



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 03 2015** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you

Ron Rosenberg  
Chief, Administrative Appeals Office

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

### I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as five-employee medical services provider<sup>1</sup> established in [REDACTED]. In order to employ the beneficiary in what it designates as a part-time health services manager position at a salary of \$29.59 per hour<sup>2</sup> the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, concluding that the evidence of record does not demonstrate: (1) that the proffered position qualifies for classification as a specialty occupation; (2) that the beneficiary is qualified to perform the duties of a specialty occupation; and (3) that the beneficiary maintained his previous H-1B status from his prior employer.

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 621111, "Offices of Physicians (except Mental Health Specialists)." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "621111 Offices of Physicians (except Mental Health Specialists)," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed February 11, 2015). On appeal, the petitioner states that it "only engages in the medical field." However, as the director noted in her RFE, the petitioner submitted evidence indicating that the petitioner offers a multitude of services, including "geological services performed by geologists." The petitioner also stated that it "was founded around wellsite supervision" and that it "focus on new plays and technologies, such as tight gas and unconventional reservoirs." These inconsistent statements undermine the credibility of the petitioner's testimony submitted in support of this petition. 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).

<sup>2</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Medical and Health Services Managers" occupational classification, SOC (O\*NET/OES) Code 11-9111, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

## II. SPECIALTY OCCUPATION

We will first determine whether the petitioner's proffered position qualifies as a specialty occupation. To meet the petitioner's burden of proof in this regard, the evidence of record must establish that the job the petitioner is offering to the beneficiary meets the following statutory and regulatory requirements.

### A. Law

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the 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 rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d at 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. The Proffered Position

The following duties are listed in the petitioner's undated H-1B support letter and in counsel's undated appeal brief:

- Administer fiscal operations of the practice by taking responsibility for accounting functions, planning budgets for the expenditure of medical supplies and staff salaries, setting an appropriate schedule of fees and coordinating financial reporting with the practice's accountant.
- Maintain and facilitate communication between practice management and all practice staff through the organization of meetings, written reports and newsletters and (in matters requiring confidentiality) private discussions.
- Review and analyze facility activities, in order to identify areas of fiscal inefficiency or noncompliance with organizational codes and practices. This task is to be performed on a regular basis, in order to assist with the risk assessment activities of senior practice management. The outcome of the review or analysis takes the form of presentations or reports which are to be drafted by the Health Services Manager.
- Plan, implement and administer programs to improve the administration of the practice, the training of practice staff and the correct assignment (and billing) of staff to patient care activities.
- Assist senior practice management by directing and conducting recruitment of staff for the practice.
- Establish and update work schedules for staff members, monitor the use of the practice's equipment and facilities and then assess the need for changes to staffing or new capital purchases.
- Develop and maintain records management systems in order to correlate and process the data obtained in performance of the other duties.

In his undated response to the director's RFE, prior counsel described the duties of the proffered position as follows<sup>3</sup>:

- Administer fiscal operations of the practice by taking responsibility for accounting functions, planning budgets for the expenditure of medical supplies and staff salaries,

<sup>3</sup> We observe that in the brief, counsel provided the approximate percentages of time allocated to each duty listed in the petitioner's letter of support. However, counsel's brief was not signed by or otherwise endorsed by the petitioner. The record of proceeding does not indicate the source of the percentages of time allocated to each duty that counsel attributes to the proffered position.

setting an appropriate schedule of fees and coordinating financial reporting with the practice's accountant.

[The beneficiary's] work will involve the application of financial analysis principles to the development of Petitioner's operations. According to the *Occupational Outlook Handbook* ("O.O.H.") entry for Financial Analysts, these professionals: "provide guidance to businesses and individuals making financial decision." The author of the O.O.H. entry notes that at least a baccalaureate education is required in a field such as business administration.

[The beneficiary] will be responsible for analyzing the costs associated with the provision of Petitioner's medical services. He will need to review the cost of materials, labor, medical equipment and advertising, in order to determine Petitioner's real profit margin. Once that margin has been determined, [the beneficiary] will generate financial statements and reports for the review of the Petitioner's accountant.

This complex level of analysis would enable Petitioner to view trends and even reach decisions based on these outcomes. Depending on those outcomes, Petitioner might adjust the services its facility offers, its level of staffing, the pricing of its services and even its presentation to target particular categories of customer.

Without his degree-level background in business, [the beneficiary] would be unable to undertake a complex analysis of Petitioner's financial data. In addition, he would be unable to reach conclusions from that data which would benefit his employer's financial position. Approximately 30 percent of [the beneficiary's] time will be devoted to this duty.

- Maintain and facilitate communication between practice management and all practice staff through the organization of meetings, written reports and newsletters and (in matters requiring confidentiality) private discussions.

[The beneficiary's] work will involve the application of management analysis principles to the development of Petitioner's brand. According to the *Occupational Outlook Handbook* ("O.O.H.") entry for Management Analysts, these professional: "propose ways to improve an organization's efficiency." The author of the O.O.H. entry notes that at least a baccalaureate education is required, and that "common fields of study include business, management, accounting..."

In performing this duty, [the beneficiary] will need to observe the operations of Petitioner's organization and consult with senior management in order to ascertain that establishment's objectives. In so doing, he will pay close attention to the written and oral exchanges of information between staff members. He will do so in order to determine the effectiveness of prior communications and make suggestions for alternative communication methods.

Without his degree-level background in business [the beneficiary] would be less able to understand the appropriate methodologies for improving communication within a dynamic business enterprise. Approximately 10 percent of [the beneficiary's] time will be devoted to this duty.

- Review and analyze facility activities, in order to identify areas of fiscal inefficiency or noncompliance with organizational codes and practices. This task is to be performed on a regular basis, in order to assist with the risk assessment activities of senior practice management. The outcome of the review or analysis takes the form of presentations or reports which are to be drafted by the Health Services Manager.

[The beneficiary] also will be responsible for analyzing the costs associated with the development and provision of Petitioner's medical services. He will need to review the cost of medical materials, labor, equipment and advertisements, in order to determine Petitioner's real profit margin. Once that margin has been determined on any given medical service (such as wellness visits or emergent care), [the beneficiary] will use that data to determine customer preferences and as a means of comparing the services provided by Petitioner's competitors.

This complex level of analysis would enable Petitioner to view trends and even reach decisions based on these outcomes. Depending on those outcomes, Petitioner might adjust the nature and extent services [sic] the facility offers, its pricing and even its presentation to target particular categories of patient.

One critical component is compliance with HIPAA and related governmental regulations. In conjunction with the instructions of outside legal counsel, [the beneficiary] will review where [sic] the facility is in compliance or not in compliance with the regulations. He will recommend changes to standard practices and compute the potential cost of noncompliance (in terms of legal penalties, legal expenses and litigation risk) in order to apply data from this component to his overall analysis of Petitioner's business operations. He will present these findings to senior management to be reviewed and implemented.

Without his degree-level background in business, [the beneficiary] would be unable to undertake a complex analysis of Petitioner's operational data. In addition, he would be unable to reach sound, reasonable and consistent conclusions from that data which would benefit his employer's financial and legal position. Approximately 30 percent of [the beneficiary's] time will be devoted to this duty.

- Plan, implement and administer programs to improve the administration of the practice, the training of practice staff and the correct assignment (and billing) of staff to patient care activities.

As a result of the analysis referenced above, [the beneficiary] will need to create protocols and training programs in order to maximize efficiency of resources, improve patient satisfaction and ensure legal compliance. In so doing, he will need

to create flow charts, training manuals and checklists to implement and monitor these new systems.

Without his degree-level background in business management and statistics, [the beneficiary] would be unable to develop, implement and monitor staff programs and processes to benefit his employer's business operations. Approximately 10 percent of [the beneficiary's] time will be devoted to this duty.

- Assist senior practice management by directing and conducting recruitment of staff for the practice.

[The beneficiary] will work with Petitioner's senior staff to identify staffing needs and recruit appropriately for open positions via the Internet, newspapers, journals and staffing companies.

Without his degree-level background in business, management and statistics, [the beneficiary] would be unable to devise and develop recruitment campaigns for new staff that best fit the Petitioner's needs and budget. Approximately 5 percent of [the beneficiary's] time will be devoted to his duty.

- Establish and update work schedules for staff members, monitor the use of the practice's equipment and facilities and then assess the need for changes to staffing or new capital purchases.

As referenced above, [the beneficiary] will be responsible for analyzing the costs associated with the provision of Petitioner's medical services. He will need to review the cost of materials, labor, medical equipment and advertising, in order to determine Petitioner's real profit margin. This duty refers to the process of performing those duties. Specifically, it refers to the decision of when to do so. For example, [the beneficiary] might want to commence a study into the facility's staffing needs in January so that he would have data available to plan Petitioner's recruitment of new of replacement staff for the summer of that year.

In order to perform this duty, [the beneficiary] needs to know how to marshal and manipulate mathematical data about a complex business operation in order to provide an analysis and conclusions to assist his employer. This requires his degree-level background in business. Approximately 5 percent of [the beneficiary's] time will be devoted to this duty.

- Develop and maintain records management systems in order to correlate and process the data obtained in performance of the other duties.

As referenced above, [the beneficiary] will be responsible for the development and provision of Petitioner's records management system. He will need to review the fields of data to comprise that system, the means of obtaining and applying that data

from existing reports and observations, and business and legal requirements for the gathering and maintenance of patient records. He will need to consult with outside legal counsel to ensure compliance with HIPAA and related governmental regulations.

Without his degree-level background in business, [the beneficiary] would be unable to undertake the level of analysis required to formulate and operate Petitioner's records management system. Approximately 10 percent of [the beneficiary's] time will be devoted to this duty.

#### C. Review of the Director's May 20, 2014 Decision: Specialty Occupation

We will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

As a preliminary matter, we will address the petitioner's statement that the proffered position requires a bachelor's degree "in Business Administration or a related field from a regionally accredited college or university in the United States, or its overseas equivalent." It must be noted that the petitioner's claim that a bachelor's degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. The evidence of record must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate 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, the evidence of record must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As will be discussed in more detail below, 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. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>4</sup>

<sup>4</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this additional basis.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>5</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Medical and Health Services Managers" occupational category.<sup>6</sup>

---

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

<sup>5</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2014-15 edition available online.

<sup>6</sup> Prior counsel's citations to the *Handbook's* entries for the "Management Analysts" and "Financial Analysts" occupational categories will not be addressed, as the LCA was certified for neither category. Furthermore, it is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file two separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

The *Handbook* states the following with regard to the duties of positions falling within the "Medical and Health Services Managers" occupational category:

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 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 February 11, 2015).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into positions within this occupational category:

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.

### **Important Qualities**

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

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

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

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

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

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

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

Some facilities may hire those with specialized experience in a healthcare occupation in addition to administrative experience. For example, nursing service administrators usually are supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration.

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

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

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

### **Advancement**

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

*Id.* at <http://www.bls.gov/ooh/management/computer-and-information-systems-managers.htm#tab-4> (last visited February 11, 2015).

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into this occupation. We note the *Handbook's* statement that "requirements vary by facility." With regard to the *Handbook's* statement that "most" medical and health services managers have at least a bachelor's degree before entering the field, it is noted that the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of medical and health services manager positions require at least a bachelor's degree, it could be said that "most" medical and health services manager positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

Furthermore, even when a bachelor's degree or the equivalent is required, the *Handbook* does not state that it must be *in a specific specialty*.

Accordingly, as the *Handbook* indicates that entry into the medical and health services managers occupational category does not normally require at least a bachelor's degree or the equivalent in a specific specialty or its equivalent, it does not support the proffered position as being a specialty occupation.

The materials from DOL's Occupational Information Network (O\*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O\*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a 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 proffered position. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required

for a particular position. It does 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 submitted by the petitioner is of little evidentiary value to the issue presented on appeal.

Nor does the record of proceeding contain any persuasive documentary evidence<sup>7</sup> from any other relevant authoritative source establishing that the proffered position's inclusion within any of these occupational categories is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Finally, it is noted that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.<sup>8</sup>

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the

<sup>7</sup> The petitioner submitted website articles from Health Management Careers, Career Planning, Career Profiles and . The articles do not establish that bachelor's degree *in a specific specialty* is normally the minimum requirement for entry into the proffered position.

<sup>8</sup> The *Prevailing Wage Determination Policy Guidance* (available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited February 11, 2015)) issued by DOL states the following with regard to Level I wage rates:

**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 [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level is appropriate for a proffered position that is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level I wage rate, the petitioner effectively attests that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

particular position that is the subject of this petition, the evidence of record does not satisfy the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor does the record contain any submissions from professional associations 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. There is no other evidence in the record for this prong of the analysis.

Therefore, the evidence of record does not satisfy the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty or its equivalent that is common (1) to the petitioner's industry and (2) for positions in that industry that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record 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."

In this particular case, the evidence of record does not credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

The record of proceeding does not contain credible evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not

distinguish the proffered position from other positions falling within the "Medical and Health Services Managers" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

The evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner's claims with regard to the complex nature of the position are acknowledged. However, the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. We incorporate here by reference and reiterates our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. If typical positions located within this occupational category do not require a bachelor's degree in a specific specialty, or the equivalent, the claim that a position with these attributes *would* contain such a requirement is not persuasive.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.

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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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").

The director's February 14, 2014 RFE specifically requested the petitioner document its past recruiting and hiring history with regard to the proffered position. The RFE includes the following specific requests for such documentation:

- If you publicized the job opening, submitting tear sheets or other advertising documentation may help establish the educational requirements for the proffered position of Health Services Manager.
- If you have previously employed individuals in the position of Health Services Manager, submit documentary evidence such as W-2 Forms and copies of degrees and transcripts to verify.

Counsel has provided a list of employees for the petitioner and asserts that the petitioner only hires employees with a bachelor's degree for management positions. The list does not include anyone in the position of health services manager, other than the beneficiary, and it appears as though this may be the first time the petitioner has filled this position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. *See also Caremax Inc. v. Holder*, \_\_\_ F.Supp. 2d \_\_\_, 2014 WL 1493621 (N.D. Cal. 2014) ("If this is [the petitioner's] first-ever public relations specialist position, then the company cannot claim that it typically requires a bachelor's degree in English.")

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Medical and Health Services Managers" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific

specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions (to the contrary, it indicates precisely the opposite). With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient, credible evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

Finally, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

**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 [emphasis in original].

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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last February 11, 2015).

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

*Id.*

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level

of complexity imputed to the proffered position by virtue of the petitioner's Level I wage-rate designation.

Further, we note the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered. Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

*Id.*

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

*Id.*

Here we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, we note that counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.<sup>9</sup> We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

The petitioner noted that USCIS approved another petition that had been previously filed on behalf of the beneficiary by another petitioner. The director's decision does not indicate whether the service center reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions

---

<sup>9</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

that are contained in the current record, the approval would constitute material and gross error on the part of the director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

As the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

### III. BENEFICIARY QUALIFICATIONS

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note for the record that we agree with the director's determination that the evidence of record does not demonstrate that the beneficiary qualifies to perform the duties of a specialty occupation.

### IV. MAINTENANCE OF H-1B STATUS WITH PRIOR EMPLOYER

The director also found that the beneficiary failed to maintain his previously accorded H-1B status and is therefore not eligible for an extension of stay. We do not have jurisdiction over the denial of an application to extend the beneficiary's stay. As provided in 8 C.F.R. § 248.3(g), the denial of an application to change nonimmigrant status may not be appealed. Accordingly, this issue will not be further addressed.<sup>10</sup>

<sup>10</sup> We note that additional evidence pertaining to this issue was received on appeal.

V. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. As mentioned, we need not and will not address the beneficiary's qualifications further. Lastly, we do not have jurisdiction to address whether the beneficiary maintained his H-1B status with his previous employer. Accordingly, the director's decision will not be disturbed.<sup>11</sup>

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.

---

<sup>11</sup> As these issues preclude approval of this petition, we will not address any of the additional issues we have observed on appeal, except to note that in the event the petitioner is able to overcome them, USCIS must explore the issues of whether the LCA submitted in support of this petition actually corresponds to it.