



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 05 2015

PETITION RECEIPT #: 

IN RE:

Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



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

In the Petition for a Nonimmigrant Worker (Form I-129) the petitioner describes itself as a "provider of healthcare professionals" which established in [REDACTED] employed 18 persons at the time the petition was filed. According to the Form I-129, the petitioner filed this H-1B petition to classify the beneficiary 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), in order to employ her in a position to which the petitioner assigned the job title "Quality Assurance Manager."

The Director denied the petition, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner claims that the Director's denial does not comport with the evidence of record, and, that therefore, the appeal should be granted.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B) and supporting materials. We reviewed the record in its entirety before issuing our decision.

For the reasons that will be discussed below, we agree with the Director that the petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. LEGAL FRAMEWORK

The issue on appeal is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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 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.

In the context of the particular appeal before us, it is important to note that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. See *Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service (INS) had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

II. BACKGROUND

As noted, the Form I-129 describes the petitioner as a "provider of healthcare professionals." As such, the petitioner does not itself operate as a healthcare facility, but rather provides healthcare workers to various healthcare facilities to help them meet their staffing needs. In the matter before us, the petitioner claims that it has filed the petition on the basis of full-time work that it has secured for the beneficiary "as Quality Assurance Manager for [redacted] New York." By virtue of the information in the Labor Condition Application (LCA) that the petitioner submitted to support the petition, the petitioner attested that the performance requirement of the position would place it within the Medical and Health Services Managers occupational category, which is identifiable in the U.S. Department of Labor's (DOL's) Bureau of Labor Statistics' Standard Occupational Classification (SOC) system by the SOC code 11-9111. The petitioner contends that it has submitted evidence sufficient to establish that the beneficiary would perform the services of a

Health Services Manager for [REDACTED] and would do so at the level of an H-1B specialty occupation.

III. ANALYSIS

The factual scenarios in the present petition and *Defensor v. Meissner*, referenced above, are substantially alike. In *Defensor*, the court addressed the consolidated appeals from federal district court decisions dismissing claims by the employer in that case, Vintage Health Resources, Inc. ("Vintage"). Vintage asserted that the evidence it had submitted for seven H-1B petitions for Registered Nurses with U.S.-equivalent Bachelor of Science Degrees in Nursing (BSNs) was sufficient to establish the seven proffered positions as specialty occupations.¹ Vintage was a medical contract service agency engaged in providing foreign nurses to medical facilities, and in each of the seven petitions it based its H-1B specialty-occupation claim upon evidence that it - the supplier of Registered Nurses to its client medical facilities - only hired persons with BSNs. The court summarized the factual scenario as follows:

Vintage produced evidence that it only hired nurses with B.S.N. degrees. The INS claimed, however, that the proper focus of inquiry is not what Vintage as an employment agency required, but instead what the contracting facility required, and Vintage failed to establish that the medical facilities where the nurses would actually work required bachelor degrees. At best, Vintage showed that such facilities preferred nurses with B.S.N. degrees, but did not require that nurses have B.S.N. degrees.

201 F.3d at 386.

In affirming the district court decisions, the *Defensor* court stated, in part:

[I]f only Vintage's requirements could be considered, then any alien with a bachelor's degree could be brought into the United States to perform a non-specialty occupation, so long as that person's employment was arranged through an employment agency which required all clients to have bachelor's degrees. Thus, aliens could obtain six year visas for any occupation, no matter how unskilled, through the subterfuge of an employment agency. This result is completely opposite the plain purpose of the statute and regulations, which is to limit H1-B visas to positions which require specialized experience and education to perform.

The *Defensor* decision held that "it was not an abuse of discretion to interpret the statute and regulations so as to require Vintage to adduce evidence that the entities actually employing the nurses' services required the nurses to have degrees, which Vintage could not do." *Defensor v. Meissner*, 201 F.3d at 388.

¹ Licensure to practice as a Registered Nurse in the United States does not require a BSN.

In the instant case, the petitioner attests that it has secured the aforementioned Quality Assurance Management position for the beneficiary at [REDACTED] for the period November 25, 2013 to November 24, 2016. In response to that portion of the Director's decision which found that the petitioner had not provided evidence of the arrangement with [REDACTED] that the petition asserts as the basis for its specialty-occupation claim, the petitioner submits a four-page document entitled "Agreement for Health Care Personnel Provider between [REDACTED] and [the Petitioner]," which was executed on September 22, 2011. (We will refer to this document as "the [REDACTED] Petitioner Agreement.") The petitioner claims that the document "evidenc[es] that the job offer was bona fide and genuine." As we shall now explain, we not only disagree with the petitioner's assessment of the evidentiary value of that Agreement, but we also find that the evidentiary record does not establish that the beneficiary would be employed as claimed in the petition. For the reasons that we shall now discuss, the record of proceeding lacks sufficient evidence to establish that [REDACTED] had contracted with the petitioner to staff the Quality Care Management position as it was described in the petition; that [REDACTED] had contracted for such staffing for the period specified in the petition; and, most importantly, that, if the beneficiary were to fill a Quality Care Management position as claimed by the petitioner, her performance of the substantive duties of that position within the particular operational context at [REDACTED] would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as is necessary to satisfy the definition of a "specialty occupation" as rendered by reading the supplementary provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A) together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

It is important to note that the record's only contractual document to which the petitioner and [REDACTED] are parties is this [REDACTED] Petitioner Agreement. Also, the record contains no other contract-related document pertinent to this petition; and there are no submissions from [REDACTED]

We find that the content of the [REDACTED] Petitioner Agreement does not establish any contractual commitment by [REDACTED] to provide the petitioner an opportunity to staff that facility with a Quality Assurance Manager for any specific period, let alone for the November, 25, 2013 to November 24, 2016 period specified in the petition. Subgraphs 1 and 2 of the document's "Facility Responsibilities" section commit [REDACTED] to:

1. Call upon [the Petitioner] to provide requested services by our health care personnel.
2. Determine the hours, scope and duration of the activities of health care personnel on each assignment and provide professional supervision by a Supervisor.

No sections in the document constitute [REDACTED] "call[ing] upon" the petitioner for "requested services." Also, while subparagraph 7 of the "Facility Responsibilities" section specifies hourly rates to be paid for five types of healthcare personnel when assigned to [REDACTED] - including Quality Assurance Managers, there is nothing in the document by

which [REDACTED] specifies or commits to any specific assignment of any person to be provided by the petitioner, let alone assignment of the beneficiary to a Quality Assurance Manager position. Likewise, subparagraph 1 of the document's "Provider Responsibilities" section commits the petitioner to no particular assignment. Rather, the petitioner only commits to provide healthcare personnel "as required for the needs of the facility"; and the document does not specify any such need as existing at the time of the document's signing. In addition, the petitioner has not supplemented the record with a copy of any follow-on contractual documents (e.g., work orders, purchase orders, or statements of work) whereby [REDACTED] agrees to the assignment of the beneficiary as a Quality Assurance Manager.

It appears, then, that the [REDACTED] Petitioner Agreement is in the nature of a master or umbrella agreement whose purpose is to specify certain terms (such as payment rates, division of worker-related tax and insurance burdens, and holiday periods) that would apply to any follow-on contractual agreement for a specific assignment that would come within the Agreement's coverage. As such, the document does not constitute a contract between the [REDACTED] and the petitioner for any particular staffing assignment of the beneficiary, or any other personnel of the petitioner, for any specific duration.

Further, aside from the just-addressed, conclusively negative aspects of the [REDACTED] Petitioner Agreement that make its evidentiary value negligible, we also find that the relevance of that document is questionable because the petitioner has not established the Agreement's duration. In this regard, we note that the document does not specify any termination date, but it does state that it "may be terminated without cause by providing a thirty (30) days written notice by either party." Thus, the [REDACTED] Petitioner Agreement does not itself prove its effective period, and it behooves the petitioner to provide objective documentary evidence sufficient to establish that period – which it has not done.

Next, the record of proceeding lacks sufficient evidence for us to recognize the duties described by the petitioner as those which the beneficiary would actually perform if this petition were approved. There are no submissions from [REDACTED] that specify any duties to be performed by the beneficiary; and that facility has not submitted any document that endorses or ratifies the petitioner's descriptions of the proffered position. Further, there is no documentation from [REDACTED] that substantiates that it (1) requires for its Quality Care Manager positions at least a bachelor's degree in nursing or a closely related specialty, and (2) that any such requirement that it may have imposed is not just a matter of preference but rather is generated and necessitated by the actual, specific performance requirements of that particular Quality Care Manager position as it functions within the [REDACTED]

For all of the reasons above, our review of the totality of the evidence of record leads us to conclude that the petitioner has not established that, if this petition were approved on the basis of the evidence of record, the beneficiary would more likely than not serve in a specialty occupation.

The petitioner has not established the substantive nature and associated educational requirements of any work to be performed by the beneficiary for [REDACTED]. This aspect of the

petition precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

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

Although the factors discussed above are sufficient grounds for dismissing the appeal for not having overcome the Director's basis for denying the petition, we shall also address why the appeal's reliance upon the "Medical and Health Services Managers" chapter of the *Occupational Outlook Handbook (Handbook)* for satisfying the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) is misplaced. For the reasons that we shall now discuss, and contrary to the petitioner's view, the *Handbook's* information does not support a finding that the particular position asserted as the basis of the petition is one for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

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.

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 Professional Association of Health Care Office Management offers certification in health information management or medical management, while the American College of Health Care Administrators offers the Certified Nursing Home Administrator and Certified Assisted Living Administrator distinctions.

Advancement

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Medical and Health Services Managers, on the Internet at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited May 28, 2015).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I (entry) on the LCA.² This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant explanatory information from DOL on wage levels, the beneficiary would be closely supervised and her work closely monitored and reviewed for accuracy. Furthermore, she would receive specific instructions on required tasks and expected results. The DOL guidance indicates that a Level I (entry) designation is appropriate for a research fellow, a worker in training, or an internship. Thus, based upon the petitioner's submission of an LCA certified for Level I position (relative to others with the occupation) it does not appear that the beneficiary would serve in a higher level management job.

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.³ 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

² The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL 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. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), which is available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

³ 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.

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

The *Handbook* states that a degree in business administration is sufficient for medical and health services manager jobs. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 147.⁵

⁴ 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.

⁵ 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

That is, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

The narrative of the *Handbook* further indicates that nursing care facility administrators and administrators in assisted-living facilities may be subject to state licensure requirements. The *Handbook* reports that a license is not required in other areas of medical and health services management; however, certification is available in many areas of practice and that some employees obtain professional certification. The *Handbook* notes that the Professional Association of Health Care Office Management (PAHCOM) provides certification in medical management and in health information management, and that the American College of Health Care Administrators (ACHCA) offers the Certified Assisted Living Administrator and Certified Nursing Home Administrator distinctions.

We reviewed the PAHCOM website, regarding its requirements for professional certification."⁶ The PAHCOM website states that its Certified Medical Manager (CMM) and its Health Information Technology Certified Manager for Physician Practice (HITCM-PP) are nationally recognized as the standard of excellence in physician office management. It further indicates that the programs provide recognition to office managers having the knowledge, skills, and experience necessary to successfully manage today's medical practices. The requirements for certification include:

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

Id.

⁶ For additional information regarding PAHCOM and its credentialing programs, see the Professional Association of Health Care Office Management website at <https://www.pahcom.com> (last visited on May 28, 2015).

- A minimum of three years of experience in the health care field (must be in support of patient care, such as a medical practice or other clinical environment); and,
- Twelve college credit hours in courses (1) pertinent to healthcare or business management for the CMM credential; or (2) pertinent to healthcare, business management, or information technology for the HITCM-PP credential. The educational credit requirement is reduced by one hour for each year experience above the three year minimum.

The PAHCOM website states that its credentialing program recognizes the qualifications and expertise of medical managers of physician practices. It specifically notes that the credential is not an entry level certification; but, rather, the CMM designation is the most senior in the industry, requiring both experience and education.

We observe that the PAHCOM website does not indicate that medical manager positions have any particular degree requirements for entry, nor does it indicate that these positions require a degree to be identified as qualified and possessing a level of expertise/competence. Instead, PAHCOM stresses the importance of professional experience, along with a few courses in healthcare, business management and/or information technology.

We also reviewed the ACHCA website regarding the Certified Assisted Living Administrator and Certified Nursing Home Administrator distinctions.⁷ According to the website, the ACHCA professional certification program identifies and honors administrators and managers who are performing at an advanced level of skill and knowledge. The website states that its professional certification program promotes quality in the profession and improves the public image of administrators, as well as allows experienced and practicing administrators to validate their knowledge, skill and abilities.

The ACHCA website indicates that there are a number paths available to candidates seeking to fulfill the education and experience requirements for the Certified Assisted Living Administrator distinction. These include possessing: (1) a high school diploma or General Education Diploma (G.E.D.) along with six years of full-time experience as an assisted living administrator/manager; (2) an associate's degree and four years of full-time experience as an assisted living administrator/manager; or (3) a baccalaureate degree and two years of full-time experience as an assisted living administrator/manager. Thus, the ACHCA website does not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is required to work as an assisted living administrator/manager – or for certification.

The requirements for the Certified Nursing Home Administrator distinction include the following: (1) two year licensure as a nursing home administrator; (2) two years of experience as a nursing

⁷ For additional information regarding ACHCA and its certification programs, see the American College of Health Care Administrators website at <http://www.achca.org/> (last visited on May 28, 2015).

home administrator; and (3) a baccalaureate degree if licensed after January 1, 1996. We note that a candidate is not required to have a degree in a specific specialty, but rather a degree in any field or a general-purpose degree is sufficient.

Thus, neither the *Handbook*, PAHCOM, or ACHCA support the claim that a particular position's inclusion within the Medical and Health Services Managers occupational group is sufficient in itself to establish that position as one for which a baccalaureate degree (or higher) in a specific specialty, or its equivalent, is normally the minimum requirement for entry; and the petitioner provides no objective standard from any authoritative source by which the proffered position as described in the record of proceeding should be recognized as one for which the minimum requirement for entry would be at least a bachelor's degree, in a specific specialty, or its equivalent. Accordingly, even if the petitioner had established that it had secured the Quality Assurance Manager position that it claims as the basis of its specialty occupation claim, the petitioner would not have satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Beyond the decision of the Director, we find that there is an additional aspect of this record of proceeding that precludes its approval, even if the petitioner had established the proffered position as a specialty occupation. As reflected in our comments and findings above, and contrary to the petitioner's view that submission of the [REDACTED] Petitioner Agreement establishes that its "job offer was bona fide and genuine," neither that document nor the totality of the evidence of record constitutes relevant, probative, and credible evidence sufficient to establish that, at the time of the petition's filing, the petitioner had secured for the beneficiary, for the employment period specified in the petition, the Quality Care Manager position that the petitioner asserts as the basis of its specialty occupation claim. We find that the petitioner has not established that, as of the time of the petition's filing, it had secured for the beneficiary definite, non-speculative work, for the period requested, as a Quality Care Manager at [REDACTED]. In this regard, we refer the petitioner to our earlier comments and findings about the quantity and dearth of evidence. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is

unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Also, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petition must be denied for this additional reason.

IV. CONCLUSION AND ORDER

An application or petition that does not comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.