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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: OCT 29 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on May 3, 2010. In the Form I-129 visa petition and supporting documents, the petitioner describes itself as a "Nursing Registry" established in 2007. In order to employ the beneficiary in what it designates as a director of nursing, rehab position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on December 4, 2012, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence dated July 26, 2010; (3) the director's denial letter dated October 27, 2010; (4) the response to the first RFE, received January 14, 2011; (5) the director's letter dated May 23, 2011, rejecting the appeal; (6) the petitioner's motion to reopen and reconsider, filed on June 23, 2011; (7) the director's letter dated March 19, 2012; (8) the petitioner response, received June 18, 2012; (9) the director's denial letter dated December 4, 2012;¹ and (10) the petitioner's Form I-290B appeal and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.²

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

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a director of nursing, rehab to work on a full-time basis at a rate of pay of \$65,000 per year. In a job description submitted with the initial Form I-129 petitioner, the petitioner indicated the following regarding the responsibilities and requirements for the proffered position:

PURPOSE OF THE JOB: The Director of Nursing (DON) is responsible for overseeing the standards of nursing practices for the client's nursing services. Participates with other members of Nursing Services and Administration in the development of patient care programs, policies and procedures to meet all requirements including ethical and legal concerns.

¹ The AAO observes that the record contains a duplicate copy of the director's denial, which is dated March 26, 2013.

² The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The DON is responsible for the implementation of an effective and ongoing program to monitor, evaluate and improve the quality and appropriateness of nursing and other direct patient related care. Provide leadership and mentoring for nursing staff.

The DON will participate with governing officials, managerial staff, medical staff, and other clinical leaders in the decision making structures and processes of the Corporation. Eligible for delegation of Executive duties.

QUALIFICATIONS:

1. A registered nurse with a current State of Connecticut nursing license.
2. Graduate of an accredited school of nursing. Must have a BS degree in Nursing.
3. Knowledgeable about Joint Commission, state and federal requirements.
4. Minimum of 2 years acute clinical practice with good clinical skills/abilities to function as staff nurse.
5. Direct hire preferred.

ESSENTIAL FUNCTIONS:

1. Coordinates, collects, analyzes, and prepares reports for the nursing management and the leaders of the corporation. Provides dialogue (verbal/written) to nursing staff including Asst Directors of Nursing. Establishes timelines for projects and follows through appropriately.
2. Coordinates and assists with design and implementation of patient care services with other departments.
3. Champions patient-safety efforts.
4. Directs critical access hospital-wide patient care programs, policies, and procedures describing how patient's nursing care, treatment, and service needs are assessed, evaluated, and met. Assigns responsibility for program, policy, and procedures development to appropriate managers
5. Provides oversight and interpretation of concurrent record review and other performance improvement activities and other studies that evaluate the effectiveness of nursing services in relation to their objectives and costs.
6. Implements an effective, on-going program to measure, assess, and improve the quality of nursing care, treatment, and services delivered to patients.
7. Participates in evaluation of, current services and programs, proposed changes and expansion of services and programs. Assists management in selecting quality indicators.
8. Assist with recruitment and retention of nursing staff.
9. Maintains an active awareness of the nursing staffing patterns in relation to safe and effective treatment and budgetary goals and is responsible for monitoring the effectiveness of staffing plan.
10. Participates in activities promoting professional growth. Promotes a professional image of the nursing profession. Maintains and respects confidentiality. Assesses nursing qualifications and develops programs

- enabling nurses to meet and exceed their competency levels. Initiates in-service programs.
11. Holds nursing staff responsible for using client's and [the petitioner's] chain of command.
 12. Upholds the mission statement and goals of [the petitioner] and client's. Actively participates in developing and managing the Strategic Plan and associated balanced scorecard measures.
 13. Actively oversees development of the nursing budget. Maintains financial viability and supports nursing management in the budget process. Trades departmental budget expenditures and reports to the Chief Operating Officer on issues of over-budget expenditures and changes to an approved budget.
 14. Provides evaluations of staff that report directly to Vice President of Operations.
 15. Performs other personnel management tasks including assisting managers in handling progressive discipline.
 16. Responsible for knowledge of and compliance, where applicable, with regulatory or credentialing agencies such as Joint Commission, state and federal agencies, Medicare and Medicaid.
 17. Assigns, delegates, and details as necessary for special duties.
 18. Participates in defined and established meetings of the corporate leadership and with other critical managerial leaders.
 19. Actively participates in organizational risk management and corporate compliance activities in coordination with client's Compliance Officer.
 20. Co-Chairs along with the client's Clinical Director the Patient Safety Committee.
 21. Provide patient coverage on an as-required-but-infrequent basis.

(Text and formatting as they appear in the original.) In support of the Form I-129 petition, the petitioner provided copies of the beneficiary's foreign diploma, transcripts, and certificates; and a copy of a Connecticut nursing license in the name of the beneficiary with an expiration date of January 1, 2008. The petitioner did not provide an evaluation of the beneficiary's foreign credentials.

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the petitioner designated the proffered position under the SOC (ONET/OES Code) 11-9199, which corresponds to the occupational classification "Managers, All Others."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on July 26, 2010. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified to provide services in a specialty occupation position. The petitioner was given until September 9, 2010 to respond to the RFE. No response was received, and the director denied the petition as abandoned on October 27, 2010.

On December 13, 2010, the petitioner filed a Notice of Appeal or Motion (Form I-290B) and indicated that it was filing an appeal. On the Form I-290B, the petitioner stated that it had not received the RFE.

On January 14, 2011, the petitioner submitted the original RFE and its response. The petitioner stated, "This is in response to you [sic] letter dated July 26, 2010 which our office received last December 15, 2010." The response included (1) a cover letter from the petitioner; (2) a document entitled "Detailed Job Description, Director of Nursing; (3) a copy of the previously submitted description of the proffered position; (4) a document regarding the petitioner's academic requirements for the proffered position; (5) a list of the petitioner's nursing personnel; (6) a copy of a Connecticut nursing license in the name of the beneficiary with an expiration date of January 17, 2013; (7) a copy of a [REDACTED] certificate in the name of the beneficiary; (8) a block-and-line organizational chart entitled "Nursing Organization Chart [the petitioner]."

On May 23, 2011, the director rejected the petitioner's appeal as untimely. The director indicated that the submission did not meet the requirements for a motion.

On June 23, 2011, the petitioner filed a motion to reopen and reconsider. The motion was accompanied by an explanation from the petitioner stating that it had not timely received the original RFE.³ The petitioner included a copy of its response to the original RFE.

On March 19, 2012, the director granted the petitioner's motion to reopen and issued an RFE. Specifically, the director requested evidence documenting the education of the petitioner's other employees; an organizational chart of the end-client, [REDACTED] and evidence demonstrating that an employer-employee relationship exists between the petitioner and the beneficiary. The director outlined the evidence to be submitted.

³ In the motion to reopen and reconsider, the petitioner stated that it "received [the RFE] only on November 22, 2010 from the Post Office at or about 4:00 pm as a redelivery. This letter was earlier mailed in error to [REDACTED] whose occupants were away for an extended period at that time." The petitioner continued, "On November 22, 2010 our office filed an appeal on your denial (dated October 27, 2010) of our I-129 Application." The petitioner further stated that in the appeal, the petitioner "advised that your RFE had not yet been received by the time we dropped it at the Post Office that morning, unaware that your RFE would be received the same day."

The AAO notes that the copy of the Form I-797, Notice of Action, (RFE) provided by the petitioner in support of its motion bears a date stamp of "Nov 22, 2010." However, the original Form I-797, which was received by USCIS on January 14, 2011 does not bear the date stamp. The AAO also notes that the petitioner indicates that it mailed the appeal on November 22, 2010, before it received the RFE. However, the record reflects that the petitioner's appeal was initially rejected on November 26, 2010 and returned to the petitioner with a letter indicating that it had failed to pay the required fee. Evidence in the record indicates that the petitioner resent the appeal on December 6, 2010. Thus, according to the petitioner's account of when the RFE was received, the petitioner was in receipt of the RFE at the time the appeal was filed. There are discrepancies and inconsistencies in the petitioner's statements as to when it received the RFE.

On June 18, 2012, the petitioner responded to the RFE by providing a letter and additional evidence. The evidence included (1) an excerpt of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook's (Handbook)* chapter on "Medical and Health Services Managers"; (2) a letter from [REDACTED] Personnel Director at [REDACTED] (3) copies of foreign degrees in the names of individuals purportedly employed by [REDACTED] and (4) a staffing agreement between the petitioner and [REDACTED] dated May 7, 2001.

The director reviewed the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on December 4, 2012.

The petitioner submitted an appeal of the denial of the H-1B petition. On appeal, the petitioner provided the following documentation: (1) a letter from the petitioner's president; (2) a document entitled "Arguments why only at least a Bachelor's Degree in Nursing and not an Associate's Degree holder qualifies for the position as Director of Nursing at the client's facility [REDACTED]"; (3) a printout of an associate's degree program in nursing at [REDACTED] (4) a foreign transcript in the name of the beneficiary; (5) Form W-2, Wage and Tax Statements, issued by the petitioner; (6) a letter from [REDACTED]⁴ personnel director for [REDACTED]⁵; (7) a block-and-line organizational chart entitled "[REDACTED] Organizational Chart"⁶; and (8) a copy of a contract dated December 8, 2008 between the petitioner and [REDACTED]

In the document entitled "Arguments why only at least a Bachelor's Degree in Nursing and not an Associate's Degree holder qualifies for the position as Director of Nursing at the client's facility [REDACTED]," the petitioner suggests for the first time that the proffered position requires "training in the field of nephrology as mandated by the [REDACTED]". The petitioner asserts

⁴ In the Form I-290B, submitted on appeal, the petitioner refers to Ms. [REDACTED] as "Nursing Coordinator at [REDACTED]". No explanation for the discrepancy as to Ms. [REDACTED]'s position was provided.

⁵ The AAO notes that this letter, dated February 6, 2013, signed by [REDACTED] bears the initials "ES/nn" underneath the signature, indicating that the letter was prepared by an individual other than the signatory, with the initials "nn." The AAO further notes that the organizational chart purportedly provided by the end client along with this letter is nearly identical to the organizational chart of the petitioner, as described below.

⁶ The AAO observes that the organizational chart purportedly provided by the end-client is in all respects identical to the organizational chart provided by the petitioner in response to the first RFE. The organizational chart provided by the petitioner was entitled "Nursing Organization Chart [petitioner]." The only difference between the two charts is the name of the organization with which the chart is associated and the substitution of "Supervisor [REDACTED]" for "Supervisor [REDACTED]"

that the "Commissiona [sic] requires that a minimum qualification calls for at least a bachelor's degree in nursing."

In a letter dated February 8, 2013, the petitioner states that the beneficiary "retains his original functions as research analyst which was the basis of his H1B approval granted by [USCIS]," and the proffered position "actually would add more responsibility to his original job description."

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline, or its equivalent. The AAO finds that the petitioner has not done so. There are numerous inconsistencies and discrepancies in the petition and supporting documents, which undermine the petitioner's credibility with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions.

For instance, the AAO observes that on appeal, the petitioner states that the beneficiary "retains his original functions as research analyst which was the basis of his H1B approval granted by [USCIS]," and the proffered position "actually would add more responsibility to his original job description." The AAO notes that the petitioner alludes to the beneficiary's prior employment with a different company where he was a research analyst. It is not apparent from the evidence provided why the beneficiary would "retain" any functions associated with his prior employment; the instant petition was submitted for "[n]ew employment (including new employer filing H-1B extension)." In addition, the description of the proffered position provided in support of the instant Form I-129 petition does not indicate that the beneficiary will perform duties pertaining to a research analyst. Moreover, the petitioner failed to describe any of the research analyst duties, which it claims, *for the first time on appeal*, will be performed by the beneficiary in the proffered position.

As part of the job description submitted with the initial petition, the petitioner initially indicated that the proffered position requires "a BS degree in Nursing"; "a State of Connecticut nursing license; knowledge regarding the "Joint Commission" and state and federal requirements; and two years of experience. On appeal, the petitioner indicates that the proffered position requires certification from the "[redacted]" and indicates that the end-client facility provides services to "individuals with heart problems[,] renal cases with earlier to end stage cases, cancer patients or rehabilitative patients, etc." The AAO notes that the record contains no independent evidence to substantiate the business operations of the end-client, [redacted]. Specifically, there is no evidence in the record to establish that [redacted] requires such nephrology certification or provides such services.⁷ In addition, the AAO observes that the record does not contain evidence indicating that the beneficiary has certification from the [redacted] nor does it contain sufficient evidence to establish that the beneficiary possesses the equivalent of a bachelor's degree in nursing. Accordingly, the beneficiary would not qualify to serve in the proffered position based upon the petitioner's stated requirements. The AAO notes that the requirements for the proffered position were submitted by the petitioner, but not endorsed by the end-client.

Moreover, it must be noted that in an appeal, a petitioner cannot make material changes to the proffered position (e.g., job duties, responsibilities, requirements) in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978).

Further, the AAO observes that the record does not contain a description of the proffered position that has been endorsed by the end-client, and the description of the beneficiary's duties provided by the petitioner lacks the specificity and detail necessary to support the petitioner's contention that the position is a specialty occupation. That is, the job description fails to communicate (1) the complexity, uniqueness and/or specialization of the tasks; and/or (2) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. Moreover, the petitioner's assertion that the proffered position qualifies as a specialty occupation is conclusory and unpersuasive, as it is not supported by the job description or substantive evidence.

In the instant case, the AAO observes that the petitioner initially provided a description of the proffered position stated in generic terms that failed to convey the actual duties that the beneficiary would perform. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary "[c]oordinates, collects, analyzes, and prepares reports for the nursing management and the leaders of the corporation." No specification was provided as to what type of "reports" were to be "collected" or

⁷ In addition, the AAO reviewed [redacted] website [redacted] as stated on the [redacted] letterhead in the record), but found no mention of services for end-stage cancer patients or individuals in need of dialysis.

"coordinated." Further, the petitioner indicated that the beneficiary "[p]rovides dialogue (verbal/written) to nursing staff including Asst Directors of Nursing." No explanation as to the purpose or content of the "dialogue" was provided. The petitioner also stated that the beneficiary, "[c]hampions patient-safety efforts," without further elaboration. The petitioner's statements regarding the duties of the proffered position are generic and not persuasive in establishing that a genuine specialty occupation position exists for the beneficiary.

On motion, the petitioner provided a document entitled "Detailed Job Description, Director of Nursing." This document contains a daily schedule for the proffered position specifying the tasks the beneficiary would undertake. However, the petitioner failed to establish any particular level of education required to perform the specific tasks.⁸

As so generally described, the duties do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application. That is, the overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations. Thus, the petitioner has failed to demonstrate how the performance of the duties of the proffered position, as described by the petitioner, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and

⁸ The petitioner provided a "case in point" in the "detailed job description" indicating that an RN with an associate's degree misdiagnosed a patient condition, which was properly diagnosed by an individual in the proffered position. The petitioner has not provided any evidence to indicate that diagnosis of the particular condition at issue is information obtained through a bachelor's degree program in a specific specialty or its equivalent, as opposed to an associate's degree program or on-the-job training.

- (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), 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 the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In the instant case, the petitioner has failed to establish nature of the proffered position and in what capacity the beneficiary will actually be employed. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, assuming, *arguendo*, that the duties of the proffered position as described by the petitioner would in fact be the duties performed by the beneficiary, the AAO will analyze them and the evidence in the record of proceeding to determine whether the proffered position as described would qualify as a specialty occupation. To make its determination as to whether the employment described by the petitioner qualifies as a specialty occupation, the AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a director of nursing, rehab position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the

position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁹ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Managers, All Other." The AAO reviewed the *Handbook* for information regarding this occupational category; however, the AAO notes that the *Handbook* does not provide a detailed narrative account nor does it provide summary data for the occupational category "Managers, All Other." Accordingly, the *Handbook* lacks sufficient information regarding the occupational category (e.g., duties, academic requirements) to be deemed probative evidence with regard to this occupational classification.

The AAO notes there are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Data for Occupations Not Covered in Detail, on the Internet at <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited October 24, 2013).

⁹ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. (That is, detailed occupational profiles for these 160+ occupations are not developed.) The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider all of the evidence presented to determine whether a beneficiary qualifies to perform in a specialty occupation. The petitioner has failed to do so in the instant case. That is, the petitioner has failed to submit probative evidence that normally the minimum requirement for positions falling under the occupational category "Managers, All Other" is at least a bachelor's degree in a specific specialty, or its equivalent.

To the director on motion, and again on appeal, the petitioner asserts that the occupational category "Medical and Health Services Managers" is relevant to the instant petition.¹⁰ The AAO reviewed the chapter of the *Handbook* entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Medical and Health Services Managers" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

¹⁰ The petitioner's characterization of the proffered position of pertaining to the occupational category of "Medical and Health Services Managers" when it has certified on the LCA that the proffered position pertains to an occupational classification with a lower prevailing wage ("Managers, All Other") is potentially problematic. Notably, the prevailing wage for "Managers, All Other" at a Level I wage in [REDACTED] CT for the relevant time period was \$62,296. All Industries Database for 7/2009 - 6/2010 for Managers, All Other at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-9199&area=72850&year=10&source=1> (last visited October 24, 2013). However, the prevailing wage for a Level I "Medical and Services Managers" position was \$79,019 for the same area during the same period. All Industries Database for 7/2009 - 6/2010 for Medical and Health Services Managers at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-9111&area=72850&year=10&source=1> (last visited October 24, 2013). The AAO notes that the petitioner stated on the Form I-129 petition that it would pay the beneficiary \$65,000 per year. However, as the petitioner now represents that the proffered position is properly characterized as a "Medical and Health Services Manager," it is not apparent that the petitioner will pay the beneficiary at least the prevailing wage for the proffered position.

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

Education

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

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

Work Experience

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Medical and Health Services Managers, on the Internet at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited October 24, 2013).

The *Handbook* does not support the assertion that at least a bachelor's degree *in a specific specialty* is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that although possession of an advanced degree is a common pathway to work in this field, some facilities hire those with on-the-job experience instead of formal education. The *Handbook* does not state that such experience must be equivalent to at least a bachelor's degree in a specific specialty. The narrative of the *Handbook* provides as an example that managers of physical therapy may be experienced physical therapists who have administrative experience. Thus, for this occupation, a baccalaureate or higher degree in a specific specialty or its equivalent is not normally the minimum requirement for entry.

Although the *Handbook* states that medical and health services managers typically need at least a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be in a specific specialty. The narrative of the *Handbook* reports that a degree in health services, long-term care administration, public health, public administration, or business administration are

common for entry into the occupation. Notably, a degree in nursing is not listed in the *Handbook* as an acceptable field of study for these positions.

The *Handbook* indicates that degrees in disparate fields (e.g., health services, long-term care administration, public health, public administration, and business administration) are acceptable for entry into the occupation. Thus, it does not appear that a degree in a specific specialty, or its equivalent, is necessary for entry into this occupation. For example, absent evidence to the contrary, the fields of health services and business administration are not closely related specialties.¹¹ Accordingly, as such evidence fails to establish a minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Notably, the *Handbook* states that a degree in business administration is acceptable. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

Thus, for the reasons discussed above, the AAO does not find that the *Handbook* supports a claim that "Medical and Health Services Managers" comprise an occupational group for which at least a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation.

¹¹ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "*in the specific specialty*," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

The director reviewed the job descriptions provided by the petitioner and found that the proffered position falls under the occupational classification of "Registered Nurses." The subchapter of the *Handbook* entitled "How to Become a Registered Nurse" states, in pertinent part, the following about this occupational category:

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Registered Nurses, on the Internet at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4> (last visited October 24, 2013).

The *Handbook* does not report that, as an occupational group, "Registered Nurses" require at least a bachelor's degree in a specific specialty, or its equivalent. The *Handbook* states that 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. In addition, there are programs for those who wish to enter the nursing profession but hold a bachelor's degree

in another field. Thus, the *Handbook* does not indicate that a bachelor's degree (or higher) in nursing, or its equivalent, is normally the minimum requirement for entry into the occupation.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific

specialty, or its equivalent, is common to the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. The petitioner has therefore not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner may believe that the proffered position qualifies as specialty occupation under this criterion of the regulations. In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted a contract between itself and the end-client and an organizational chart. The AAO reviewed the record of proceeding in its entirety. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of director of nursing, rehab.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Additionally, the AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

Thus, based upon the record of proceeding, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position. Specifically, the petitioner fails to demonstrate how the duties of the position as 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 degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique.¹² While a few related courses may be beneficial, or even required, in performing certain duties of the 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 proffered position.

¹² The AAO notes that on appeal, the petitioner provided a copy of an associate's degree in nursing curriculum from [REDACTED] and a copy of the beneficiary's foreign transcript for comparison purposes. However, the petitioner has not established that the associate's degree curriculum is insufficient to perform the duties of the proffered position as described by the petitioner. The AAO notes that a foreign transcript might only be relevant to the present inquiry where the transcript has been deemed equivalent to a United States bachelor's degree. In the instant case, an evaluation of the beneficiary's academic credentials was not provided.

The AAO observes that the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner has indicated that the beneficiary's educational background and prior work experience will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

On motion to the director, the petitioner provided a letter from the end-client, [REDACTED] dated June 6, 2012 that lists the names of seven of the end-client's registered nurses and indicates that they hold BSN degrees. In support of this assertion, the end-client provided photocopies of their foreign diplomas. Notably, no evaluations of the foreign degrees were provided. Thus, the AAO has not been provided with sufficient evidence to assess whether the registered nurses employed by the end-client have attained the equivalent of at least a bachelor's degree in a specific specialty.¹³ Further, the petitioner does not claim that the proffered position of director of nursing, rehab falls under occupational category "Registered Nurses." Additionally, the petitioner (or the end-client) did not provide a description of the registered nurse positions, such their day-to-day responsibilities, the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, the petitioner has not established that the duties and responsibilities of the registered nurses letter are the same as the proffered position.

Upon review, the petitioner did not submit any documentation to establish that it (or the end-client) normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the director of nursing, rehab position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner may believe that the nature of the specific duties is so

¹³ The AAO notes that the diplomas for [REDACTED] indicate that each completed a three-year course of study.

specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Moreover, the AAO reviewed the documentation submitted by the petitioner (including a contract with the end-client and an organizational chart) but finds that it fails to establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

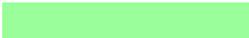
The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, that the petitioner failed to provide an evaluation of the beneficiary's credentials to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in a specific specialty, or its equivalent. Without an evaluation, the petitioner has failed to establish any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C).

Thus, as evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.¹⁴

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *see e.g., Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

¹⁴ As previously mentioned, the AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 145. Here, the petitioner has not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Accordingly, the appeal will be dismissed. Given that this issue is dispositive for the case, the AAO reserves the remaining issues. That is, as the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter, the AAO will not address and will instead reserve its determination on the additional issues that it observes in the record of proceeding.

(b)(6)



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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.