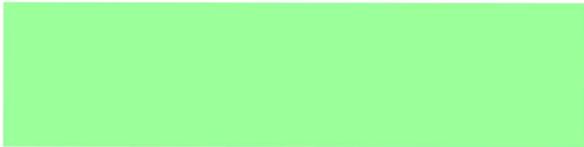




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: MAR 20 2015

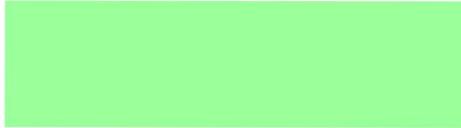
OFFICE: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner:

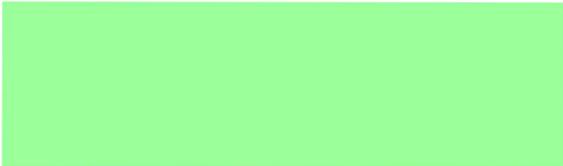
Beneficiary:



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:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2014. On the Form I-129 visa petition, the petitioner describes itself as a provider of healthcare services with 40 employees, established in [REDACTED]. In order to employ the beneficiary in what it designates as a healthcare compliance manager, 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).

On July 28, 2014, the director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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 director's notice of decision; and, (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

For the reasons that will be discussed below, we agree with the director's decision 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. FACTUAL AND PROCEDURAL HISTORY

The petitioner indicated on the Form I-129 that it seeks the beneficiary's services in a position titled "Healthcare Compliance Manager" to work on a full-time basis at \$26.61 per hour or \$55,349 per year.<sup>2</sup>

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Managers, All Other" – SOC (ONET/OES) Code 11-9199, at a Level I (entry level) wage.

In a letter of support dated March 31, 2014, the petitioner stated that the beneficiary will be

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

<sup>2</sup> In "Unilateral Employment Agreement" submitted in support of the Form I-129, the petitioner stated that the beneficiary will be paid \$29.98 per hour, which is higher than the wage indicated on the Form I-129 and the LCA. The petitioner did not provide further information to explain the discrepancy.

responsible for the following duties:

1. Develop, initiate, manage, maintain and revise policies and procedures for the general operation of the Compliance Program and its related activities in accordance with Federal, State and local laws and regulations
2. Develop and periodically review and update the Standards of Conduct to ensure continuing currency and relevance in providing guidance to management and employees and prevent illegal, unethical, or improper conduct
3. Collaborate with other departments to direct compliance issues to appropriate existing channels for investigation and resolution
4. Work with the Human Resources Department and others, as appropriate, to develop an effective compliance training program, including appropriate introductory training for new employees as well as ongoing training for all employees and managers
5. Identify potential areas of compliance vulnerability and risk, develop and implement corrective action plans for resolution of problematic issues, and provide general guidance on how to avoid or deal with similar situations in the future
6. Respond to alleged violations of rules, regulations, policies, procedures and the Standards of Conduct by evaluating or recommending the initiation of investigative procedures, and develop and oversee a system for the uniform handling of such violations, and ensure proper reporting of violations or potential violations to duly authorized enforcement agencies as appropriate and/or required

Under the direct supervision of the President, the Healthcare Compliance Manager coordinates the facility's corporate compliance program. This includes ensuring the facility is adhering to federal and state regulations for the quality of care, residents' rights, employee screening, vendor relationships, billing, cost reporting, record keeping and documentation. The Healthcare Compliance Manager is directly involved in the establishment of appropriate facility procedures and policies. This includes monitoring the enforcement of standards for each resident, employee, vendor and others and for monitoring the ethical and legal conduct expected in the care of residents and the operations of the facility.

In order for employees to learn, understand and maintain compliance with applicable laws and regulations, the Healthcare Compliance Manager must work with the other departments to develop an effective compliance training program, including appropriate introductory training for new employees, as well as ongoing training for all employees and managers. The Candidate is responsible for ensuring ongoing compliance by all the company's officers, employees, contractors, and anyone doing business on behalf of the organization.

The petitioner added the following regarding the requirements to perform the duties of the position:

Only a highly educated and trained professional, one with a Baccalaureate degree, has the technical skills and scholastic competency to do the highly specialized and complex duties assigned to a Healthcare Compliance Manager. The nature of this professional occupation with its specific duties is so complex and specialized enough that a baccalaureate degree is the minimum requirement for the job. Thus, [the petitioner], specifically requires a Bachelor's degree in Law, Business Administration, or related field as minimum prerequisites for the offered position, it clearly marks it as a specialty occupation, one requiring a person who has at least a Bachelor's degree.

The petitioner submitted an evaluation of academic credentials from [REDACTED] for the beneficiary. The beneficiary's credentials were found to be the equivalent of a Master of Business Administration from an accredited institution of higher education in the United States. The petitioner submitted copies of the beneficiary's degrees, school transcripts and employment certificates.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 28, 2014. The director, in part, requested that the petitioner provide evidence to establish that the proffered position qualifies as a specialty occupation, including evidence that a bachelor's degree in a specific field of study is required to perform the duties of the position. The director outlined some of the specific types of evidence that could be submitted.

In response, the petitioner explained that the proffered position is most closely aligned with the occupational category of Medical and Health Services Managers as stated in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The petitioner also submitted job postings to "illustrate that a Bachelor's degree is required for the Healthcare Compliance Manager position." The petitioner also explained that the proffered position is a new position for the petitioner but industry standard requires a bachelor's degree to hold this position.

On July 28, 2014, the director denied the petition concluding that the proposed position does not qualify as a specialty occupation.

## II. SPECIALTY OCCUPATION

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

### A. Law

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. Analysis

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

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>3</sup> As noted above, the petitioner submitted an LCA in support of this position certified for a job offer falling within the "Managers, All Other" occupational category. However, the occupational category "Managers, All Other" is one for which the *Handbook* does not provide detailed data.<sup>4</sup> Further, as mentioned, the petitioner stated in response to the RFE that "Medical and Health Services Manager" is the "closest approximation of an apt occupation for the proffered position of Healthcare Compliance Manager." Therefore, we will focus our discussion on the occupational category "Medical and Health Services Managers."

We have reviewed the chapter of the *Handbook* entitled "Medical and Health Services Managers," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Medical and Health Services Managers" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subchapter of the *Handbook* entitled "How to Become a Medical and Health Services Manager" states the following:

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**

<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. The references to the *Handbook* are from the 2014-15 edition available online.

<sup>4</sup> The *Handbook* states:

#### **Data for Occupations Not Covered in Detail**

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O\*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited March 11, 2015).

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees in health services, long-term care administration, public health, public administration, or business administration also are common.

Prospective medical and health services managers should have a bachelor's degree in health administration. These programs prepare students for higher level management jobs than programs that graduate students with other degrees. Courses needed for a degree in health administration often include hospital organization and management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Some programs allow students to specialize in a particular type of facility, such as a hospital, a nursing care home, a mental health facility, or a group medical practice. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Medical and Health Services Managers, on the Internet at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited March 11, 2015).

Although the *Handbook* states that medical and health services managers typically need at least a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be in a specific specialty. The *Handbook* reports that a degree in health services, long-term care administration, public health, public administration, or business administration are common for entry into the occupation.

Notably, the *Handbook* and the petitioner both state that a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration, is acceptable to perform the duties of the occupation. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

In addition, the petitioner submitted an LCA certified for a job prospect with a wage-level I. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.<sup>5</sup> That is, in accordance with the relevant DOL explanatory information on

<sup>5</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary 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.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies 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."

In response to the RFE, the petitioner refers to the Occupational Information Network (O\*NET) Summary Report to state that "most of these occupations require graduate school," "[f]or example, they may require a master's degree, and some require a Ph.D., M.D., or J.D." The petitioner also asserted that according to the labor market information printout from the Illinois Department Employment Security, the occupational categories "General and Operations Managers," "Administrative Services Managers," and "Human Resources Managers" are among the jobs requiring a Bachelor's Degree. However, the petitioner did not clarify how the duties and responsibilities of the above-mentioned occupational categories are similar to the proffered position as a health compliance manager. Moreover, both the O\*NET Summary Report and the printout from Illinois Department of Employment Security do not establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. As was noted previously, we interpret the term "degree" in

**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.

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. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Upon review of the totality of the evidence in the entire record of proceeding, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, 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 sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Nor are there any submissions from a professional association in the petitioner's industry stating that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Nor has the petitioner submitted any letters or affidavits from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals.

Next, we find that the job-vacancy announcements submitted by counsel also do not satisfy this alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). 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 meet all of the criterion's elements of being in the petitioner's industry, in organizations similar to the petitioner, and also parallel to the proffered position, as required for evidence to merit consideration under this first alternative prong. In this regard, we make several specific findings.

In the Form I-129 and supporting documentation, the petitioner stated that it is a provider of healthcare services established in [REDACTED] with 40 employees and an annual gross income of \$2.5 million. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 621610 – "Home Health Care Services"<sup>6</sup> The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments primarily engaged in providing skilled nursing services in the home, along with a range of the following: personal care services; homemaker and companion services; physical therapy; medical social services; medications; medical equipment and supplies; counseling; 24-hour home care; occupation and vocational therapy; dietary and nutritional services; speech therapy; audiology; and high-tech care, such as intravenous therapy.

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 621610 – Home Health Care Services on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited March 11, 2015).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the documents, we find that the advertisements do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.<sup>7</sup>

<sup>6</sup> NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited March 11, 2015).

<sup>7</sup> Moreover, the petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As

For example, the advertisements do not contain sufficient information regarding the employers to establish that they are similar to the petitioner. Specifically, the advertisements from [REDACTED] [REDACTED], and [REDACTED] do not provide any information about the employers. Further, some employers do not appear to be similar to the petitioner. Specifically, [REDACTED] is described as a "provider of dietary supplements" and "[REDACTED]" appears to be a children's hospital.

Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Consequently, the record is devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the organizations to the petitioner. That is, the petitioner did not provide sufficient information to establish that the advertising companies and the petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) it shares with the advertising organizations.

Further, the petitioner has not established that the advertisements are for parallel positions. On appeal, the petitioner asserts that "various positions closely approximate the duties and requirements of the proffered position." However, the petitioner did not discuss which duties from the advertising employers are similar to the proffered position. 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)).

Moreover, although the petitioner has designated the proffered position as a Level I position, indicating that it is an entry-level position, the petitioner provided several job announcements for positions requiring extensive experience. For example, the posting for [REDACTED] Inc. requires "[f]our (4) years of prior experience in Quality and/or Risk Management with three (3) years at a supervisory level," [REDACTED] requires "minimum 7+ years' experience," [REDACTED] requires "five to ten years of in-depth experience," and also [REDACTED] requires "4-6 years of compliance experience." The advertised positions appear to be for a more senior position than the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, the job postings do not indicate that a bachelor's degree in a directly related specific specialty is required. For example, the advertisement from [REDACTED] states that education requirement is a bachelor's degree, but does not state a specific specialty. Similarly, [REDACTED] prefers a bachelor's degree, but does not indicate that it requires a bachelor's degree in a specific specialty. As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher

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the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

Thus, 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 sharing all three characteristics of being (1) within the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

Next, 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."

Upon review of the proffered duties, the record of proceeding presents the duties comprising the proffered position in terms of relatively abstract and generalized functions. More specifically, they 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. For example, the beneficiary will "develop, initiate, manager, maintain and revise policies and procedures for the general operations of the Compliance Program"; "develop and periodically review and update the Standards of Conduct"; and "identify potential areas of compliance vulnerability." The evidence of record contains neither substantive explanation nor documentation showing the substantive nature of the work and associated applications of specialized knowledge that would be involved in the referenced tasks. These duties do not provide any information as to the complexity of the job duties, the amount of supervision required, and the level of judgment and understanding required to perform the duties. Furthermore, the phrases could cover a range of issues, and without additional information, do not provide any insights into the beneficiary's day-to-day work.

While this type of general 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 as it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business activities. 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. Therefore, it is not evident that the proposed

duties as described, and the position that they comprise, merit recognition of the proffered position as a specialty occupation.

Further, the petitioner failed to demonstrate how the duties of the proffered position as described in the record require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

We also find that the LCA submitted by the petitioner in support of the instant petition is materially inconsistent with a claim that the petitioner has established the relative complexity or uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, we incorporate by reference and reiterate our earlier discussion regarding the fact that the petitioner submitted as the supporting LCA one that had been certified for a Level I (entry level) wage. This designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and his work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other director of operations positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). The petitioner did not provide evidence of its hiring history.

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

Next, 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.

For context, we again refer the petitioner to the *Handbook* and the pertinent sections that we have quoted from it. The *Handbook's* information does not indicate that the performance requirements of the duties of health and medical services manager occupational group are usually associated with attainment of at least a bachelor's degree in a specific specialty.

As reflected in this decision's earlier comments and findings with regard to the proposed duties as presented in the record - which we here incorporate into the present analysis - the evidence of record does not establish the nature of the proposed duties as so specialized and complex that their performance would require knowledge usually associated with a particular level of education in a specific specialty. While the petition relates many and varied duties and functions

<sup>8</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner's submission of an LCA certified for a Level I prevailing-wage signifies assessment of the proffered position as a comparatively low, entry-level position relative to others within the same occupation.

that the beneficiary would have to perform, it does not show that even the aggregate of such duties is usually associated with a particular level of educational attainment in any specific specialty. Thus, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On appeal, the petitioner asserts that the position requires "myriad of specialized skills" to ensure "patient safety" which is "one of the most vital and challenging jobs in healthcare today." However, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

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

### III. ADDITIONAL ISSUES

As the grounds discussed above are dispositive of the petitioner's eligibility for the benefit sought in this matter they conclusively require that the appeal be dismissed. However, here we will note additional deficiencies in the petition and supporting documentation in order to apprise the petitioner of further insufficiencies in the record that would also require dismissal of the appeal.

#### A. The LCA

As mentioned, the petitioner indicated on its LCA that the proffered position corresponds to "Managers, All Other" – SOC (ONET/OES Code) 11-9199. However, in response to the RFE a, the petitioner indicated that the duties of the proffered position correlate to the occupational category of "Health and Medical Services Managers" – SOC (ONET/OES Code) 11-9111.

With respect to the LCA, the U.S. Department of Labor (DOL) provides guidance for selecting the most relevant O\*NET classification code. DOL's "Prevailing Wage Determination Policy Guidance" states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O\*NET description that corresponds to the

employer's job offer shall be used to identify the appropriate occupational classification . . . . If the employer's job opportunity has worker requirements described in a combination of O\*NET occupations, the [determiner] should default directly to the relevant O\*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [determiner] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

*See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

A search of the Foreign Labor Certification Data Center Online Wage Library reveals that the prevailing wage for "Medical and Health Services Managers" SOC (O\*NET/OES) Code 11-9111 for [REDACTED] at a Level I is \$68,744 per year.<sup>9</sup> The petitioner's offered wage to the beneficiary of \$55,349 per year is below the prevailing wage for the occupational category "Medical and Health Services Managers" in the area of intended employment by \$13,395 per year.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. *See* section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation . . . and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

<sup>9</sup> For more information, *see* the All Industries Database for 7/2013 - 6/2014 for Medical and Health Services Managers at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at [http://www.flcdatabase.com/OesQuickResults.aspx?code=11-9111&\[REDACTED\];year=14&source=1](http://www.flcdatabase.com/OesQuickResults.aspx?code=11-9111&[REDACTED];year=14&source=1) (last visited March 11, 2015).

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that the Form I-129 petition is supported by an LCA that corresponds to it. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different occupational category at a lower prevailing wage than the one that it claims it is offering to the beneficiary. Here, the LCA does not properly reflect the correct occupational category and thus does not correspond to the H-1B petition. Further, the petitioner has not demonstrated that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted. Thus, for this reason as well, the petition must be denied.

#### B. Beneficiary's Qualification

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, we will not address the beneficiary's qualifications further.

#### IV. CONCLUSION AND ORDER

An application or petition that fails to 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 our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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. The petition is denied.