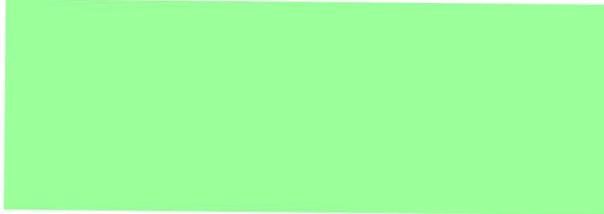


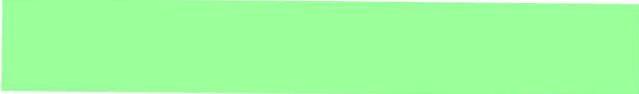
(b)(6)



U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 15 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (hereinafter "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.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Hospice Services" firm. In order to employ the beneficiary in what it designates as a "Registered Nurse Case Manager/Health Services Manager" 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 visa petition was accompanied by a Form G-28 Notice of Entry of Appearance recognizing a Pasadena, California attorney as the petitioner's counsel of record. The record contains no indication that counsel participated in the present appeal. However, because counsel has not withdrawn his appearance, a copy of today's decision will be furnished to him.

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

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

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

## II. THE LAW

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

### III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Health Service Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9111, Medical and Health Services Managers from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in information technology from [REDACTED] and a bachelor's degree in nursing from [REDACTED], Inc., both of which are in Manila, Philippines. An evaluation in the record states that the beneficiary's degrees are equivalent to U.S. bachelor's degrees in information technology and nursing.

Counsel also submitted a letter, dated March 29, 2013, from the petitioner's CEO. As to the duties of the proffered position, the petitioner's CEO stated:

The RN Case Manager is responsible for ensuring that patient care is coordinated and managed appropriately. The RN Case Manager is also responsible for ensuring that

care and services are properly managed and delivered through the supervision of clinical personnel. The duties and responsibilities include the following:

1. Receives case referrals. Reviews available patient information related to case, including home visits, to determine hospice/home care needs. Assigns appropriate registered nurses (RN), vocational nurses (LVNs)[,] home health aides, social workers and hospice personnel to cases as needed. Conferences with Medical Director regarding any questions about an individual's eligibility for services;
2. Reviews and evaluates each case through a variety of means such as home visits, conferences, record review and the services provided by clinicians; discusses and verifies impressions, instructs and guides clinicians to promote more effective performance and delivery of quality home care services; and is available at all times during operating hours to assist clinicians as appropriate;
3. Reviews patient's medical diagnoses, prognoses, medications, procedures and clinical course;
4. Assists clinicians and registered nurses (RN), vocational nurses (LVNs) [and] home health aides in establishing immediate and long-term therapeutic goals, in setting priorities, and developing plan of care;
5. Attends case conference meetings with hospice personnel to facilitate coordination of care and discussion of interdisciplinary group involvement;
6. Conducts quarterly record reviews and communicate findings and recommendations to Clinical Director and hospice personnel;
7. Assists in the screening and interviewing process of new employees and makes recommendations for employment of individuals. Assists in the orientation of new employees;
8. Assists Clinical Director and other supervisory hospice personnel in the planning, implementation and evaluation of in-service and continuing education programs. Assists in the formulating, revising, implementing, and evaluating organization policies, procedures, goals and objectives, both short and long range; and
9. Complies with accepted professional standards and principles.

As to the educational requirement of the proffered position, the petitioner's CEO stated: "Our company, and other hospice service providers, require the minimum of a specialized bachelor's degree in healthcare administration or a closely related field such as nursing for entry into the field."

On May 23, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation and outlined the specific evidence to be submitted.

In response, counsel provided, *inter alia*, (1) a section of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* pertinent to Health Services Managers; (2) six vacancy announcements; (3) a letter, dated August 14, 2013, from the petitioner's Human Resources & Benefits Coordinator; and (4) counsel's own letter, also dated August 14, 2013.

In her August 14, 2013 letter, the petitioner's Human Resources & Benefits Coordinator asserted that the proffered position is not a registered nurse position, but "a medical services manager position responsible for the administration and supervision of medical services personnel including registered nurses, licensed vocational nurses and certified home health agency aides." She also asserted, citing the *Handbook* and the vacancy announcements provided, that a requirement of a bachelor's degree in either nursing or health care administration is normal for this occupation.

In his own August 14, 2013 letter, counsel also cited the *Handbook* for the proposition that a bachelor's degree in health care services or administration or in a closely-related field, such as nursing is required for the proffered position. Counsel further stated:

A comparison of the duties and responsibilities of the Registered Nurse Case Manager with [those] of a registered nurse (RN) further illustrates the increased complexity and responsibility of the position. The RN positions['] responsibilities are limited to providing clinical care to assigned patients. The Registered Nurse Case Manager position, in contrast, has more complex responsibilities requiring the exercise of independent judgment in managing and administering patient care provided not only by RNs, but by LVNs and CHHSs. These duties include developing and implementing care criteria on highly individualized basis for an extremely diverse patient base.

The director denied the petition on September 3, 2013, finding, as noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provided, *inter alia*, (1) a letter, dated September 10, 2013, from the petitioner's CEO; and (2) a brief signed by the petitioner's CEO. Counsel also submitted the first page of a letter dated September 26, 2013, which appears substantially identical to the first page of the March 29, 2013 letter from the petitioner's CEO.

In her September 10, 2013 letter, the petitioner's CEO described the care provided by the petitioner and stated that "the health services manager position of Registered Nurse (RN) Case Manager" is

one member of the "interdisciplinary team" providing that care, which team also includes attending physicians, the Hospice Medical Director, skilled nurses, home health aides, social workers, spiritual counselors, bereavement counselors, and volunteers. The petitioner's CEO reiterated the duty description previously provided and characterized the proffered position as "a predominantly . . . administrative position ensuring our registered nurses are providing quality care for dying patients." She also reiterated that, "Our company, and other hospice service providers, require the minimum of a specialized bachelor's degree in healthcare administration or a closely related field such as nursing for entry into the field."

The petitioner's CEO's brief again discusses the petitioner's business and reiterates a duty description that is substantially the same as that previously provided. The petitioner's CEO characterized the duties and responsibilities of the proffered position as highly complex and stated, "[The petitioner] . . . believes that a bachelor's degree is a minimum requirement for the [proffered position] . . . ."

#### IV. ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9111, Medical and Health Services Managers from O\*NET. The *Handbook* describes the occupation of "Medical and Health Services Managers" as follows:

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

## What Medical and Health Service Managers Do

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

## Duties

Medical and health services managers typically do the following:

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

In group medical practices, managers work closely with physicians and surgeons, registered nurses, medical and clinical laboratory technologists and technicians and other healthcare workers.

Medical and health services managers' titles depend on the facility or area of expertise in which they work. The following are some examples of types of medical and health services managers:

*Nursing home administrators* manage staff, admissions, finances, and care of the building, as well as care of the residents in nursing homes. All states require them to be licensed; licensing requirements vary by state.

*Clinical managers* oversee a specific department, such as nursing, surgery, or physical therapy, and have responsibilities based on that specialty. Clinical managers

set and carry out policies, goals, and procedures for their departments; evaluate the quality of the staff's work; and develop reports and budgets.

**Health information managers** are responsible for the maintenance and security of all patient records. They must stay up to date with evolving information technology and current or proposed laws about health information systems. Health information managers must ensure that databases are complete, accurate, and accessible only to authorized personnel.

**Assistant administrators** work under the top administrator in larger facilities and often handle daily decisions. Assistants might direct activities in clinical areas, such as nursing, surgery, therapy, medical records, or health information.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Medical and Health Services Managers," <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-2> (last visited May 14, 2014).

The duties of the proffered position, as described in the petitioner's CEO's March 29, 2013 letter, consist primarily of assessing patients' needs for nurses, aides, and other personnel; assigning such personnel to serve those patients; and assessing the performance of those personnel. In her September 10, 2013 letter the petitioner's CEO stated, more succinctly, "[The proffered position] is predominantly an administrative position ensuring our registered nurses are providing quality care for dying patients."

The duties of the proffered position do not include managing an entire facility, managing a specific clinical department, managing a medical practice, or management of anything at the level contemplated by the *Handbook* in its discussion of medical and health services manager positions. In fact, in her description of the duties of the proffered position, the petitioner's CEO referred to a Medical Director and a Clinical Director, in contexts that suggest that the beneficiary is their subordinate. Although the duties of the proffered position are managerial, they do not include management at the level contemplated by the *Handbook* in its discussion of medical and health services manager positions.

Although the petitioner has stated that the proffered position is not a registered nurse position, the AAO observes that the *Handbook* describes registered nurse positions as follows:

### **What Registered Nurses Do**

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

### **Duties**

Registered nurses typically do the following:

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

Most registered nurses work as part of a team with physicians and other healthcare specialists. Some registered nurses oversee licensed practical nurses, nursing assistants, and home health aides.

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

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

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

Many possibilities for working with specific patient groups exist. The following list includes just a few other examples:

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

**Cardiovascular nurses** care for patients with heart disease and people who have had heart surgery.

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

**Genetics nurses** provide screening, counseling, and treatment of patients with genetic disorders, such as cystic fibrosis.

**Neonatology nurses** take care of newborn babies.

**Nephrology nurses** care for patients who have kidney-related health issues stemming from diabetes, high blood pressure, substance abuse, or other causes.

**Rehabilitation nurses** care for patients with temporary or permanent disabilities.

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

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

**Clinical nurse specialists (CNSs)** are a type of advanced practice registered nurse (APRN). They provide direct patient care in one of many nursing specialties, such as psychiatric-mental health or pediatrics. CNSs also provide indirect care, by working with other nurses and various other staff to improve the quality of care that patients receive. They often serve in leadership roles and may advise other nursing staff. CNSs also may conduct research and may advocate for certain policies.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Registered Nurses," <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-2> (last visited May 14, 2014).

Although counsel, in his August 14, 2013 letter, characterized registered nurses' duties as being "limited to providing clinical care to assigned patients," the *Handbook* makes explicit that their duties may be much more inclusive. The *Handbook* states:

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

The duties attributed to the proffered position suggest that it is an administrative nursing position supervising the performance of nurses and other direct care personnel. On the balance, the AAO finds that the proffered position is a registered nurse position as described in the *Handbook*.<sup>2</sup>

The *Handbook* states the following about the educational requirements of registered nurse positions:

### **How to Become a Registered Nurse**

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

### **Education**

In all nursing education programs, students take courses in anatomy, physiology, microbiology, chemistry, nutrition, psychology and other social and behavioral sciences, as well as in liberal arts. BSN programs typically take 4 years to complete; ADN and diploma programs usually take 2 to 3 years to complete. All programs also include supervised clinical experience.

Bachelor's degree programs usually include additional education in the physical and social sciences, communication, leadership, and critical thinking. These programs also offer more clinical experience in nonhospital settings. A bachelor's degree or higher is often necessary for administrative positions, research, consulting, and teaching.

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<sup>2</sup> The AAO observes that if the proffered position had been determined to be a health services manager position, it would still not have qualified as a specialty occupation position, because the *Handbook* does not reveal that health services manager positions, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent, and the duties of the proffered position, as will be discussed further below, do not demonstrate that a minimum of a bachelor's degree in a specific specialty or its equivalent is required to perform them. As such, absent evidence that the position of health services manager satisfies one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A), the instant petition could not be approved for this additional reason.

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. However, some employers may require a bachelor's degree.

Many registered nurses with an ADN or diploma choose to go back to school to earn a bachelor's degree through 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. Some employers offer tuition reimbursement.

Certified nurse specialists (CNSs) must earn a master's degree in nursing. CNSs who conduct research typically need a doctoral degree.

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

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

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

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

Nurses may become certified through professional associations in specific areas, such as ambulatory care, gerontology, and pediatrics, among others. Although certification is usually voluntary, it demonstrates adherence to a higher standard, and some employers may require it.

CNSs must satisfy additional state licensing requirements. They may choose to earn certification in a specialty.

### **Important Qualities**

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

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

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

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

**Organizational skills.** Nurses often work with multiple patients with various health needs. Organizational skills are critical to ensure that each patient is given proper care.

**Physical stamina.** Nurses should be comfortable performing physical tasks, such as helping to lift and to move patients. They may be on their feet for most of their shift.

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

### **Advancement**

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

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

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

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

Some RNs choose to become nurse anesthetists, nurse midwives, or nurse practitioners, which, along with certified nurse specialists, are types of advanced

practice registered nurses (APRNs). APRNs may provide primary and specialty care, and, in most states, they may prescribe medicines. For example, clinical nurse specialists provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health.

Other nurses work as postsecondary teachers in colleges and universities.

*Id.* at <http://www.bls.gov/ooh/healthcare/registered-nurses.htm#tab-4> (last visited May 14, 2014).

The *Handbook* does not indicate that registered nursing positions, as a category, require a bachelor's degree. To the contrary, it indicates that an associate's degree, or a "diploma program" that takes two to three years to complete, would be sufficient for entry into positions falling within this occupational category.

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

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

Next, the AAO finds that the evidence of record does not satisfy 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

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

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

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

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

1. Manager – Home Health/Hospice for Redlands Community Hospital requiring a master's degree in nursing administration or supervision, or a master's degree in public health administration and two years' of supervising or administrative experience in community health service or a home health agency, or a bachelor's degree in nursing and three years of nursing experience in a community health service in the past six years with progressively responsible experience in supervisory or administrative duties preferred;
2. Hospice Clinical Supervisor for Sutter Health requiring a bachelor's degree in nursing or equivalent experience as a professional nurse within the last three years;
3. Quality Director Home Health Hospice for Kaiser Permanente Northern California requiring a bachelor's degree in health care administration, nursing, public administration, or a related field;
4. Director of the hospice program for an unidentified client of CTL Consulting requiring a bachelor's degree in nursing and a master's degree in a related field;
5. Inpatient Care Management Registered Nurse for an unidentified client of a recruitment service requiring an unrestricted registered nursing license and preferring a bachelor's degree in nursing; and
6. Director of Case Management for Corona Regional Medical Center stating, "Bachelor degree in nursing, healthcare management or other related field preferred."

The first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) may be satisfied if the petitioner demonstrates that organizations that are similar to the petitioner require a minimum of a bachelor's degree in a specific specialty or its equivalent for positions parallel to the proffered position.

The petitioner has stated that it provides hospice services. Whether it does that in the context of inpatient care or home care has not been made clear. As such, which of the vacancy announcements may be for a position at an organization in the petitioner's industry and otherwise similar to the petitioner is unclear. The fourth vacancy announcement, for instance, is for a hospice program director, but whether this is an inpatient program or an outpatient program is unclear, as the type of client for which CTL Consulting is seeking to fill that vacancy is unstated.

Also, although each of the vacancy announcements provided contains some description of the duties of the position announced, none is sufficiently detailed to show that it is a position parallel to the proffered position.

Further, the second vacancy announcement does not require a minimum of a bachelor's degree in a specific specialty or its equivalent within the meaning of the salient regulations. Although it specifies that the employer requires a bachelor's degree "or equivalent," it makes clear that no more than three years of experience is necessary to qualify as the equivalent of a bachelor's degree. Three years of experience cannot be considered equivalent to a bachelor's degree pursuant to the governing regulations. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The fifth and sixth vacancy announcements state that a bachelor's degree is "preferred" for the positions announced. A preference is not a minimum requirement. Those vacancy announcements also do not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from six vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>3</sup>

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in parallel positions in organizations similar to the petitioner in the petitioner's industry. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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<sup>3</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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

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

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>4</sup>

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

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as reviewing case referrals; reviewing and evaluating cases; reviewing diagnoses, prognoses, medications, procedures, and clinical courses; assisting clinicians and nurses in establishing goals; assisting in screening and interviewing employees; etc., have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. Moreover, the evidence of record does not distinguish the duties of the proffered position from those of other positions within the same occupational category, which, the *Handbook* indicates, do not necessarily require a person with a minimum of a bachelor's degree in a specific specialty or its equivalent for entry.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of administrative nursing positions that may not usually be associated with at least a bachelor's degree in a specific specialty or its equivalent.

The evidence of record does not satisfy 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.

#### IV. CONCLUSION

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.