



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 06 2015**

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The Director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

## I. PROCEDURAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an 11-employee ' [REDACTED] ' established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Facility Administrator" 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 the evidence insufficient to establish that the beneficiary is qualified for the proffered position. The petitioner now files this appeal, asserting that the Director's denial of the petition was erroneous.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and the supporting documentation; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

As will be discussed below, the Director's decision will be withdrawn and the petition remanded to the Director for entry of a new decision.

## II. SPECIALTY OCCUPATION

As noted, the director denied the petition finding that the petitioner has not established that the beneficiary is qualified to perform the services in a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is 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]."). In this matter, however, it appears the Director did not analyze the proffered position to determine whether it met the definition of a specialty occupation. Therefore, we will first determine whether the proffered position is a specialty occupation.

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<sup>1</sup> We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

### A. Legal Framework

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 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), 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. The Proffered Position

The petitioner claims in the Labor Condition Application (LCA) submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 11-9111, Medical and Health Services Managers, from the Occupational Information Network (O\*NET).

In a letter dated March 18, 2014, the petitioner provided the following description of the duties of the proffered position:

- Processes, Procedures and Compliance
  - In accordance with the facility's Medical Director and other executive directors and management, implement written policies and procedures concerning every aspect of clinical operation;
  - Prepare all internal and external reports as required by management and any federal, state, or local agency in a timely manner;
  - Prepare detailed operating budget projections for approval by the CFO and Medical Director;
  - Maintain financial integrity of facility operations by analyzing budget data on a regular basis to determine areas of concern, potential savings, and cost reductions;
  - Ensure compliance with all local, state and federal laws, regulations and ordinances;
  - Participate in onsite inspections by State and Federal Surveyors;
  - Complete all required ERSD Network, OSHA and Workers' Compensation Reports.
  
- Facility Oversight
  - Ensures facility's physical plant, including all equipment housed therein (owned or leased) is adequately maintained as required by Federal law; Maintain standard services agreements and contracts, e.g. waste disposal, cleaning, etc. as appropriate;
  - Ensure compliance of routine preventative maintenance procedures for central and bedside equipment; Implement emergency procedures as necessary.
  
- Personnel Supervision
  - Direct personnel activities, including but not limited to: compliance with policies and procedures; recruitment and hiring; performance evaluation; progressive discipline; wage and salary administration; employee relations and maintenance of employee files;
  - Ensure quality patient care through implementation of policies and procedures, including but not limited to: patient care plans; medical records; quality assurance; administrative clinical review; dietary services; and social services;
  - Provide ongoing in-service training;
  - Oversee facility staffing operations;
  - Ensure implementation of policies and procedures, appropriate staffing levels, efficient staff schedules and attainment of productivity goals;
  - Conduct staff meetings on routine basis, maintaining open communications between staff and facility management.

- Services Oversight
  - Coordinate all medical, dietary and social services for patients;
  - Provide guidance and leadership to nursing staff and clinicians;
  - Oversee all business office activities, including but not limited to: patient admission, accounts receivable, purchase orders, payroll, accounts payable and G/L input.
  - Supervise business office personnel to ensure the integrity of all financial aspects of the facility's operation;
  - Promote facility growth and utilization by developing in-center referral services, and acute and ancillary programs.

The petitioner also stated that performance of those duties requires a minimum of a bachelor's degree in nursing, health administration, or a related field.

In response to the RFE, the petitioner provided a letter, dated August 11, 2014, providing the following supplemental description of the duties of the proffered position:

- Direction and supervision of staff: 35%
- Review of patient files and coordinate and interact with physicians and health care providers for scheduling purposes: 20%
- Review of staffing performance, analyze the Center's procedures, record keeping practices and patient care protocols and prepare reports and reconsiderations: 35%
- Assisting in budgetary and program review functions: 5%
- Interface with hospitals and physicians to facilitate business opportunities: 5%

### C. Analysis

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position*

We will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The subchapter of the *Handbook* entitled "How to Become

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<sup>2</sup> 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.

a Medical and Health Services Manager" states, in relevant part, the following about 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Medical and Health Services Managers, on the Internet at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited August 5, 2015).

Although the petitioner states that the proffered position qualifies as a medical and health services manager position, the duty descriptions provided suggest that her duties are largely limited to the supervision of the petitioner's nursing personnel. Although she would contribute to various other efforts, reviewing the facility for compliance with safety standards and preparing budget projections, for instance, her duties largely consist of supervisory and administrative tasks associated with operation of a relatively small facility. Although the duties attributed to the proffered position are similar to those described in the *Handbook*, the *Handbook's* description appears to contemplate management of a larger facility, such as a department of a hospital, or even an entire hospital. We further note that primary duties of the proffered position are closely related to the *Handbook's* description of "Registered Nurses." Specifically, the *Handbook's* description of the occupational category, "Registered Nurse" states "[s]ome registered nurses oversee licensed practical nurses, nursing aides, and home health aides." It further states, "Some nurses have jobs in which they do not work directly with patients," and "they may work as nurse educators [or] . . . hospital administrators . . . ." However, assuming *arguendo* that the proffered position is a medical and

health services manager, we note that the *Handbook* does not indicate that the medical and health services manager qualifies as a specialty occupation.

According to the *Handbook*, the requirements for medical and health services managers vary by facility. The *Handbook* also states that medical and health services managers typically need an advanced degree to enter the occupation, but it further clarifies that various fields are common (health services, long-term care administration, public health, public administration, or business administration). The *Handbook* specifies that prospective employees should have a bachelor's degree in health administration, and then explains that health administration programs prepare students for higher level management jobs than programs that graduate students with other degrees.<sup>3</sup> The *Handbook* elucidates that the 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. It continues by stating that some facilities may hire those with specialized experience in a healthcare occupation in addition to administrative experience, such as supervisory registered nurses with administrative experience and graduate degrees in nursing or health administration. The narrative of the *Handbook* concludes that the level of a starting position varies with the experience of the applicant and the size of the organization.

Therefore, although the *Handbook* states that medical and health services managers typically need an advanced degree, it also specifies that the requirements for these positions vary by facility and that degrees in various fields are acceptable for jobs in this occupation (e.g., health services and business administration, as well as public administration and nursing). While the *Handbook* indicates that prospective employees "should" have a degree in health administration – it does not indicate that such a degree is required; but, rather, that these programs prepare students for higher level management jobs than programs that graduate students with other degrees. The *Handbook's* statement suggests that "other degree programs" would be sufficient for lower level management jobs in this occupation.

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 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

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<sup>3</sup> In the subsection entitled "Advancement," the *Handbook* states that graduates of health administration programs usually begin as administrative assistants or assistant department heads in large hospitals, and that they may begin as department heads or assistant administrators in small hospitals or nursing care facilities.

highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>4</sup> Section 214(i)(1)(B) of the Act (emphasis added).

The *Handbook* states that a degree in business administration is sufficient for medical and health services manager jobs. 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 147.<sup>5</sup>

That is, 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. 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. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

We recognize that in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is

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<sup>4</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

<sup>5</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[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.*

the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation.

In response to the RFE, counsel states that according to the Occupational Information Network (O\*NET) Online Summary Report for the occupational category "Health Services Managers," 52% of health services managers have obtained a bachelor's degree. Upon review, we note that O\*NET does not indicate that a degree must be in a specific specialty, or its equivalent; therefore, O\*NET does not establish that the proffered position satisfies the requirements for a specialty occupation position.

The petitioner also refers to our non-precedent decisions to assert that the proffered position is a specialty occupation, but furnishes no evidence and makes no assertion that the facts in these decisions are analogous to the instant petition. Regardless, even if the facts of those cases were analogous to those in this matter, as acknowledged by the petitioner, they are unpublished decisions and, as such, not binding on us. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are: (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by

reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

As was noted above, the petitioner provided two vacancy announcements placed by other dialysis centers. One vacancy announcement is for a Medical Facility Administrator-RN position in Oklahoma, and the other is for a Medical Facility Administrator-RN position in Texas. Those vacancy announcements state:

The ideal candidate will have graduated from an accredited school of nursing and current state licensure [sic] in the state of [Oklahoma or Texas], a bachelor's degree in Business Management or related field. 2-4 years of relevant experience with strong management and finance background. 1 year of experience as a Director of Nursing in a critical ill or dialysis facility would be a plus.

Although those vacancy announcements indicate that the dialysis centers are especially interested in candidates who have: (1) graduated from nursing school, (2) are currently licensed as registered nurses, (3) have a bachelor's degree in business management or a related field, (4) have relevant experience with a strong background in management and finance, and (5) have experience as a Director of Nursing in a critical ill or dialysis facility, they do not make clear that any one of those qualifications is a minimum requirement.<sup>6</sup> Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner 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). The vacancy announcements are not persuasive evidence for the proposition that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to positions parallel to the proffered position among similar organizations in the petitioner's industry.

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<sup>6</sup> We further observe that if the positions announced are identical to the proffered position, and were shown to require a minimum of a bachelor's degree in business management or a related field, or its equivalent, then the instant beneficiary would not appear to be qualified for the proffered position since she has a degree in nursing, and the instant visa petition would be deniable on that basis.

The petitioner also, as was stated above, provided evidence pertinent to employees of other dialysis centers.<sup>7</sup> The job applications provided indicate that those workers applied for positions entitled Registered Nurse or RN, Charge RN/Staff RN, and Facility Administrator or FA.<sup>8</sup> One of those individuals has a master's degree in nursing. The remaining individuals have either an associate's degree or a bachelor's degree in nursing, and some have additional degrees. We will discuss the evidence pertinent to those employees who do not have a bachelor's degree in nursing.

résumé states that she has an "Associated Nursing Degree." The record contains no evidence that she has any other degree. résumé states that she has an "Associate Degree Nursing." The record contains no evidence that she has any other degree. The résumé of indicates that she has an "Associate Degree in Nursing," but not that she has any other degree. résumé indicates that she is a "Graduate of with ASN" (Associate of Science in Nursing), but not that she has any other degree. job application states that she has an "AASN" (Associate of Applied Science in Nursing) degree and is an "LVN" (Licensed Vocational Nurse). Neither of those qualifications has been shown to be equivalent to a bachelor's degree, and the record contains insufficient indication that she has any other degrees or other qualifications equivalent to a bachelor's degree.

The evidence pertinent to the people whom counsel asserts were employed as facility administrators does not indicate that those people have a minimum of a bachelor's degree in a specific specialty or its equivalent.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The evidence of record does not, therefore, satisfy the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>7</sup> Evidence in the record suggests that those other dialysis centers and the petitioner are under common ownership. While they may be related to the petitioner, evidence in the record does not demonstrate that they are the same entity. As such, the evidence pertinent to those other dialysis centers is discussed in the analysis pertinent to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), rather than in the analysis pertinent to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). However, even if those other entities were deemed to be identical to the petitioner, and that evidence were included, therefore, in the analysis of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), it would be insufficient to show that the petitioner requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, for reasons essentially the same as those discussed above in the analysis of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

<sup>8</sup> If, as counsel asserted, those workers applied for registered nurse positions and were given facility administrator positions, then it suggests that the proffered position is a position for a registered nurse, not a facility administrator position.

*The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent*

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 did not credibly demonstrate that the duties that comprise the 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.

Specifically, the petitioner did not 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. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.<sup>9</sup> Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category 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.<sup>10</sup> For example, a Level IV (fully

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<sup>9</sup> The wage-level of the proffered position indicates that (relative to other positions falling under this occupational category) the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require 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.

<sup>10</sup> The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a

competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>11</sup> The evidence of record does not distinguish this particular position from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty or its equivalent is not required for the proffered position.

The petitioner claims that the beneficiary is well qualified for the position. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner did not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

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.

The visa petition states that the petitioner was established in 2011. However, the record contains no evidence pertinent to anyone who has previously worked for the petitioner in the proffered position. It has therefore submitted insufficient evidence for analysis pursuant to this criterion.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards

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position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>11</sup> For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available 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).

for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

*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 in a specific specialty, or its equivalent*

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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 contain insufficient indication 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. Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

We reiterate our earlier discussion regarding the petitioner's designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the petitioner's has not demonstrated that its 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 substantially higher prevailing wage.<sup>12</sup>

Although the petitioner asserts that the nature of the specific duties is specialized and complex, the record lacks sufficient evidence to support this claim. Thus, the petitioner has not satisfied the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

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<sup>12</sup> For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

### III. BENEFICIARY QUALIFICATIONS

As noted, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed, the record of proceeding does not establish that the proffered position qualifies as a specialty occupation. Thus, the matter will be remanded to the Director for review and issuance of a new decision.

### IV. CONCLUSION

As was discussed above, the proffered position does not qualify as a specialty occupation position. We need not, and will not, discuss the beneficiary's qualifications for the proffered position.

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. The Director's decision will be withdrawn and the matter remanded for entry of a new decision.

**ORDER:** The Director's October 15, 2014 decision is withdrawn. The matter will be remanded to the Director for issuance of a new decision determining whether the evidence of record demonstrates that the proffered position is a specialty occupation.