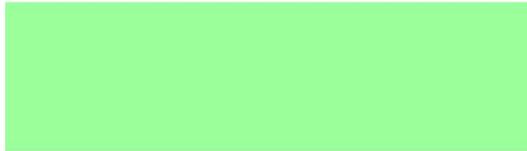




U.S. Citizenship
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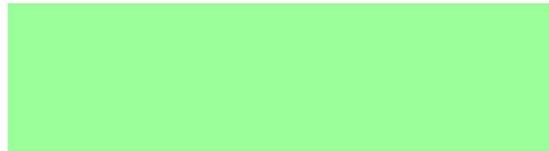


DATE: **NOV 13 2014** OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a four-employee medical services facility established in 2005. In order to continue to employ the beneficiary in what it designates as a part-time "Health Service 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, finding that the petitioner failed to establish that the proffered position is a specialty occupation. The petitioner subsequently filed a motion to reconsider. The director dismissed the motion. The petitioner now files this appeal, asserting that the director's decision was erroneous.

As will be discussed below, we find that the evidence fails to establish that the proffered position is a specialty occupation. The appeal will be dismissed, and the petition will be denied for this reason.

We base our decision upon our 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 letter denying the petition; (5) the petitioner's motion to reconsider and the supporting documentation filed with it; (6) the director's letter dismissing the motion; and (7) the petitioner's appeal and submissions on appeal.

I. FACTUAL AND PROCEDURAL HISTORY

As noted above, the petitioner describes itself on the Form I-129 as a four-employee medical services facility established in [REDACTED]. On the Form I-129, the petitioner listed its business address and the address in which the beneficiary will work as [REDACTED] New York. The petitioner indicated that the beneficiary will not work off-site. The petitioner indicated on the instant Form I-129 that it was requesting "[c]ontinuation of previously approved employment without change with the same employer."

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and occupation title "11-9111, Medical and Health Services Managers" from the Occupational Information Network (O*NET). The LCA states that the proffered position is a Level I, entry-level, position. The sole place of employment listed on the LCA is [REDACTED] New York.

In a letter dated September 11, 2012 submitted in support of the petition, the petitioner stated that it is a private health center incorporated in the State of New York in [REDACTED]. The petitioner stated that

its health center, known as "[REDACTED]" is "comprised of a network of medical treatment and diagnostic facilities" that offers patient care in internal medicine, child medicine, women clinic, and dermatological medicine. The petitioner stated: "Our center maintains our medical facility at [REDACTED]" The petitioner stated that in addition to its medical center, it also runs a [REDACTED] to provide overseas travelers with medical prevention and treatment for certain diseases. The petitioner's letterhead listed its address as [REDACTED] New York

In the same letter, the petitioner stated that the beneficiary will be performing the following duties at its medical center:

1. Direct overall activities and administration of the health care systems of our Center by assessing and identifying the quality and appropriateness of health care services and any issues and concerns regarding the efficiency of health care deliver[y] of the Center (25%);
2. Review the Center's activities, health care delivery systems and recommend changes in, or better utilization of the health care system, services, and staff by establishing and developing policies and procedures which support the facility's goals and business objectives (15%);
3. Manage the facility to efficiently utilize manpower and financial resources employing strategies and tactics for the projects and programs' implementation to ensure cost efficient medical care, and identify and achieve improvement efforts related to all functions and operational aspects of health administration (15%);
4. Facilitate standardization through implementation and maintenance of internal policy requirements, and manage the daily operations of the facility by prioritizing initiatives that support the facility's care management program and medical-action plan objectives (10%);
5. Monitor financial performance, and identify and complete strategies to reduce costs and improve quality of health care services by developing and monitoring budgets and resource allocations (10%);
6. Maintain awareness of overall development in the field of health and hospital management and administration, including application of new medical technologies through related literature, professional meetings, etc. (5%);
7. Direct hiring and training of personnel, and interpret and administer personnel policies and provide for training programs, as well as, identify ongoing training and development needs of staff (10%);

8. Establish and maintain work schedules and assignment of professional staff members and direct and coordinate activities of staff and services (5%);
9. Administer fiscal year operations such as budget planning, accounting, and establishing rates for health care services (5%).

After emphasizing the petitioner's need for a health services manager to apply knowledge of "medical administration on complex work scheduling and work assignment, assignment of medical facilities, budgeting, and human resources," the petitioner stated that it requires its candidates to possess "at least bachelor's degree or its equivalent in the related medical fields to perform the complex duties of health service manager."

In support of the initial petition, the petitioner submitted, *inter alia*, an "Offer of Employment" dated September 11, 2012. This letter is addressed to the beneficiary and confirms her part-time job offer. The petitioner's letterhead lists its address as [REDACTED] New York.

The petitioner submitted its organizational chart depicting a total of five employees. The chart depicts the petitioner's president, [REDACTED] at the top, directly overseeing the "Medical Department Assistant Physician," [REDACTED] the "Health Service Department Manager," the beneficiary, and the "Administrative Department Manager," which appears to be unfilled as no name is given. Ms. [REDACTED] is depicted as overseeing a "Medical Assistant," [REDACTED] while the beneficiary is depicted as overseeing an "Assistant," [REDACTED]. The "Administrative Department Manager" is depicted as overseeing an "Administrative Officer," which also appears to be unfilled as no name is given.

The petitioner submitted two vacancy announcements.

On January 2, 2013, the director issued a request for evidence (RFE). The director requested evidence that the proffered position qualifies as a specialty occupation. The director also requested evidence to confirm the petitioner's official name and address.

In response, the petitioner submitted a letter on letterhead showing its address as [REDACTED] New York. The petitioner first explained that it is "expanding" its health service and facility to specialize in providing health services especially for Korean American patients, and therefore it needs a Korean health services manager such as the beneficiary. The petitioner then provided the following revised description of the duties of the proffered position:

. . . [W]e need a Korean health services manager such as [the beneficiary] who has a plenty of experience and knowledge regarding Korean patients' health care service system in order to provide a quality service for Korean American patients. Moreover, we need a Korean health services manager such as [the beneficiary] who is able to present a broad picture of cultural facts and experiences to optimize efficiency of a

variety of interrelated services for Korean American patients. [The beneficiary] will manage Korean American patients' data to help medical personnel in order to treat the patients more efficiently. [The beneficiary] will also manage personnel, finance, facility operations, and admissions in Korean especially for Korean American patients. Besides, [the beneficiary] will establish and implement policies, objectives and procedures in Korean for Korean American patients. [The beneficiary] will also develop and design medical computer software for computerized health information system in Korean especially for Korean American patient management. Finally, [the beneficiary] will improve efficiency in our facility and the quality of the healthcare provided by planning, directing, coordinating, and supervising the delivery of health care for Korean American Patients.

With respect to the minimum educational requirement, the petitioner asserted that the "nature of the job duties in [the proffered position] needs theoretical and practical knowledge and attainment of a bachelor's degree as a minimum for entry in to the occupation in the United States." The petitioner then stated that "[s]ince the job duties of [the proffered position] require specific training and knowledge, it is our company's policy to hire an individual with at least a baccalaureate degree . . . in nursing or its equivalent professional experience." The petitioner again emphasized the position's requirement for "confident managerial capacity in health service administration," such as "complex work scheduling and work assignment, management of medical facilities, budgeting, and human resources." The petitioner stated that a qualified individual must possess "a body of highly specialized knowledge in health services administration, hospital management, health care delivery systems along with the skills and abilities to apply this body knowledge to complex health care management, administration projects and patient care programs."

In response to the director's request for evidence confirming the petitioner's official name and address, the petitioner stated that it is submitting "the amended form I-129 since we put the wrong address in the Form I-129 by mistake. We also enclosed Filing Receipt, Certificate of Incorporation, Form SS-4, lease agreement, Telephone Bill [sic]."

In support of the RFE, the petitioner submitted, *inter alia*, a revised organizational chart showing the petitioner's address as [redacted] New York. The revised chart depicts a total of seven employees. The petitioner's president and Principal Physician, Dr. [redacted] is depicted at the top overseeing two employees: the "Medical Department Assistant Physician," Dr. [redacted] and the "Health Service Department Manager," the beneficiary. Dr. [redacted] is depicted as overseeing one "Medical Assistant," Dr. [redacted]. The beneficiary is depicted as overseeing the rest of the employees: an "Assistant," [redacted]; a "Nurse," [redacted] and another "Nurse," [redacted].

The petitioner submitted copies of W-2 Forms for Dr. [redacted] Dr. [redacted], and the beneficiary. The petitioner submitted paychecks for the beneficiary, [redacted] and Dr. [redacted].

¹ According to the petitioner's "Information of Employees" list, [redacted] is listed as the "Assistant Receptionist."

With respect to the beneficiary's paychecks, the petitioner issued her separate paychecks from two different facilities during the same time period of December 2012 through February 2013. Specifically, some paychecks were issued from the petitioner's address of [REDACTED] while the other paychecks were issued from the address of [REDACTED].

The petitioner also submitted three additional vacancy announcements from "other hospitals."

With respect to its official name and address, the petitioner submitted, *inter alia*, an "amended" Form I-129 listing its address as [REDACTED]. The petitioner did not submit a filing receipt or other evidence establishing that this "amended" petition was actually filed, as the petitioner asserted in its RFE response. The petitioner also submitted a copy of its original LCA, with the address of "[REDACTED] crossed out and [REDACTED]" hand-written next to it.

The petitioner submitted an IRS Form 8822, Change of Address, reflecting a change of business address/location from [REDACTED]. This form is not signed, dated, or accompanied by evidence of actual filing.

Finally, the petitioner submitted the lease to its business premises on [REDACTED] New York. This lease commenced on January 1, 2010, and ends on December 31, 2020.

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

The petitioner filed a motion to reconsider, in support of which the petitioner submitted DOL's Occupational Information Network (O*NET OnLine) Summary Report for the Medical and Health Services Manager occupational category. The director dismissed the motion.

The petitioner then filed an appeal. On appeal, the petitioner reiterates the same job duties as provided in the initial petition, and resubmits copies of evidence previously submitted. The petitioner also provides evidence of its prior approved H-1B visa petition on behalf of the beneficiary [REDACTED]. This petition was approved on June 1, 2009 and shows the petitioner's address as [REDACTED] New York.

II. SPECIALTY OCCUPATION

USCIS is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within

[a specialty occupation]."). Therefore, we will first address the issue of whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation.

A. The Law

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.

B. Preliminary Findings

We first find that the evidence of record does not consistently reflect what the petitioner's actual address and business location is, and subsequently, where the beneficiary will be working.

More specifically, on the Form I-129 and LCA, the petitioner listed its business address and the address in which the beneficiary will work as [REDACTED] New York. In its letter dated September 11, 2012, the petitioner stated that it "maintains [its] medical facility at [REDACTED] New York." In response to the RFE, the petitioner asserted that its business address and the address at which the beneficiary will work is [REDACTED] New York. Moreover, some of the beneficiary's paychecks were issued by the petitioner located in [REDACTED]" In total, the petitioner has claimed four different addresses.

The petitioner explained that the [REDACTED] address is the correct address, and that it put the "put the wrong address [of [REDACTED] New York] in the Form I-129 by mistake."

However, we do not find the petitioner's explanation regarding the address "mistake" to be credible. The petitioner has not provided any further explanation of its "mistake," such as what, when, where, why, and by whom the "mistake" was committed. We note that the petitioner's previous H-1B petition for the beneficiary ([REDACTED]) was filed from the petitioner's [REDACTED] address. Thus, the instant filing would have required the petitioner, who is represented by counsel, to proactively change the address information provided in its previous filing, even though the petitioner filed the instant Form I-129 as a request for continuation of previously approved employment "without change."

Furthermore, the petitioner has not submitted any credible evidence to corroborate its explanation that the [REDACTED] address listed on the instant Form I-129, LCA, and supporting documents was a "mistake." Although the petitioner claimed that it filed an amended petition and submitted the filing receipt for the amended petition, no such evidence was provided. In addition, although the petitioner submitted a copy of an IRS Form 8822, Change of Address, to reflect a change of business address/location from [REDACTED] this form is not signed, dated, or accompanied by evidence of actual filing.²

Here, it is important to note the petitioner's claims that it has more than one medical facility. Specifically, the petitioner stated in its September 11, 2012 letter that its health center is "comprised of a network of medical treatment and diagnostic facilities." The petitioner stated in the same letter that it also runs a [REDACTED] at an unspecified location. In addition, the petitioner submitted paychecks for the beneficiary covering the same pay periods which were issued by two different facilities: one from the petitioner's [REDACTED] facility, and one from a facility in

² If the petitioner is trying to suggest through the "amended" petition and the Form 8822 that it made a "mistake" due to a recent move from [REDACTED] to the [REDACTED] address, we would find such an explanation to be implausible. As stated above, the petitioner's previous H-1B petition on the beneficiary's behalf was filed from its [REDACTED] address, and the petitioner's lease to its [REDACTED] premises commenced in 2010.

" Overall, the evidence of record does not establish what the petitioner's actual business address and location is, and subsequently, where the beneficiary will be working.

Second, we find that the evidence of record does not establish the petitioner's actual organizational structure and staffing. Specifically, on the Form I-129 the petitioner indicated that it has four employees. The petitioner's initial organizational chart depicts a total of five employees (including the beneficiary). The petitioner's revised organizational chart, submitted in response to the RFE, depicts a total of seven employees (including the beneficiary).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Not only does the record contain discrepancies regarding the number of employees, but there are also discrepancies regarding the organization's overall structure and the beneficiary's level of responsibility over other employees. Specifically, in the initial chart, the beneficiary is depicted as overseeing one employee: the "Assistant," [REDACTED]. However, in the revised chart, the beneficiary is depicted as overseeing three employees: the "Assistant," [REDACTED] and two "Nurses," [REDACTED]. We note that the petitioner submitted corroborating evidence, such as paychecks and W-2 forms, for all its employees except for the two "Nurses" as depicted in the revised chart. We also note that the initial chart does not depict any nurse positions. As such, the petitioner has not established its employment of the two claimed "Nurses." In addition, the petitioner's initial organizational chart depicts an "Administrative Department Manager" and "Administrative Officer," while these positions are completely omitted from the revised organizational chart. In short, the record fails to establish what the petitioner's actual staffing and organizational structure is, as well as the beneficiary's role and level of responsibility within the organization.

Third, we find that the petitioner has provided differing descriptions of the duties of the proffered position. More specifically, in response to the RFE, the petitioner provided additional duties that are outside the scope of duties as initially described. For instance, in response to the RFE, the petitioner stated that the beneficiary will be managing patient data. The petitioner also stated that the beneficiary will "develop and design medical computer software for computerized health information system in Korean especially for Korean American patient management." The petitioner further stated that the beneficiary will be "supervising the delivery of health care for Korean American patients." The duties of managing patient data, developing and designing medical computer software, and supervising health care delivery do not directly correspond to any of the duties as initially listed by the petitioner.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner also cannot materially change the general characteristics of the

petitioning company, such as the company's organizational structure, staffing, or even business location and address. A petitioner also cannot materially change a position's associated job duties or its level of authority within the organizational hierarchy. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the RFE did not clarify or provide more specificity to the original information provided, but rather added new and inconsistent information with respect to the petitioning organization and the duties of the proffered position. Therefore, our analysis will be based on the initial descriptions of the petitioner and the job duties as provided in the Form I-129 and initial supporting documentation.

Finally, we find that the proposed duties, as described in the initial documentation, do not provide a sufficient factual basis for conveying the substantive nature of the proffered position and its constituent duties.

A crucial aspect of this matter is whether the petitioner has adequately and consistently described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner has not done so here.

The petitioner described the proposed duties in generalized and broad terms that fail to convey the substantive nature of the proffered position and its constituent duties. For example, the petitioner asserted that the beneficiary will "[d]irect overall activities and administration of the health care systems of our Center by assessing and identifying the quality and appropriateness of health care services and any issues and concerns regarding the efficiency of health care deliver[y] of the Center." This statement fails to provide any detail or explanation of the specific day-to-day tasks needed to accomplish this overarching duty, such as what specific tasks are involved in "[directing] overall activities" and "administration of the health care systems," within the scope of the petitioner's four or five-person operations.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1;

(2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.

C. Discussion of Criteria

The material deficiencies in the record, as discussed above, preclude the approval of the petition. However, for thoroughness we will address whether the position proffered qualifies as a specialty occupation under the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2) requires the petitioner to demonstrate that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; or 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 we consider when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* on which we routinely rely 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)).

We 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. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9111, Medical and Health Services Managers. Even if it could be determined that the proffered position is a medical and health services manager position, the *Handbook* states the following about the educational requirements of such positions:

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

How to Become a Medical or Health Services Manager

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

Education

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

Prospective medical and health services managers should 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.

Id. at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited Nov. 12, 2014).

Although the *Handbook* indicates that medical and health services managers "typically need at least a bachelor's degree to enter the occupation," the *Handbook* does not specify any particular field of study the bachelor's degree must be in. Accordingly, the *Handbook* does not support the proposition that a bachelor's degree in a specific discipline is the minimum requirement necessary to enter into the occupation. Rather, it indicates only that a bachelor's degree, without any particular specialty, is the typical entry requirement. However, the requirement of a bachelor's degree, without further specification, is inadequate to establish that a position qualifies as a specialty occupation. 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. Again, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

We turn next to DOL's Occupational Information Network (O*NET OnLine), an alternative authoritative source cited by the petitioner. We find that O*NET OnLine does not establish that the proffered position qualifies as a specialty occupation under the first criterion described at 8 C.F.R.

§ 214.2(h)(4)(iii)(A), either. In general, O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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 proposed position. Furthermore, the Specialized Vocational Preparation (SVP) ratings are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt cited by the petitioner is of little evidentiary value to the issue at hand.⁴

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, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (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).

Here and as already discussed, the evidence of record does not establish that the proffered position is one for which the *Handbook*, or other authoritative sources, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate by reference our previous discussion on the matter.

The petitioner submitted copies of five vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar

⁴ For example, the O*NET OnLine excerpt states that "[m]ost of these occupations require graduate school." It also states that 52% of respondents have an unspecified bachelor's degree, and 41% have an unspecified master's degree. It does not, however, specify what field of study the bachelor's or master's degrees come from.

organizations. However, we find the vacancy announcements insufficient to establish eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Foremost, other than stating that it was providing advertisements from "hospitals," the petitioner provided no evidence establishing the general characteristics of the individual companies posting the advertisements. As such, the petitioner failed to establish that it is similar to these companies.⁵ For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In addition, the petitioner provided no explanation as to how the vacancy announcements are for positions that are parallel to the proffered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, even if all of the vacancy announcements provided were for parallel positions with organizations similar to the petitioner, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from five vacancy announcements with regard to the educational requirements for entry into parallel positions in similar organizations common to the petitioner's industry.⁶

The record of proceeding contains insufficient evidence pertinent to this particular criterion. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy 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 that comprise the

⁵ Even if the petitioner had established that the posting companies are hospitals, the petitioner failed to demonstrate how its four to seven-employee medical facility can reasonably be considered similar to a hospital.

⁶ See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (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").

proffered position 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.

The petitioner failed to demonstrate how the duties that collectively constitute the proffered position 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. Here, the petitioner asserts that a bachelor's degree in nursing is required to perform the job duties, which require "specific training and knowledge." However, the petitioner has not identified what specific training and knowledge is needed to perform the duties. Moreover, the petitioner has not explained how the requisite training and knowledge correlates to a bachelor's degree in nursing. That is, the petitioner has not submitted any information relevant to a detailed course of study leading to a bachelor's degree in nursing and established how such a curriculum is necessary to perform the duties of the proffered position.

We note that the petitioner repeatedly emphasizes the proffered position's need to have knowledge related to medical administration, including "complex work scheduling and work assignment, assignment of medical facilities, budgeting, and human resources," as well as "health services administration, hospital management, [and] health care delivery systems." The petitioner has not explained which courses leading up to a bachelor's degree in nursing would provide the entire range of specialized knowledge in medical administration the petitioner asserts is required for the job.

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 there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. 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.

Furthermore, it is important to note that the petitioner designates the proffered position as a Level I (entry level) position on the LCA.⁷ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance."⁸ A Level I wage rate is described as follows:

⁷ Wage levels should be determined only after selecting the most relevant 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.

⁸ 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

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.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. The petitioner's designation of the proffered position as a Level I (entry) position undermines the credibility of any claim as to the proffered position or the duties comprising it as being particularly complex or unique.

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).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices. The petitioner has not provided any objective, reliable evidence with respect to its hiring practices for the proffered position. We note that the petitioner provided a

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.

list of its claimed employees and their educational degrees. However, the plain language of the criterion requires the petitioner to demonstrate its normal requirements *for the proffered position*; the petitioner has not established how the degrees held by employees in *other positions* are relevant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁹

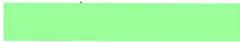
We also note that the petitioner claims repeatedly that the duties of the proffered position can only be employed by a degreed individual. However, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating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

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than medical and health services manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Furthermore, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the 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, DOL indicates that a Level I

⁹ Even if relevance were established, the petitioner's bare assertions of its employees and their educational credentials, without any corroborating evidence, are not entitled to evidentiary weight. 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. at 165.



designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence and explanation, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, 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." The petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons above, the evidence of record fails to 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 for classification as a specialty occupation.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. 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.