



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-M-S-, LLC

DATE: JULY 18, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a healthcare management company, seeks to temporarily employ the Beneficiary as a “director of medical staff relations” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, California Service Center, denied the petition. The Director concluded that the evidence of record did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

The matter is now before us on appeal. 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.

Upon *de novo* review, we will dismiss the appeal.¹

I. LAW

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.

¹ This decision does not prejudice or otherwise prevent the Petitioner from filing a new petition on behalf of the Beneficiary or other individuals, especially if the facts and circumstances have since changed such that eligibility for the immigration benefit can be established.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). U.S. Citizenship and Immigration Services (USCIS) has consistently interpreted 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 proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. PROFFERED POSITION

In the initial letter of support, the Petitioner provided a description of the job duties and the requirements for its director of medical staff relations position, stating the Beneficiary will perform the following duties:

In this position, [the Beneficiary] will manage physician relations to strengthen and align the relationship between [the Petitioner], the physicians and hospital customers, serving as the primary corporate contact for physicians. She will assess and track physician performance, review quality reports, enhance communication with hospital administrators regarding physician performance, align physician performance with hospital administrators’ policies and goals, monitor needs and respond to physician concerns, participate in physician hiring and on-boarding, assist in physician credentialing as needed, design and implement a physician retention program and perform other duties as assigned.

In response to the Director’s request for evidence (RFE), the Petitioner stated that the Beneficiary’s job title was recently changed from “director of medical staff relations” to “vice-president, medical

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staff relations,” in order to better reflect her role in the company. The Petitioner stated that her primary responsibility is to “review hospital data, statistics and quality reports, and perform in depth analysis and develop solutions to meet and improve quality metrics, efficiency rates, physician performance, patient flow and other factors that impact the quality and productivity of patient care.” The Petitioner also provided an updated list of job duties for the Beneficiary’s position which included the following time allocations:

Data Analysis – 65%

- Emergency Department (ED) Stats Review
- Applying data analysis to ED data, problems
- Creating physician scorecards for ED performance
- Assessment of throughput times for ED patient flow
- Review and assessment of radiology department performance metrics

Communicating and working with Medical Directors – 20%

- Reviewing physician performance
- Attending monthly meetings with an inter-disciplinary team to discuss ED performance and assess areas of improvement

ED Scheduling – 10%

- Working with the Medical Directors to ensure that all shifts are covered in the ED, 24/7
- Communicating the monthly schedule and schedule changes to the respective physicians

Provider Team Building – 5%

- Working with the organization’s sales and marketing team to garner more hospital clients
- Overseeing physician recruitment activities – interviewing physicians, physician onboarding including introducing the physician to the hospital and Medical Director, coordinating with the credentialing team to ensure that required credentialing process is completed on time.

According to the Petitioner, the position requires at least a bachelor’s degree or equivalent professional degree in a clinical health science, including medicine, nursing, dental medicine/surgery or related clinical field, plus a master of health administration degree.²

² The Petitioner submitted a letter from the [REDACTED] dated February 25, 2015, which verified that the Beneficiary was in the final semester of a two-year graduate program in health administration. According to the letter, the Beneficiary would receive her master’s degree in May 2015.

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the Petitioner has not demonstrated that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, qualifies as a specialty occupation. Specifically, the record (1) provides inconsistent information regarding the position³; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.⁴

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.⁵ To inform this inquiry, we recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Medical and Health Services Managers" corresponding to the Standard Occupational Classification code 11-9111 at a Level I wage.⁷

³ The purpose of an RFE is to provide a petitioner with an opportunity to clarify whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, the Petitioner cannot materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. Rather, the Petitioner must establish that the position offered to the Beneficiary when the petition was filed merits classification for the benefit sought. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). If significant changes are made, the Petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Here, in response to the RFE, the Petitioner changed the Beneficiary's job title from director of medical staff relations to vice president, medical staff relations.

⁴ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position. While we may not discuss every document submitted, we have reviewed and considered each one.

⁵ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

⁶ All of our references are to the 2016-2017 edition of the *Handbook*, available at <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

⁷ We will consider the Petitioner's classification of the proffered position at a Level I wage (the lowest of four assignable wage levels) in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage*

The *Handbook* subchapter entitled “How to Become a Medical and Health Services Manager” states in pertinent part: “Most medical and health services managers have at least a bachelor’s degree before entering the field. However, master’s degrees are common and sometimes preferred by employers. Requirements vary by facility.”⁸ It further specifies: “Prospective medical and health services managers typically have a degree in health administration, health management, nursing, public health administration, or business administration. Degrees that focus on both management and healthcare combine business-related courses with courses in medical terminology, hospital organization, and health information systems.”

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 degrees in various fields are common (health administration, health management, nursing, public health administration, or business administration).

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 management and business administration, as well as public administration and nursing). While the *Handbook* indicates that prospective employees “typically” have at least a bachelor’s degree, it does not indicate that such a degree is required or that the degree must be in a specific field.

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 a 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.⁹ Section 214(i)(1)(B) of the Act (emphasis added).

Determination Policy Guidance, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf. A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner’s job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

⁸ For additional information regarding the occupational category “Medical and Health Services Managers,” see U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Medical and Health Services managers, available at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm> (last visited July 13, 2016).

⁹ Whether read with the statutory “the” or the regulatory “a,” both readings denote a singular “specialty.” Section

The *Handbook* further 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 at 147.¹⁰

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 Petitioner also referenced the Occupational Information Network (O*NET) OnLine Summary Report for this occupation. The summary report provides general information regarding the occupation; however, it does not support the Petitioner's assertion regarding the educational requirements for the occupation. For example, while the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, formal education, and experience – and it does not specify the particular type of degree, if any, that a position would require.¹¹

Further, the summary report provides the educational requirements of “respondents,” but does not account for 100% of the “respondents.” The respondents' positions within the occupation are not

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.

¹⁰ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Id.

¹¹ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

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distinguished by career level (e.g., entry-level, mid-level, senior-level). Additionally, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty.

The Petitioner also submitted an opinion letter prepared by [REDACTED] of [REDACTED] (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) claims that the proffered position requires a graduate degree in healthcare or business as a minimum requirement, noting that the duties and responsibilities of the position are aligned with the competencies achieved in a graduate program; and (3) claims that these minimum qualifications represent a common standard for parallel positions among similar organizations. We carefully evaluated [REDACTED] assertions in support of the instant petition but, for the following reasons, determined his opinions lent little probative value.

Upon review of the opinion letter, there is no indication that [REDACTED] possesses sufficient knowledge of the Petitioner's proffered position and its business operations. First, [REDACTED] states that his opinion is "based on a review of [the Beneficiary's] resume" as well as her credentials, but makes no mention of any position descriptions or other documentary evidence specific to the position being offered by the Petitioner. Other than the Beneficiary's resume, [REDACTED] does not identify what documentation, if any, he relied upon when assessing the nature of the proffered position. There is no evidence that [REDACTED] has visited the Petitioner's business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. He does not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise.

[REDACTED] does not discuss in detail the duties or requirements of the proffered position; rather, he makes a broad assertion that these types of positions "typically exist in virtually all medical facilities" and "are common throughout the healthcare industry." [REDACTED] does not reference, cite, or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted to complete his evaluation. Although we note his reference to *Blooms Taxonomy of Learning*, he refers to this source to support his opinion that the Beneficiary's graduate-level education "significantly" adds to her qualifications, noting that there is a differentiating factor between the levels of learning imparted at the undergraduate and graduate levels. Again, it appears that [REDACTED] evaluation focuses exclusively on the Beneficiary's resume, education, and experience as a "Graduate Level Research Assistant and Administrative Intern" at the [REDACTED] during her graduate program, rather than on the specific requirements and associated duties of the proffered position.

[REDACTED] concludes that the position of "Vice President of Medical Staff Relations" requires a graduate degree in healthcare or business. [REDACTED] does not cite specific examples of how the proffered position, in the context of the Petitioner's operations, requires such an educational prerequisite, nor does he support his blanket assertion that all positions with similar titles impose the same minimum qualifications. The record does not indicate whether [REDACTED] was aware of the Petitioner's designation of the proffered position as a Level I (entry) position (the lowest out of four

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assignable wage-levels) in the LCA. In contrast, [REDACTED] states that the proffered position is “clearly aligned with the competencies to be achieved in a graduate program” and requires “a skill set developed in graduate programs and not at the undergraduate level.” It appears that [REDACTED] would have found such information relevant for his opinion letter. Accordingly, the Petitioner has not demonstrated that [REDACTED] possessed the requisite information to adequately assess the nature of the position and appropriately determine parallel positions based upon the job duties and level of responsibilities.

For the reasons discussed, we find that [REDACTED] opinion letter lends little probative value to the matter here. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm’r 1988) (The service is not required to accept or may give less weight to an advisory opinion when it is “not in accord with other information or is in any way questionable.”).

On appeal, the Petitioner cites to *Warren Chiropractic & Rehab Clinic, P.C v. USCIS*, No. SACV 14-0964 AG (RNBx), 2015 WL 732428 (C.D. Cal. 2015) and *Chung Song Ja Corp. v. U.S. Citizenship and Immigration Services*, No. C14-0177RSM, 2015 WL 1058110 (W.D. Wash. 2015), and claims that they are relevant here.¹² In the district court case, *Warren Chiropractic*, the employer designated the position as a “health services manager” position.¹³ We reviewed the decision; however, there is no indication that the duties and responsibilities, level of judgment, complexity of the job duties, supervisory duties, independent judgment required or the amount of supervision received are analogous to the proffered position here.¹⁴ Accordingly, aside from the claimed occupational category, there is a lack of evidence demonstrating that the positions are similar.

Further, in *Warren Chiropractic*, the court stated that a specialty occupation is one that requires a bachelor’s degree or higher in the specific specialty (or its equivalent). We must clarify that a specialty occupation requires (1) theoretical and practical application of a body of highly specialized knowledge, and (2) 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. Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Furthermore, the Petitioner must satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

¹² In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

¹³ It is important to note and distinguish within the court’s decision that “health services manager” refers to the employer’s particular position, whereas “Medical and Health Services Managers” refers to a general occupational category.

¹⁴ We note that the Director’s decision was not appealed to our office. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision in our *de novo* review of the matter.

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.

In *Warren Chiropractic*, the court concluded that the petitioner met the first criterion. It is important to note, however, that the court misquoted the *Handbook*, with regard to prospective medical and health services managers. That is, the *Handbook* does not state that prospective medical and health services have a bachelor's degree in health administration, but rather that they "should" have such a degree. The *Handbook* then continues by stating that these programs prepare students for higher level management jobs than programs that graduate students with other degrees. The statement suggests that "other degrees" would be appropriate for lower level management jobs.

The court also stated that "while true that medical and health services may have master's degrees in a wider variety of fields, the description is clear that their bachelor's degrees are typically in health administration." The court continued, saying that "[t]his satisfies the statutory requirement that a specialty occupation is one normally requiring a bachelor's degree in the specific specialty. 8 U.S.C. § 1184(i)." We note, however, that the term "normally" is not in the statute as attributed by the court, but rather is an aspect of the first criterion of the supplemental regulatory requirement. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The court concluded that "[b]ecause the Medical and Health Services Manager position requires a degree in a specific specialty, the USCIS erred in finding that it is not a specialty occupation." According to the court, the "Medical and Health Services Manager role normally requires a bachelor's degree in a specific field."

The decision, thus, states that the occupational category "Medical and Health Services Managers" requires a degree, but the court does not conclude that the employer's particular "health services manager" position requires such a degree. The court therefore appears to mischaracterize the first criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). That is, the first criterion requires the petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the *particular position*.

Furthermore, if the court meant to suggest that any position classified under the occupational category "Medical and Health Services Manager" would qualify as a specialty occupation – we must disagree.¹⁵ The occupational category designated by a petitioner is considered as an aspect in

¹⁵ In *Warren Chiropractic*, the court quoted a brief excerpt from the *Handbook*. We observe that the court did not address the section of the *Handbook* regarding professional certificates, and more specifically the information on the PAHCOM website indicating that there are no specific degree requirements to obtain professional certification – and therefore to work as a medical manager of a group physician practice.

establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, the burden of proof remains on the petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement or its equivalent for entry. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title or designated occupational category. 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 beneficiary, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000).

Nevertheless, it is important to note that the court in *Warren Chiropractic* determined that the evidence in the record demonstrated that the particular position proffered required a bachelor's degree in a specific specialty or its equivalent as a minimum for entry. Further, the court noted that "[t]he patently specialized nature of the position sets it apart from those that merely require a generic degree." The position in *Warren* can, therefore, be distinguished from the instant position. Here, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner 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 has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The Petitioner has not provided documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

B. Second Criterion

The second criterion presents two, alternative prongs: "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[.]" 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner's specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the "degree requirement" (i.e., a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

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

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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)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner’s industry attesting that such firms “routinely employ and recruit only degreed individuals.”

The Petitioner submitted an excerpt from the [REDACTED] which offers guidance on planning for careers in healthcare management. According to the [REDACTED] a bachelor’s degree is “enough for some entry-level positions in healthcare administration, a few senior-level positions in smaller operations, and for some middle management jobs in larger organizations.” It also states, however, that “an undergraduate degree in health services management is not required to become a health services manager,” and notes that degrees in business, nursing, or liberal arts may also be acceptable. While the [REDACTED] also states that a master’s degree is required “for almost every position in the healthcare management field,” it indicates that a wide variety of degrees, including business administration, are acceptable vehicles for entry into this field. Without more, the Petitioner has not demonstrated that the proffered position, which it designates as a Level I, entry-level position relative to others within the occupation, requires a degree in a specific specialty as a minimum requirement for entry.

The Petitioner also submitted copies of job advertisements. However, upon review of the documents, we find that the Petitioner’s reliance on the job advertisements is misplaced. First, we note that some of the job postings do not appear to involve organizations similar to the Petitioner. For example, the Petitioner is a nine-person healthcare management company whereas the advertising organizations include:

- [REDACTED] – a hospital and healthcare system and third largest private employer in Kentucky; and
- [REDACTED] – a healthcare company with over [REDACTED] employees that operates [REDACTED] hospitals, over [REDACTED] outpatient centers, and six health plans.

When determining whether the Petitioner and the 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.

Moreover, many of the advertisements do not appear to be for parallel positions. For example, some of the positions appear to be for more senior positions than the proffered position. The Petitioner has

not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, none of the postings indicate that at least a bachelor's degree in a directly related specific specialty (or its equivalent) is required.¹⁶ The job postings suggest, at best, that although a bachelor's degree is sometimes required for director of medical staff relations positions, a bachelor's degree in a *specific specialty* (or its equivalent) is not.¹⁷

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, not every deficit of every job posting has been addressed. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We reviewed the Petitioner's statements regarding the proffered position; however, in the appeal brief, the Petitioner does not assert that it satisfies this prong of the second criterion. Further, the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Thus, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

¹⁶ 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 degree, but a bachelor's degree in a specific specialty that is directly related to the duties of the position. See section 214(i)(1)(b) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Further, 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. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

¹⁷ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

(b)(6)

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The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

In response to the RFE and again on appeal, the Petitioner acknowledges that it has not previously employed an individual in the proffered position and confirms that there is no hiring history. The Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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 a specific specialty, or its equivalent.

We reviewed the Petitioner's job duties and the information regarding its business operations. However, the Petitioner does not assert and the evidence does not support a finding that it has satisfied this criterion. The duties of the position are not described in such a way that establishes that the duties require more than a general bachelor's degree. Although the Petitioner may desire a candidate with particular credentials, it has not submitted sufficient probative evidence explaining in detail how or why the proposed duties are so complex or specialized that they require a bachelor's degree in a specific specialty, or its equivalent, to perform them. Further, we incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category.¹⁸

Finally, we again note [redacted] opinion letter, where he claims that the Beneficiary's graduate-level education and experience significantly qualify her for the position. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

¹⁸ The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation. The burden is on the Petitioner to show 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.

Cite as *Matter of M-M-S-, LLC*, ID# 17913 (AAO July 18, 2016)