



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

DATE: JAN 16 2014 OFFICE: CALIFORNIA SERVICE CENTER [REDACTED]

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center (the 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.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 10, 2013. On the Form I-129 visa petition, the petitioner describes itself as a chiropractic clinic established in 1997, with four employees. In order to employ the beneficiary in what it designates as a "Medical and Health Services Manager" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on July 10, 2013, 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, counsel asserts that the director's basis for denial of the petition was erroneous. Counsel submits a brief<sup>1</sup> and additional evidence in support of this assertion.

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

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

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

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

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

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<sup>1</sup> The AAO notes that, in contrast to the Form I-129, counsel's brief on appeal states that "[t]he petitioner is in [the] business of plastics machining and manufacture" and that "[i]t seeks to employ the beneficiary as a Budget & Operation Planning Specialist." No explanation was provided for these discrepancies.

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 (5<sup>th</sup> 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.

In this matter, the petitioner stated in the Form I-129 petition that it seeks the beneficiary's services in a position that it designates as a "Medical and Health Services Manager" to work on a part-time basis (30 hours per week) at the rate of pay of \$30.00 per hour (\$900.00 per week/\$46,800 per year).

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Medical and Health Services Managers" - SOC (ONET/OES) Code 11-9111, at a Level I (entry level) wage.

In a support letter dated March 29, 2013, the petitioner stated that the beneficiary will perform the following duties in the proffered position:

- Review, modify, and maintain our office's medical and health services systems in medical record keeping, service billing, payment collection to improve efficiency and service quality[;]
- Monitor changes in laws, regulations, and policies pertaining to our office's medical practice and ensure that our medical services are provided within the provisions[;]
- Comply with all pertinent health and safety standards including licensing[;]

- Schedule regular in-service training events, provide information and encourage staff to attend classes and educational programs to enhance professional skills[;]
- Stay abreast of and recommend to the medical practitioners the latest advances in computerized diagnostic and treatment equipment, data processing technology, and health insurance changes[;]
- Develop budgeting and financial planning in medical equipment purchasing as directed by the owner[;]
- Assess the need for additional staff to operate new equipment and provide new services, and determine job applicants' qualifications[;] [and]
- Serve as the clinic liaison with patients, equipment suppliers, insurance companies, and government agencies[.]

In the letter of support, the petitioner asserts that "the minimum education[al] requirement for the proffered position is [a] Bachelor's degree or higher degree in Healthcare Administration." The petitioner stated that the beneficiary is qualified to perform services in the proffered position by virtue of her degree. The petitioner provided a copy of the beneficiary's Master of Science degree in Health Leadership and unofficial transcript from [REDACTED]. The petitioner also submitted a copy of the beneficiary's undergraduate diploma for the completion of a five-year program in clinical medicine at [REDACTED], and the corresponding certified English translation.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 15, 2013. The director outlined the evidence to be submitted.

On June 28, 2013, the petitioner's former attorney responded to the director's RFE and submitted a response letter and additional evidence. In the letter in response to the RFE, dated June 24, 2013, counsel asserted that the rigorous healthcare regulations and safety rules imposed upon healthcare providers in the United States, as well as sophisticated medical billing practices and procedures, require an individual with "specialized knowledge in healthcare administration/management" possessing "at least a bachelor's degree in healthcare administration/management/leadership." Also, in the RFE-response letter, counsel provided a revised description of the job duties for the proffered position, the specialized knowledge required, and the percentage of working hours, as follows:

#### **Legal**

- Monitor changes in laws, regulations, and policies such as OSHA [Occupational Safety and Health Act] and HIPAA [Health Insurance Portability and Accountability Act] pertaining to the petitioner's medical practice and ensure that its medical services are provided within the provisions[.]
- Develop and implement office policies and procedures[.]
- Ensure safety procedures are in place and followed[.]
- Ensure all licenses such as technician[']s] and doctor's license, [and] x-ray machine license are up to date[.]
- Observe and practice confidentiality policies and procedures[.]

- Responsible for maintaining a secure storage system that comply [sic] with privacy law for confidential medical information[.]
- Patients [sic] relations, settle conflicts and arguments[.]

Counsel noted that these duties required specialized knowledge in US Health & Human Services Systems, Health & Human Services: Legal & Regulation Perspective, Professional Ethics, Research Method, and Conflict Management in the Organization and that these duties comprised 30% of working hours.

#### **Billing, Claims, and Accounts Receivable**

- Review, modify, and maintain the petitioner's medical and health services systems in medical record keeping, service billing, payment collection to improve operational efficiency and service quality[.]
- Oversee billing and coding based upon OPT [sic, should read CPT for Current Procedural Terminology code set, which is maintained by the American Medical Association] and ICD-9 [the ninth version of the International Classification of Diseases, a separate code set utilized by the World Health Organization as a standard diagnostic tool for epidemiology, health management, and clinical purposes][.]
- Oversee obtaining treatment authorization from HMO [Health Maintenance Organization] and submitting claims to insurance[.]
- Follow up on all outstanding account receivable and prepare report[.]
- Reconcile account information[.]
- Correspondence to insurance company, law offices, and patients[.]

Counsel noted that these duties required specialized knowledge in US Health & Human Services Systems, Health & Human Services: Legal & Regulation Perspective, Conflict Management in the Organization, and Communication for Administrators and that these duties comprised 40% of working hours.

#### **Facility and Equipment**

- Stay abreast of and recommend the latest advances in computerized diagnostic and treatment equipment, data processing technology, and health insurance changes[.]
- Develop budgeting and financial planning for medical equipment purchasing[.]

Counsel noted that these duties required specialized knowledge in US Health & Human Services Systems, and Health Care Finance and that these duties comprised 20% of working hours.

#### **Human Resources**

- Schedule regular in-service training events, provide information and encourage staff to attend classes and educational programs to enhance professional skills[.]
- Assess the need for additional staff to operate new equipment and provide new services, and determine job applicants' qualifications[.]
- Supervise and train other employees with the current office procedures and health care regulations[.]

Counsel noted that these duties required specialized knowledge in Administrative and Labor Law, Professional Ethics, Leadership of Health & Human Services Organization, and Services Organization and that these duties comprised 10% of working hours.

The director reviewed all of 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 July 10, 2013. Counsel for the petitioner<sup>2</sup> submitted a timely appeal of the denial of the H-1B petition.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

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, USCIS must look 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."

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

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

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

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<sup>2</sup> The petitioner retained new counsel for the appeal.

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

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Medical and Health Service Managers."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Medical and Health Service Managers," including the sections regarding the typical duties and requirements for this occupational category.<sup>4</sup> The AAO also reviewed the information in the *Handbook* regarding the occupational category "Medical Records and Health Information Technicians," including the sections regarding the typical duties and requirements for this occupational category.<sup>5</sup> Although the petitioner titled the position "Medical and Health Service Manager," upon review of the job descriptions provided by counsel, the AAO finds that the proffered position most closely falls under the occupational classification of "Medical Records and Health Information Technicians." The AAO notes that the *Handbook* does not support a conclusion that either occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry. More specifically, the subchapter of the *Handbook* entitled "How to Become a Medical and Health Services Manager" states the following about this occupational category:

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

### **Education**

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2014-2015 edition available online.

<sup>4</sup> For additional information regarding the occupational category "Medical and Health Service Managers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Medical and Health Service Managers, on the Internet at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-1> (last visited Jan. 15, 2014).

<sup>5</sup> For additional information regarding the occupational category "Medical Records and Health Information Technicians," see *id.*, Medical Records and Health Information Technicians, on the Internet at <http://www.bls.gov/ooh/Healthcare/Medical-records-and-health-information-technicians.htm#tab-1> (last visited Jan. 15, 2014).

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.

### **Important Qualities**

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

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

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

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

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

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

### **Work Experience in a Related Occupation**

Some facilities may hire those with specialized experience in a healthcare occupation in addition to administrative experience. For example, nursing service administrators

usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration.

### **Licenses, Certifications, and Registrations**

All states require nursing care facility administrators to be licensed; requirements vary by state. In most states, these administrators must have a bachelor's degree, pass a licensing exam, and complete a state-approved training program. Some states also require administrators in assisted-living facilities to be licensed. A license is not required in other areas of medical and health services management.

Although certification is not required, some managers choose to become certified. Certification is available in many areas of practice. For example, the Professional Association of Health Care Office Management offers certification in health information management or medical management, while the American College of Health Care Administrators offers the Certified Nursing Home Administrator and Certified Assisted Living Administrator distinctions.

### **Advancement**

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Medical and Health Services Managers," available on the Internet at <http://www.bls.gov/ooh/Management/Medical-and-health-services-managers.htm#tab-4> (last visited Jan. 15, 2014).

The *Handbook* does not report that a medical and health services manager requires at least a bachelor's degree in a specific specialty. While the *Handbook* indicates that a master's degree in a variety of fields is acceptable for generalist positions in the field, it also indicates that a bachelor's degree in general is often accepted for entry level positions. Moreover, it also indicates that a degree in a general field, such as business administration, is common.<sup>6</sup> Finally, the *Handbook*

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<sup>6</sup> To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a

indicates that some facilities hire individuals “with specialized experience in a healthcare occupation in addition to administrative experience.”

The subchapter of the *Handbook* entitled "How to Become a Medical Records or Health Information Technician" states the following about this occupational category:

Health information technicians typically need a postsecondary certificate to enter the occupation, although they may have an associate’s degree. Many employers also require professional certification.

### **Education**

Postsecondary certificate and associate’s degree programs in health information technology typically include courses in medical terminology, anatomy and physiology, health data requirements and standards, classification and coding systems, healthcare reimbursement methods, healthcare statistics, and computer systems. Applicants to health information technology programs increase their chances of admission by taking high school courses in health, computer science, math, and biology.

### **Important Qualities**

**Analytical skills.** Health information technicians must be able to understand and follow medical records and diagnoses, and then decide how best to code them in a patient’s medical records.

**Detail oriented.** Health information technicians must be accurate when recording and coding patient information.

**Integrity.** Health information technicians work with patient data that are required, by law, to be kept confidential. They must exercise caution when working with this information in order to protect patient confidentiality.

**Interpersonal skills.** Health information technicians need to be able to discuss patient information, discrepancies, and data requirements with other professionals such as physicians and finance personnel.

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finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Again, the *Handbook* indicates that most generalist positions in this field can be performed by an individual with only a general-purpose degree, i.e., a degree in "business administration," or on-the-job experience. This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree *in a specific specialty* or its equivalent for entry into the occupation.

**Technical skills.** Health information technicians must be able to use coding and classification software and the EHR system that their healthcare organization or physician practice has adopted.

### **Licenses, Certifications, and Registrations**

Most employers prefer to hire health information technicians who have professional certification. A health information technician can earn certification from several organizations. Some organizations base certification on passing an exam. Others require graduation from an accredited program. Once certified, technicians typically must renew their certification regularly and take continuing education courses. Certifications include Registered Health Information Technician (RHIT) and Certified Tumor Registrar (CTR), among others. Many coding certifications require coding experience in a work setting.

### **Advancement**

Health information technicians may advance to other health information positions by receiving additional education and certifications. Technicians can advance to a medical or health services manager after completing a bachelor's or master's degree program and taking the required certification courses. Requirements vary by facility.

*Id.*, available on the Internet at <http://www.bls.gov.ooh/Healthcare/Medical-records-and-health-information-technicians.htm#tab4> (last visited Jan. 15, 2014).

The *Handbook* does not report that, as an occupational group, "Medical Records and Health Information Technicians" require at least a bachelor's degree in a specific specialty. The *Handbook* states that medical records and health information technicians "typically need a postsecondary certificate to enter the occupation, although they may have an associate's degree."

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within 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 particular position that is the subject of this petition 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 reviews 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 an 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, the record of proceeding does not contain any evidence 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 record is devoid of any evidence establishing that a requirement of a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the proffered position's duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

While some of the courses listed on the copy of the beneficiary's unofficial transcript for the Master of Science degree in Health Leadership from [REDACTED] may be beneficial 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, are required to perform the duties of the particular position here proffered.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level based upon the occupational classification "Medical and Health Services Managers" at a Level I (entry level) wage.<sup>7</sup> This wage-level designation is appropriate for positions for which the petitioner expects the beneficiary to only have a basic understanding of the occupation.<sup>8</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary will be expected to perform routine tasks that require

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<sup>7</sup> Wage levels should be determined only after selecting the most relevant Occupational Information Network (O\*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

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

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>8</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

*Id.*

limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>9</sup>

The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than other positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

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

The AAO turns next to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past. Here, the petitioner did not submit evidence to satisfy this criterion.

As the petitioner has not provided any evidence to demonstrate a history of recruiting and hiring only individuals with at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position, it has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires the petitioner to establish that the nature of the proffered position's duties is 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.

In the brief on appeal, dated August 6, 2013, counsel for the petitioner states the following:

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<sup>9</sup> For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

The previous submitted documentation in support of [the] Response to [the] Request for Evidence includes [a] detailed job description in relation to the sophisticated medical insurance system and medical billing system; legal issues and medical malpractice prevention issues, [and an] expert opinion on the job duty complexity of a Medical and Health Services Manager[.] [T]he documentation proves that the proffered position's duties are complex[,] that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Upon review of the entire record of the proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. There is insufficient evidence to establish that the duties of the proffered position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. 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. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

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

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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