.00) provides that most such occupations require a four-year bachelor's degree. Counsel also provided printouts of vacancy announcements taken from popular job search websites. Counsel did not, however, provide the requested detailed description of the duties of the proffered position, an explanation of the need for a bachelor's degree in nursing in order to perform those duties, copies of past or present announcements of the proffered position, or any other evidence to demonstrate that the petitioner has a past practice of hiring only staff development managers with bachelor's degrees in nursing.

The director denied the visa petition on June 16, 2009 finding, as was noted above, that the petitioner failed to demonstrate that the proffered position qualifies as a position in a specialty occupation. In that decision, the director found the proffered position to be a Nurse Educator position as described in the *Handbook*.

On appeal, counsel asserted that the proffered position is not a Nurse Educator position, but a Staff Development Manager position, and that, in any event, the *Handbook* supports that a Nurse Educator position requires a bachelor's degree level of education. Counsel also asserted that the proffered position combines duties of Health Educator positions and Human Resources, Training and Labor Relations Managers and Specialists as described in the *Handbook*.

The AAO will now discuss the application of the additional, supplemental criteria 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)(1), which may be 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.

Counsel observed that the O\*NET section on training and development managers indicates that such occupations require a four-year bachelor's degree. The AAO notes that, in order to establish eligibility for the benefit sought, the petitioner must demonstrate that the proffered position requires at least a bachelor's degree in a directly related, specific specialty, or its equivalent. Therefore, even if the proffered position were amenable to classification as a training and development manager position, O\*NET contains no indication that such positions require at least a bachelor's degree in a directly related specific specialty or its equivalent for entry into a position in that occupational category.

In addition, counsel has asserted that the proffered position is a combination of various occupations. In response to the RFE, counsel asserted that the proffered position is a combination of health educator and training and development manager. On appeal, counsel asserted that the proffered position is a combination of a health educator position and a human resources, training and labor relations manager or specialist position. Counsel argued that the proffered position is not a nurse educator position, as the director found, but further asserted that, even if it were, such positions require at least a bachelor's degree level of education.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

In the "Health Educators" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Health Educators Do**

Health educators teach people about behaviors that promote wellness. They develop programs and materials to encourage people to make healthy decisions.

### **Duties**

Health educators typically do the following:

- Assess the needs of the people they serve
- Develop programs and events to teach people about health topics
- Create and distribute health-related posters, pamphlets, and other educational materials
- Evaluate the effectiveness of programs and materials
- Help people find health services or information
- Supervise staff who implement health education programs
- Collect and analyze data to learn about their audience and improve programs
- Advocate for improved health resources and policies

The duties of health educators vary based on where they work. Most work in health care facilities, colleges, public health departments, nonprofits, and private businesses. Health educators who teach health classes in middle and high schools are considered teachers. For more information, see the profiles on middle school teachers and high school teachers.

In *health care facilities*, health educators often work one-on-one with patients and their families. They teach patients about their diagnoses and about necessary treatments or procedures. They direct people to outside resources, such as support groups and home health agencies. Health educators in health care facilities also help organize health screenings, such as blood pressure checks, and health classes on topics such as correctly installing a car seat. They also train medical staff to interact

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

better with patients. For example, they may teach doctors how to explain complicated procedures to patients in simple language.

In *colleges*, health educators create programs and materials on topics that affect young adults, such as smoking and alcohol use. They may train students to be peer educators and lead programs on their own.

In *public health departments*, health educators administer public health campaigns on topics such as proper nutrition. They develop materials to be used by other public health officials. During emergencies, they provide safety information to the public and the media. They help health-related nonprofits obtain funding and other resources. Some health educators work with other professionals to create public policies that support healthy behaviors. Some participate in statewide and local committees on topics such as aging.

In *nonprofits* (including community health organizations), health educators create programs and materials about health issues for the community that their organization serves. Many nonprofits focus on a particular disease or audience, so health educators in these organizations limit programs to that specific topic or audience. In addition, health educators may lobby policymakers to pass laws to improve public health.

In *private businesses*, health educators identify common health problems among employees and create programs to improve health. They work with management to develop incentives for employees to adopt healthy behaviors, such as losing weight. Health educators recommend changes to the workplace, such as creating smoke-free areas, to improve employee health.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Health Educators," <http://www.bls.gov/ooh/community-and-social-service/health-educators.htm#tab-2> (last visited May 29, 2013).

The petitioner is a home healthcare agency. It bears little similarity to a college, a public health department, of a nonprofit organization, either in organization, function, or purpose. Further, the health education efforts in colleges are geared toward educating students about maintaining their own health. The health education efforts in private businesses teach employees to maintain their own health. None of the health educator positions described contemplate teaching classes to healthcare professionals. The AAO finds that the duties of the proffered position bear little resemblance to the duties of a health educator as described in the *Handbook*, and that the proffered position is not, therefore, a health educator position.<sup>3</sup>

<sup>3</sup> In any event, the *Handbook* also states, "Entry-level [health educator] positions require a bachelor's degree in health education or health promotion." <http://www.bls.gov/ooh/community-and-social-service/health-educators.htm#tab-4>. Therefore, even if the petitioner had demonstrated that the proffered position is a health educator position, the beneficiary would not be found to be qualified for the proffered position based on the

In the "Training and Development Manager" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Training and Development Managers Do**

Training and development managers plan, direct, and coordinate programs to enhance the knowledge and skills of an organization's employees. They also oversee a staff of training and development specialists.

### **Duties**

Training and development managers typically do the following:

- Assess employees' needs for training
- Align training with the organization's strategic goals
- Create a training budget and keep operations within budget
- Develop or update training programs to ensure that they are current and make the best use of available resources
- Oversee the creation of training manuals, online learning modules, and other educational materials for employees
- Review training materials from a variety of vendors and select materials with appropriate content
- Teach training methods and skills to instructors and supervisors
- Evaluate the effectiveness of training programs and instructors

Executives increasingly realize that developing the skills of their organization's workforce is essential to staying competitive in business. Providing opportunity for development is a selling point for recruiting high-quality employees, and it helps in retaining employees who can contribute to business growth. Training and development managers work to align training and development with an organization's goals.

Training and development managers oversee training programs, staff, and budgets. They are responsible for organizing training programs, including creating or selecting course content and materials. Most training takes place in a classroom, computer laboratory, or training facility. But some training is in the form of a video, Web-based program, or self-guided instructional manual. Regardless of how it is conducted, managers must ensure that training content, software, systems, and equipment are appropriate and meaningful.

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current record of proceeding, as the petitioner has not established that she possesses at least a bachelor's degree in either health education or health promotion or their equivalent.

Training and development managers typically supervise a staff of training and development specialists, such as instructional designers, program developers, and instructors. Managers teach training methods to specialists who, in turn, instruct the organization's employees, both new and experienced. Managers direct the daily activities of specialists and evaluate their effectiveness. Although most managers primarily oversee specialists and training and development program operations, some—particularly those in smaller companies—also may direct training courses.

To enhance employees' skills and an organization's overall quality of work, training and development managers often confer with managers of each department to identify its training needs. They may work with top executives and financial officers to identify and match training priorities with overall business goals. They also prepare training budgets and ensure that expenses stay within budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Training and Development Managers," <http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-2> (last visited May 29, 2013).

The duties of the proffered position, as described, would include conducting employee orientation, "coordinat[ing] competency completion," arranging for continuing education classes, arranging for immunizations and physicals, maintaining files, assisting in hiring nurses and other employees, and completing forms and documents. Those duties fall far short of the duties of training and development managers as described in the *Handbook*, which include "Teach[ing] training methods and skills to instructors and supervisors," and "Evaluat[ing] the effectiveness of training programs and instructors."

Training and development managers manage a training program, not merely by acquiring materials and teaching classes, but by teaching training methods to subordinates and evaluating their effectiveness. The record contains no evidence, nor even an assertion, that, in the context of the petitioner's 23-person business, the beneficiary would organize and oversee a team of instructors and instructional supervisors. The proffered position is not a training and development specialist position as described in the *Handbook*.<sup>4</sup>

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<sup>4</sup> The AAO also observes that, if the proffered position were demonstrated to be a training and development manager position as described in the *Handbook*, that would not demonstrate by its inclusion in this occupational category that the proffered position is a specialty occupation position. This is because, although the *Handbook* indicates that training and development manager positions require a minimum of a bachelor's degree, it does not indicate that they require a minimum of a bachelor's degree *in a specific specialty or its equivalent*, as a general business administration degree is sufficient for entry into the occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*,

The *Handbook* no longer contains a chapter pertinent to Human Resources, Training and Labor Relations Managers and Specialists, per se. In his appeal brief, however, counsel quoted extensively from a previous version of the *Handbook* which did contain a chapter dedicated to discussing those occupations. Those positions are now discussed in various, more specific, chapters of the *Handbook*. Of those various more specific chapters, the most pertinent to the proffered position in the instant case is the chapter on Training and Development Managers, which is discussed above.

Although counsel insists that the proffered position is not a nurse educator position, the AAO will now consider such positions, which are addressed in the *Handbook* chapter pertinent to registered nurses. 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. 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#tab-2> (last visited May 29, 2013).

The *Handbook* indicates that some nurses work in nurse educator positions and that some work in administrative positions. The proffered position appears to encompass duties of both such positions. That is, in the proffered position, the petitioner would provide training and education to the beneficiary's staff (e.g., "conduct new employee orientation and coordinate competency completion; ensure for or deliver annual mandatory and continuous education for staff using internal and external resources according to state and federal regulations and company policy; [and] teach in-house courses") and would perform some administrative functions (e.g., "coordinate employee health program . . . ; monitor and ensure current licensure and certifications of staff; maintain employee education, training and health files; assist in the screening and hiring of nursing and other staff; [and] complete required forms and documents in accordance with company policy and state and/or federal regulations"). No basis exists for distinguishing the proffered position from a registered nurse position in which the beneficiary would perform nurse educator and administrative duties, and the

AAO finds that the proffered position is, in fact, a registered nurse position as contemplated by the *Handbook*.

The *Handbook* states the following about registered nurse positions:

### **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>.

The *Handbook* makes clear that registered nurse positions, as a category, do not require a minimum of a bachelor's degree or the equivalent, as it indicates that an associate's degree suffices for entry into the occupation. Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of nurse educator and administrative duties, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty or its equivalent as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific

specialty or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

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

The petitioner did submit four vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

One of those vacancy announcements was placed by the [REDACTED] in Urbana, Illinois for a Staff Development Coordinator. That nursing home describes itself as a 243-bed facility with "200+" employees. The AAO notes that it is much larger than the petitioner, and that this difference would likely render the position announced considerably more complex than the proffered position, even if they were otherwise parallel. Further, the only educational requirement for that position is that applicants must be registered nurses. As was explained by the *Handbook*, a registered nurse need not necessarily have a bachelor's degree, but may acquire that status with, for instance, a two-year associate's degree in nursing. That announcement does not, therefore, contain a requirement for a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another announcement was placed by the [REDACTED] in Oak Park, Illinois for an ED [Emergency Department] Staff Nurse. The AAO notes that the announcement contains no indication of

that organization's size, and that the position announced does not appear similar to the proffered position in the instant case. Further, that announcement states that the position requires only an associate's degree, and that a bachelor's degree in nursing, although preferred, is not required. That announcement does not, therefore, contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another announcement was placed by [REDACTED], Pennsylvania, for a Clinical Education & Staff Development Specialist. Evidence of the size of that organization is not in the record. That announcement states that the position announced requires a minimum of a bachelor's degree in occupational therapy, physical therapy, or speech language pathology, rather than a bachelor's degree in nursing. It appears, therefore, not to be a position parallel to the proffered position and, in any event, offers no support for the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in nursing.

The final vacancy announcement provided was placed by [REDACTED] Georgia for an RN Staff Development Coordinator for an LT (long-term) Care Facility. That announcement states that [REDACTED] has 646 locations, including 250 skilled nursing centers, 52,900 employees, and annual revenues of over \$4 billion. It is, by any measure, considerably larger than the petitioner. Further, that announcement does not state any educational requirement. It does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in nursing or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>5</sup>

Thus, based upon a complete review of the record, the petitioner has not established 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)

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<sup>5</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error"). As such, even if the job announcements supported the finding that the positions parallel to the proffered position for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected support the petitioner's assertions that the particular position here proffered more likely than not requires at least a bachelor's degree in nursing.

located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to be beyond those of a registered nurse who does not possess a bachelor's or higher degree in nursing or its equivalent.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty, baccalaureate degree and did not establish how such a baccalaureate-level curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position.<sup>6</sup>

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<sup>6</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In the April 30, 2009 RFE, the service center requested, *inter alia*, copies of past and/or present announcements of the proffered position, and other evidence to demonstrate that the petitioner has a past practice of hiring only staff development managers with bachelor's degrees in nursing. However, no such evidence has been submitted. The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 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. Conducting employee orientation, coordinating competency completion, arranging for continuing education classes, arranging for immunizations and physicals, maintaining files, assisting in hiring nurses and other employees, and completing forms and documents contain no indication of a nature so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, notwithstanding that the service center requested a more detailed description of the duties of the proffered position, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of nursing positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Therefore, 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.

Beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified Labor Condition Application (LCA) that corresponds to the petition. Specifically, the job title on the LCA submitted with the petition reads "Staff Development Manager," and it was certified for SOC (O\*NET/OES) Code 11-3042 or "Training and Development Managers" for a Level I, entry-level position with a prevailing wage at that time of \$48,443 per year. As determined *supra*, however, the job as titled and as described by the petitioner is best classified as a registered nurse, i.e., SOC (O\*NET/OES) Code 29-1111, for which the minimum prevailing wage at that time in Cook County, Illinois was \$50,003 per year. As such, the petitioner was required to provide at the time of filing an LCA certified for SOC (O\*NET/OES) Code 29-1111, not SOC (O\*NET/OES) Code 11-3042 (now 11-3131), in order for it to be found to correspond to the petition.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.