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



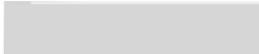
U.S. Citizenship  
and Immigration  
Services



**JUN 03 2015**

DATE:

PETITION RECEIPT #:



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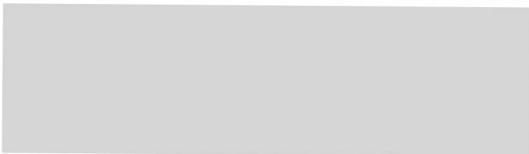
Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center (hereinafter "the director") denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 visa petition, the petitioner describes itself as a 20-employee "residential care facility for the elderly" established in [REDACTED]. In order to employ the beneficiary in what it identifies as a position located within the "Medical and Health Services Managers" occupational category, with "Operations Manager" as its job title, 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, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

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

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

## I. FACTUAL AND PROCEDURAL HISTORY

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as an "Operations Manager" on a part-time basis. The Labor Condition Application (LCA) that the petitioner submitted in support of the petition was certified for use with a job prospect within the "Medical and Health Services Manager" occupational classification, SOC (O\*NET/OES) Code 11-9111, at a Level I prevailing wage rate.

In a letter dated March 28, 2014, the petitioner's administrator described the petitioning company as follows:

[The petitioner] is an assisted living facility located in [REDACTED] California. Assisted living facilities are an apartment-style habitat designed to focus on providing assistance with daily living activities. They provide a higher level of services for the elderly which can include preparing meals, housekeeping, medication assistance, laundry, and also perform regular check-in's [sic] on the residents. Basically, they are designed to bridge the gap between independent living and nursing home facilities.

The petitioner's administrator further stated that the beneficiary's specific duties would be as follows:

- Plan, organize and hands-on management of the day-to-day practice operations including supervising and monitoring/managing staff performance. Including: staff enrollment, initial and ongoing staff training and education, staff EMR use and functionality, staff medical record keeping, managing and rectifying patient complaints immediately and in a satisfactory manner.
- Physician management and interaction.
- Assist in new program development and manage full implementation in the practice from promotion to staff education/training to patient flow, billing and documentation.
- Ensure the recruitment, development, motivation, and retention of top notch administrative and clinical staff.
- Coordinate and monitor patient flow and take action to ensure timely, quality and compassionate care. Prepare a variety of written reports including budget, financial, inventory, staffing, payroll, and other HR reports as identified.
- Identify opportunities for increased sales growth and profitability and assist with developing new services and strategic alliances to better serve patients.
- Ensure compliance with practice policies and procedures including patient confidentiality and [HIPAA].
- Manage technical support including information technology and administrative requirement.

The petitioner's administrator stated the following regarding the requirements of the position:

The position requires the application of technology and principles that can only be gained through attainment of at least a Bachelor's degree or its foreign equivalent in Business Administration, Nursing, or a related field.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on June 4, 2014. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

In response to the director's RFE, the petitioner submitted the following, *inter alia*: a letter further detailing the position and its duties; the petitioner's organizational chart; excerpts from O\*Net Online, the *Occupational Outlook Handbook*, and the State of California Employment Development Department website pertaining to Medical and Health Services Managers; a letter from Associate

Professor [REDACTED] submitted for consideration as an expert opinion letter to establish that the proffered position is a specialty occupation and the writer's credentials; the petitioner's job postings for the proffered position; corporate and tax documentation pertaining to the petitioner; photos of the petitioner's facility; and the petitioner's brochure.

In the August 26, 2014 letter from the petitioner's counsel submitted in response to the RFE, the beneficiary's duties were expanded. The following duties of the proffered position were provided:

- Specific Job Description: Operations Manager
  - Conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting.
  - Direct, supervise and evaluate work activities of medical, nursing, technical, clerical, service, maintenance, and other personnel.
  - Maintain communication between governing boards, medical staff, and department heads by attending board meetings and coordination [of] interdepartmental functioning.
  - Review and analyze facility activities and data to aid planning and cash and risk management and to improve service utilization.
  - Plan, implement and administer programs and services in a health care or medical facility, including personnel administration, training, and coordination of medical, nursing and physical plant staff.
  - Direct or conduct recruitment, hiring and training of personnel.
  - Establish work schedules and assignments for staff, according to workload, space and equipment availability.
  - Maintain awareness of advances in medicine, computerized diagnostic and treatment equipment, data processing technology, government regulations, health insurance changes, and financing options.
  - Monitor the use of diagnostic services, inpatient beds, facilities, and staff to ensure effective use of resources and asses the need for additional staff, equipment, and services.
  - Develop and maintain computerized record management systems to store and process data such as personnel activities and information, and to produce reports.

We note here that counsel revised the job duties from the job description provided to USCIS with the initial petition. Notably, the "revised" job description duplicates virtually verbatim the tasks from the occupational category "Medical and Health Services Managers" as described in the Occupational Information Network (O\*NET) Code Connector. That is, all of the duties provided by counsel have been recited from the description from O\*NET Code Connector for the occupational category "Medical and Health Services Managers." Specifically O\*NET states, in pertinent part, the following regarding the occupational category "Medical and Health Services Managers" Code -- 11-9111.00:

- Conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting.
- Direct, supervise and evaluate work activities of medical, nursing, technical, clerical, service, maintenance, and other personnel.
- Maintain communication between governing boards, medical staff, and department heads by attending board meetings and coordinating interdepartmental functioning.
- Review and analyze facility activities and data to aid planning and cash and risk management and to improve service utilization.
- Plan, implement and administer programs and services in a health care or medical facility, including personnel administration, training, and coordination of medical, nursing and physical plant staff.
- Direct or conduct recruitment, hiring and training of personnel.
- Establish work schedules and assignments for staff, according to workload, space and equipment availability.
- Maintain awareness of advances in medicine, computerized diagnostic and treatment equipment, data processing technology, government regulations, health insurance changes, and financing options.
- Monitor the use of diagnostic services, inpatient beds, facilities, and staff to ensure effective use of resources and assess the need for additional staff, equipment, and services.
- Develop and maintain computerized record management systems to store and process data such as personnel activities and information, and to produce reports.

Employment & Training Administration, U.S. Dep't of Labor, Occupational Information Network (O\*NET) Code Connector, Medical and Health Services Managers -- Code 11-9111.00 available at <http://www.onetonline.org/link/summary/11-9111.00> (last visited May 27, 2015).

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on October 25, 2014. On appeal, counsel submits a brief and additional documentation in support of the petition.



## II. STANDARD OF REVIEW

As a preliminary matter and in light of counsel's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

\* \* \*

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

\* \* \*

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

*Id.*

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the petitioner has not established that its specialty occupation claim is "more likely than not" or "probably" true. As the evidentiary analysis of this

decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

### III. SPECIALTY OCCUPATION

We will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we find that the evidence of record does not establish that the position as described constitutes a specialty occupation.

#### A. Legal Framework

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

## B. Preliminary Findings

### 1. Regarding the Proffered Position's Duties and the Relative Complexity of the Position

As previously mentioned, the description of the proffered position as provided by counsel in response to the RFE is recited from the occupational category "Medical and Health Services Managers" as described in the O\*NET Code Connector. We note that simply copying a job description from O\*NET (or other source) is generally not sufficient for establishing H-1B eligibility. That is, while this type of generalized description may be appropriate when defining the range of duties that may be performed within an occupational category, it generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval. That is, the description for an occupational category does not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, generally cannot be relied upon by a petitioner when discussing the duties attached to specific employment. More specifically, in establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

In the instant case, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, we find the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position, or its equivalent. The job description does not communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

More specifically, the duty descriptions in the record lack sufficient detail and concrete explanation to establish the substantive nature of the work and associated applications of specialized knowledge that their actual performance would require within the context of the petitioner's particular business operations. Take for example the following duty descriptions provided by the petitioner with the initial H-1B submission:

Assist in new program development and manage full implementation in the practice from promotion to staff education/training to patient flow, billing and documentation.

Manage technical support including information technology and administrative equipment

The evidence of record contains neither substantive explanation nor documentation showing the range and volume of the program development that the beneficiary would assist in and manage in implementing. Nor does the record contain substantive explanation or documentation showing the volume and range of information technology and administrative equipment that the beneficiary would be expected to manage. Likewise, the petitioner does not provide substantive information with regard to the particular work, methodologies, and applications of knowledge that would be required for the above-referenced duties.

Overall, we find that the description of the duties of the proffered position does not adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. The description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the proffered position qualifies as a specialty occupation. Thus, we conclude that, as generally described as all of the elements of the constituent duties are, they do not - even in the aggregate - establish the nature of the position or the nature of the position's duties as more complex, specialized, and/or unique than those of Medical and Health Services Manager positions that do not require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent.

In addition, when attempting to understand the actual duties of the proffered position and the level of complexity they may require, we look to the LCA submitted with the petition. The LCA provides not only the classification the petitioner believes most closely corresponds to the duties of its proffered position but also provides the petitioner's attestation regarding the appropriate prevailing-wage level attached to the level of responsibilities and complexity of tasks inherent in the position. As noted above, by submitting an LCA certified for a Level I prevailing-wage rate, the petitioner asserted that the proffered position only merited that prevailing-wage rate, the lowest of the four possible prevailing-wage rates.

Wage levels attested to for submission of an LCA should be determined only after selecting the most relevant Occupational Information Network (O\*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing-wage level for a position include the complexity of the job duties, the level of judgment, the amount

and level of supervision, and the level of understanding required to perform the job duties.<sup>1</sup> U.S. Department of Labor (DOL) emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate, the attested wage level in this matter, is described as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

U.S. Dept 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).

Here, the petitioner's submission of an LCA certified for only a Level I, entry-level prevailing-wage signifies the petitioner's endorsement of the appropriateness of a characterization of the proffered position as a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on prevailing-wage levels, this wage rate indicates the petitioner's assertion that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered. This designation undermines any assertions that the proffered position or its constituent duties are particularly specialized, complex, and/or unique

<sup>1</sup> A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

relative to others within the same occupational category.

The abstract level of information provided regarding the duties of the proffered position and the wage level designated by the petitioner on the LCA does not provide sufficient information regarding the petitioner's position to determine that the position proffered here is a specialty occupation position. The petitioner has not provided sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. The record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty (or its equivalent). Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

2. Regarding Associate Professor [REDACTED] Evaluation of the Position's Educational Requirements

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted an August 21, 2014 letter from [REDACTED] M.B.B.S., M.P.H., Ph.D., an Associate Professor in the Department of Epidemiology at [REDACTED]

After detailing the duties of the proffered position, which were the same as was provided by counsel in response to the RFE (which, as noted above, are repeated virtually verbatim from O\*Net), Professor [REDACTED] made the following assertions:

The duties of the Operations Manager are complex and specialized. In order to perform these job duties, an individual must have in-depth knowledge of medical information and HIPPA regulations. The acquisition of these critical knowledge and skills and their integration into usable wisdom requires the courses and integration of those courses that would be received in a Bachelor's Degree in Nursing.

\* \* \*

Because [the position] involves the theoretical and practice application of a specialized body of knowledge, the minimum requirement for the position of Operations Manager as an Industry Standard requires at least a Bachelor's degree, or the equivalent, in Health, Nursing or any related field for this position.

\* \* \*

In summary, I conclude that the position of Operations Manager for [the petitioner] would qualify as a specialty occupation requiring a minimum of a Bachelor's Degree

in Nursing or closing related field as an industry standard. The job duties show that it is a highly specialized position.....

We reviewed the letter in its entirety. However, as discussed below, the letter from Professor [REDACTED] is not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Upon review of the opinion letter from Professor [REDACTED] we find that there is no indication that Professor [REDACTED] possesses any substantive knowledge of the petitioner's proffered position and its business operations. Professor [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Moreover, Professor [REDACTED] does not indicate that she visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that these workers apply on the job. Her level of familiarity with the actual job duties as they would be performed in the context of the petitioner's business has therefore not been substantiated.

Furthermore, there is no indication that the petitioner and counsel advised Professor [REDACTED] that the petitioner characterized the proffered position as low and entry-level, and for a beginning employee who has only a basic understanding of the occupation (as indicated by the Level I wage-level on the LCA). As explained above, that prevailing-wage rate is appropriate for a position in which the beneficiary will only be expected to perform routine tasks that require limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results. We find this to be a relevant aspect of the position, as it reflects an assessment that the proffered position is of relatively low complexity in relation to other jobs within the position's occupational group. In this respect too, we consider this a significant omission, and find that Professor [REDACTED] opinion is not based upon a sufficient factual foundation. Without this information, the petitioner has not demonstrated that Professor [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the job duties and responsibilities.

The conclusions reached by Professor [REDACTED] are not supported by any persuasive degree of analytical and factual content and are not supplemented by independent, objective evidence supporting her findings and ultimate opinion. Consequently, we find that Professor [REDACTED] submission is not probative evidence toward satisfying any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), and we treat it accordingly.

We, in our discretion, may use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). It should be noted that, for efficiency's sake, the above discussion and

analysis regarding Professor [REDACTED] letter is hereby incorporated as part of this decision's later analyses of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based upon a complete review of the record of proceeding, we find that the petitioner has not established (1) the substantive nature and scope of the beneficiary's employment; (2) the actual work that the beneficiary would perform; (3) the complexity, uniqueness and/or specialization of the tasks; and/or (4) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty. Consequently, this precludes a determination that the petitioner's proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

Irrespective of the above findings, we will continue to discuss the evidence of record to identify other evidentiary deficiencies that preclude us from reasonably determining that the petition has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

C. Application of the Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)

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

We recognize DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>2</sup> As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Medical and Health Services Managers" occupational category.

The subchapter of the *Handbook* entitled "How to Become 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.

<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. This office's references to the *Handbook* are from the 2014-15 edition available online.

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.

\* \* \*

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

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

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

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

Although certification is not required, some managers choose to become certified. Certification is available in many areas of practice. For example, the [REDACTED] offers certification in health information management or medical management, while the [REDACTED] offers the Certified Nursing Home Administrator and Certified Assisted Living Administrator distinctions.

### **Advancement**

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Medical and Health Services Managers, available at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited May 27, 2015).

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

<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 would be sufficient for medical and health services manager jobs. The petitioner made the same assertion in its March 28, 2014 letter. 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, and the petitioner's confirmation that it would also accept that credential, strongly suggest that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

Thus, the *Handbook* does not support the claim that the occupational category "Medical and Health Services Managers" is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), to satisfy the first criterion, the petitioner must provide evidence to support a finding that

<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.

the particular position proffered would normally have such a minimum, specialty degree requirement or its equivalent.

Next, we are not persuaded by counsel's reference to O\*NET OnLine in her response to the director's RFE. O\*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O\*NET OnLine's pertinent Job Zone designations makes no mention of the specific field of study from which a degree must come. As was noted previously, we interpret the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Also, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the references made by counsel to O\*NET OnLine are of little evidentiary value to the issue presented on appeal.

When, as here, the *Handbook* does not support the proposition that a proffered position satisfies the 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 the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such 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." Here, the petitioner has not done so.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described 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.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, the record contains no letters or affidavits from firms or persons in the industry attesting to such a requirement. Further, there is no evidence of a professional association having made a bachelor's degree in a specific specialty, or the equivalent, a minimum requirement for entry.

Next, we find that the job-vacancy announcements submitted by the petitioner do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), either. That is, neither the job-vacancy announcements themselves nor any other evidence within the record of proceeding establish that those advertisements pertain to positions that are parallel to the proffered position, as required for evidence to merit consideration under the first alternative prong of position. In this regard, we make several specific findings.

First, while some of the advertisements bear the title "Operations Manager," it is the nature of the duties comprising the advertised positions that would determine whether those positions are in fact parallel to the proffered position. However, we see that the duty descriptions of the advertised positions and their constituent duties are not substantially similar to the proffered position's duties as stated in the petitioner's letters. We also see that the extensive experience that some of the job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position.<sup>6</sup> So, the job-vacancy advertisements do not establish that the advertised positions are "parallel" to the proffered position.

In addition, the submitted advertisements do not all specify a requirement for a bachelor's or higher degree in a specific specialty or its equivalent. By way of example, the [REDACTED] advertisement for a "Manger of Operations" only states "Bachelor's degree" without any specification of any particular academic major.

As the submitted vacancy-announcements are not probative evidence toward satisfying this criterion, further analysis of their content is not necessary.

Therefore, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as 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 for positions that are

<sup>6</sup> By way of example, the [REDACTED] advertisement for an "Operations Manager/Administrator" states "2 years of Operations level experience in a similar firm with extensive healthcare staffing experience in both per diem and travel. . . Knowledge of GSA contracting. . . Experience in successfully writing proposals for RFPs for contracts nationwide." [REDACTED] advertisement for an "Operations Manager" states "Medical license (PA, RN, LVN, EMTP) with experience in resuscitation. . . BLS, ACLS, PALS Instructor Credentials. . . Previous experience in sales. . . Previous experience teaching medical courses." [REDACTED] advertisement for an "Operations Manager " states "Experience in multi-location business. . . Knowledge and experience in organizational effectiveness and operations management." The extensive experience that these job advertisements specify as hiring requirements suggests that they involve the application of greater occupational knowledge than the proffered position, which the petitioner described on the LCA as a Level I, entry-level position.

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.

Next, we find that the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, as reflected in our earlier comments and findings regarding the record's description of the duties comprising the proffered position, the petitioner has not provided sufficient evidence to establish why it is more likely than not that the proffered position can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent. We here refer the petitioner back to our comments and findings with regard to the generalized and relatively abstract terms in which the proposed duties and the position that they are said to comprise were presented. They simply do not establish a level of complexity or specialization that would elevate the proffered position above positions in the Medical and Health Services Managers occupational group that the *Handbook's* information indicates can be performed by persons without a bachelor's or higher degree, or the equivalent, in a specific specialty.

Aside from such evidentiary deficiencies, reliance upon the petitioner's assertions of relative job complexity or uniqueness is further undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. We incorporate here by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation: this factor is inconsistent with the level of relative complexity or uniqueness required to satisfy this criterion. Based upon the wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy.<sup>7</sup>

As the evidence of record therefore does not establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

<sup>7</sup> See also *Caremax v. Holder*, ---F. Supp. 2d---, 2014 WL 1493621 (N.D. Cal. 2014), "[a]n entry level position with entry level pay is hardly so complex or unique that it requires an applicant with a bachelor's degree in a specific specialty."

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

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that the imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>8</sup>

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. Thus, the director provided the petitioner with an additional opportunity to establish a history of recruiting and hiring for the proffered position only individuals with a bachelor's or higher degree in a specific specialty, or the equivalent. In response to the RFE, counsel maintained that the petitioner has a practice of hiring persons with a bachelor's degree or higher in a specific specialty to perform the duties of the proffered position. In support, the petitioner submitted classified advertisements soliciting for the current position, and W-2 statements and Quarterly Wage Reports "for the employees."

To begin, we note that the organizational chart provided by the petitioner states that the position of Operations Manager is vacant. The petitioner has not submitted any documentation to establish that it has any *current* employees that hold the proffered position. As for any past employees, the petitioner did not provide any documentation regarding the title, duties and day-to-day responsibilities of its past employees to support its claim that their position was the same as the proffered position. The petitioner did not provide any substantive information corroboratively detailing their actual job duties, their pay level, and other relevant factors such as when their

<sup>8</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner submitted an LCA that had been certified for a Level I wage-level, which is appropriate for use with a comparatively low, entry-level position relative to others within the same occupation.

employment in the position began; whether they had their degree by that time; and the educational requirements, if any, that the petitioner may have specified in recruiting efforts for the job in which the two referenced individuals are now employed. Likewise, the Forms W-2 and Quarterly Wage Reports hold little probative value as the petitioner has not established that they correspond to any individual that held the position actually proffered here. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

As for the petitioner's own classified advertisements for the proffered position, we note that the advertisements for the position of "Operations Manager" require "[t]hree (3) years [of] progressive experience in a leadership role in Operations Management working in a healthcare environment." Again, the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." It is therefore not clear that these advertisements pertain to the position proffered here.

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

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

As reflected in this decision's earlier discussions and findings regarding record's duty descriptions - which we hereby incorporate into this present analysis - the nature of the proposed duties as described in the record of proceeding do not show the level of specialization and complexity required to satisfy this criterion. As generically and generally as they were described, we find that the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or the equivalent. By the same token and as evident in the duty descriptions themselves, the nature of the proposed duties are not developed with sufficient substantive detail to distinguish them from the nature of the duties of positions within the Medical and Health Services Managers occupational group whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty.

Furthermore, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA at a Level I wage.

For the reasons discussed above, we conclude that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

#### IV. CONCLUSION AND ORDER

Based upon a complete review of the record of proceeding, we find that the evidence does not establish that the position as described more likely than not constitutes a specialty occupation. The petitioner has not established 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.<sup>9</sup> Accordingly the appeal will be dismissed and the petition will be denied.

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.

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<sup>9</sup> As this issue precludes approval of the petition, we will not address any of the additional issues we have observed on appeal.