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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: FEB 26 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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 71-employee "Home health care provider" established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a "Medical and Health Services Manager" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

## II. THE LAW

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

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

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

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

### III. EVIDENCE

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

With the visa petition, the petitioner submitted a letter, dated February 5, 2014, from [REDACTED] signing as the petitioner's director of operations. That letter contains the following description of the duties of the proffered position:

- Plan, direct and coordinate healthcare operations to improve quality of service of the organization. His salary will be \$68,494.00 per year. He will be reporting to our establishment in [REDACTED] VA.
- Perform resident care, admissions and facility operations.
- Be responsible for coordinating activities with other managers, such as evaluating work and personnel, developing reports, and implementing policies and procedures of the organization.
- In addition, evaluate work activities of health information personnel.

[REDACTED] also stated: "The minimum requirement of the professional position described above is a bachelor's degree, with two (2) years experience in the field of Nursing, Medical records Management, or related study." With respect to the beneficiary, [REDACTED] stated that the

beneficiary is "well qualified to continue in the position as he is a Registered Nurse in the United States and has maintained his practice license in good standing."

On March 10, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*, (1) a description of the proffered position; (2) an organizational chart; (3) an evaluation, dated October 20, 2011, of the proffered position; (4) a letter, dated May 14, 2014, from [REDACTED] signing as the petitioner's executive vice president; and (5) a letter from counsel, dated May 21, 2014.

The description of the proffered position states:

**RESPONSIBILITIES:**

**I. DIRECT – 80%**

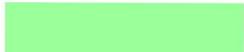
- A. Plan, direct and coordinate healthcare operations to improve quality of service of the organization.
  - a) Review, evaluate policies, standards and operations of our company.
  - b) Develop, implement new regulations and train staff in coordinating with the development staff.
  - c) Develop procedures to ensure that our concerned staff complies with the Federal and State regulations and implement changes.
  - d) Responsible for our company's compliance with the requirements for accreditation and certification with all applicable federal, state and local laws and regulation.
  - e) Prepare budgets annually.
  - f) Response and answer inquiries from other, relating to the information of our services. Coordinate updates and changes in our information system, the community health consultant.
  - g) Follow up patient complaints.
  - h) Do performance evaluation.

**II. SUPERVISION AND COORDINATION**

- a) Staff nurses, LPNs and CNA, CHHA and PCA.
- b) Supervise CNA/CHHA/PCA.
- c) Coordinate with Development Specialist for orientation and training of staff in classroom and field.

**III. Others – 10%**

- A. Attend courses to enhance personal knowledge.
- B. Participate in the PI Committee.



- C. Assist/participate with Department Heads and managers in the employee performance evaluation.
- D. Collect surveys after training and use result to improve the training program.
- E. Prepare reports as required.
- F. Participate in the on call system during weekend, after office hours and holidays.
- G. Participate in the coverage of scheduled vacation or emergency coverage for patient visit.
- H. Perform other duties as required.

[Verbatim.]

That description further states, as to the education and experience required for the proffered position: "Must have a Bachelor's Degree preferably in Nursing because of the nature of the job; with two (2) years of work experience in their field."

The October 20, 2011 evaluation of the proffered position of the proffered position was prepared by [redacted] a full-time faculty member at [redacted] Florida. It indicates that [redacted] found and considered six vacancy announcements, which she described as follows:

**Health Services Manager** – Company: [redacted] Location: Alameda, California. Job Requirements: Bachelor's degree in Health Administration, Public Health, Nursing, Business or a related field of work.

**Regional Health Services Manager** – Company: [redacted]. Location: San Antonio, Texas. Job Requirements: Bachelor's degree in a related field of work.

**Health Services Manager** – Company: [redacted] Location: St. Louis, Missouri. Job Requirements: Bachelor's degree in a related field of work.

**Health Services Manager** – Company: [redacted] Location: Bedford, Texas. Job Requirements: Bachelor's degree in Nursing or a related field.

**Health Services Manager** – Company: [redacted] Location: Missoula, Montana. Job Requirements: Bachelor's degree in Nursing or a related field of work

**Medical Services Manager** – Company: [redacted] Location: Newport Coast, California. Job Requirements: Bachelor's degree in Nursing, Healthcare Management/Administration or a related field of work.

That evaluation also states:

The Medical and Health Services Manager will coordinate activities with other managers, such as evaluating work and personnel, developing reports, and implementing policies and procedures of the organization; evaluate work activities of health information personnel; plan, direct and coordinate healthcare operations to improve quality of service of the organization; perform resident care, admissions and facility operations.

In addition, a Medical and Health Services Manager typically performs the following job duties: direct and conduct recruitment, hiring and training of personnel; direct, supervise and evaluate work activities of medical, nursing, technical, clerical, service, maintenance, and other personnel; direct, supervise and evaluate work activities of medical, nursing, technical, clerical, service, maintenance, and other personnel; [Repetition in the original.] maintain communication between governing boards, medical staff, and department heads by attending board meetings and coordinating interdepartmental functioning; plan, direct and coordinate healthcare policies to improve quality of service to patient; perform facility operations; coordinate activities with other managers such as evaluating work and personnel, developing budgets and reports, and implementing policies and procedures; conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting; review and analyze facility activities and data to aid planning and risk management and to improve service utilization; plan, implement and administer programs and services, including personnel administration, training, and coordination of medical nursing and physical plant staff; establish work schedules and assignments for staff according to workload, space and equipment availability.

The evaluator further stated:

[I]t is my professional opinion that in order to adequately perform the responsibilities required for the job of Medical and Health Services Manager at [the petitioner] an individual would need the knowledge obtained by acquiring a Bachelor's Degree in Physical Therapy, Nursing, Medical Records Management or a related subject.

I base my assessment on the fact that the job requires specialized knowledge to perform the following:

- Coordinate activities with other managers, such as evaluating work and personnel, developing reports, and implementing policies and procedures of the organization.
- Evaluate work activities of health information personnel.
- Plan, direct and coordinate healthcare operation to improve quality of services of the organization.
- Perform resident care, admissions and facility operations.

May 14, 2014 letter refers to unspecified Bureau of Labor Statistics research as indicating that most medical and health services managers have a minimum or a bachelor's degree and that master's degrees are also common. She stated that the petitioner requires a bachelor's degree in nursing for the proffered position.

In his May 21, 2014 letter, counsel asserted that the evidence submitted demonstrates that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

The director denied the petition on June 10, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner asserts that the evidence demonstrates that the proffered position qualifies as a specialty occupation position.

#### IV. ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9111.00, Medical and Health

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

Services Managers from O\*NET. The *Handbook* describes the occupation of "Medical and Health Services Managers" as follows:

### **What Medical and Health Service Managers Do**

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

### **Duties**

Medical and health services managers typically do the following:

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

In group medical practices, managers work closely 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. Dept 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 Feb. 18, 2015).

There is an issue to be resolved before determining whether the duties of the proffered position show that it is a Medical and Health Services Manager position as described in the *Handbook*. First, we must determine what duties the beneficiary would actually perform if the visa petition were approved. For instance, although the description of duties contained in [REDACTED] February 5, 2014 letter states that the beneficiary would "Plan, direct and coordinate healthcare operations to improve quality of service of the organization," we observe that the petitioner's organizational chart shows that the petitioner employs a Quality Assurance Staff (Studies) that includes three people and a Performance Improvement Committee with an unstated number of people, both of which are above the proffered position in the petitioner's chain of command. Further, the petitioner employs an Ancillary Health & Quality Assurance Manager who is not in the beneficiary's chain of command. As such, although the beneficiary, in the proffered position, may contribute to the petitioner's efforts to improve its quality of service, he does not appear to bear the sole, or even the primary responsibility for that duty.

More telling, the organizational chart shows that the petitioner is directly under the petitioner's Certified Wound, Ostomy and Continence Nurse (CWOCN) Manager in the petitioner's chain of command. The petitioner's CWOCN Manager is under the petitioner's Director of Professional Services, who is under the petitioner's Medical Director, who is under the petitioner's Administrator.

Further still, the petitioner's sole educational requirement is a bachelor's degree in nursing and the only employees below the beneficiary in the petitioner's chain of command, whom the beneficiary would supervise, are one of the petitioner's two Registered Nurse Case Managers, one of the petitioner's

two Licensed Practical Nurse/Certified Nursing Assistants, a Registered Nurse WCN,<sup>2</sup> some of the petitioner's Registered Nurses, and one of the petitioner's Home Health Aides. The organizational chart makes plain that the beneficiary's duties would be largely limited to the supervision of some of the petitioner's nurses, certified nursing assistants, and other home healthcare personnel. Although he may contribute to various other efforts such as promulgating policies and procedures and the improvement of the petitioner's quality assurance program, the record does not show that he would have personal charge of any such company-wide endeavors.

In contrast, according to the *Handbook*, medical and health services managers, also called healthcare executives or healthcare administrators, "plan, direct, and coordinate medical and health services," and might do so in the context of managing an entire facility, such as the petitioner's Administrator, Director of Operations, or Director of Professional Services may do.

Further, the duty description contained in [REDACTED] February 5, 2014 letter indicates that, in the proffered position, the beneficiary would perform resident care. The duty description contained in the position description submitted in response to the RFE indicates that, in the proffered position, the beneficiary would participate in the petitioner's on call system and cover the scheduled visits of health care providers in emergencies or when those other health care providers are on leave. Those duties are inconsistent with a medical and health services manager position.

The *Handbook* describes registered nurse positions as follows:

### **What Registered Nurses Do**

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

### **Duties**

Registered nurses typically do the following:

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

<sup>2</sup> The meaning of the acronym WCN in this context is unknown to us.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Registered Nurses," <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-2> (last visited Feb. 18, 2015).

The *Handbook* states, "Some 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 . . ."

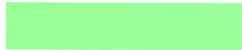
The *Handbook* indicates that some registered nurses work in positions that are chiefly, or even exclusively, supervisory and/or administrative. The duties attributed to the proffered position are consistent with the duties of a registered nurse position as described in the *Handbook*, and we, therefore, find that the proffered position is a registered nurse position as described in the *Handbook*.

The *Handbook* states the following pertinent to the requirements of registered nurse positions.

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

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

### **Education**



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

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

Generally, licensed graduates of any of the three types of education programs (bachelor's, associate's, or diploma) qualify for entry-level positions as a staff nurse. However, some employers may require a bachelor's degree.

Many registered nurses with an ADN or diploma choose to go back to school to earn a bachelor's degree through an RN-to-BSN program. There are also master's degree programs in nursing, combined bachelor's and master's programs, and programs for those who wish to enter the nursing profession but hold a bachelor's degree in another field. Some employers offer tuition reimbursement.

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

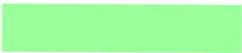
### **Licenses, Certifications, and Registrations**

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

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

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

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



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

### **Important Qualities**

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

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

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

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

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

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

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

### **Advancement**

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

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

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

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

Some RNs choose to become nurse anesthetists, nurse midwives, or nurse practitioners, which, along with certified nurse specialists, are types of advanced practice registered nurses (APRNs). APRNs may provide primary and specialty care, and, in most states, they may prescribe medicines. For example, clinical nurse specialists provide direct patient care and expert consultations in one of many nursing specialties, such as psychiatric-mental health.

Other nurses work as postsecondary teachers in colleges and universities.

*Id.* at <http://www.bls.gov/ooh/Healthcare/Registered-nurses.htm#tab-4> (last visited Feb. 18, 2015).

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

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain sufficient persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category establishes that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

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

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

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

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

The position evaluation provided does refer to six vacancy announcements the evaluator encountered and considered. However, none of those vacancy announcements appear to have been placed by home healthcare firms, and the names of the firms suggest that none of them were. The positions they announce do not, therefore, appear to be in the petitioner's industry. Further, none of the positions offered have been shown to be parallel to the proffered position. Further still, none of those vacancy announcements, as quoted or paraphrased by the evaluator, make clear that the positions they announce require a bachelor's degree in any specific specialty, as all state that they must be in a related field, but do not specify what array of fields would be considered closely related to the positions announced to be a sufficient educational qualification for those positions.

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 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.

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the 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 failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

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

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish 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 the petitioner's

imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.

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 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").

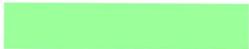
Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent. The petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

The duties attributed to the proffered position, such as planning, directing, and coordinating the healthcare operations of a home health care provider; performing resident care; coordinating activities with other managers; supervising and evaluating personnel; developing reports; and implementing organizational policy, even if they were demonstrated to be an accurate account of the duties the beneficiary would perform, contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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



petitioner has failed to submit sufficient evidence to support its claim that the proffered position's duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty or its equivalent. The evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

#### V. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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