



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

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

MATTER OF M-S-L-M- CORP.

DATE: OCT. 12, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a residential care facility management company, seeks to temporarily employ the Beneficiary as a part-time "program director" under the H-1B nonimmigrant classification for specialty occupations. 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 Petitioner had not established that the proffered position qualifies as a specialty occupation position.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the evidence submitted satisfies all evidentiary requirements.

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

I. LEGAL FRAMEWORK

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) 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.

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. Fed. 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.¹

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 individuals 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

¹ We do not find the Petitioner’s contrary assertions persuasive.

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 individual, 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 or 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.

II. PROFFERED POSITION

In the H-1B petition, the Petitioner stated that the proffered position is a program director position. The Petitioner provided the following description of the duties of the proffered position:

- *Manage consultant service for residents at each facility. Arrange for residents to attend available community programs identified in the individualized needs and service plans. Coordinate use of professional consultants such as behavior therapist, recreational therapist, registered nurse, occupational therapist, etc. Oversee screening, selection, complete admission procedures, and program assignment of participants. Implement injury and illness prevention program. Oversee participant assessment and ISP (individual service plan) development and implementation.
- *Recruit and hire staff for each facility.
- *Oversee training program of staff. Provide or arrange for orientation, continuing education and on-the-job training of staff.
- *Determine staff schedule based on the individualized needs and services plan of the residents.
- *Oversee accurate and timely participant billing, participant payroll, and personal documents. Maintain and supervise the maintenance of personnel, financial and resident record. Develop and implement administrative policy and procedures.
- *Ensure compliance with quality assurance standards and care requirements.

The Petitioner stated, "The minimum academic requirement for this position is a Bachelor of Science degree in any area of Health Sciences, Health Administration or related field."

In a letter submitted in response to a request for evidence (RFE) issued in this matter, the Petitioner provided the following duties (note: errors in the original text have not been changed):

1. **Management of Individual Service Programs:** **80%** **20 hrs/week**

- Responsible for the supervision of individuals' supports and maintenance of assigned programs.
- Facilitates the planning, development and implementation of person-centered plans by developing programs based on residents' individual goals and desired outcomes, and coordinating and participating in individual plan meetings with professional consultants. Confers with parents, relatives and staff regarding a resident's program plan and how they can aid in promoting functional growth.
- Directs and coordinates the activities of all program, treatment and teaching of individuals in assigned homes/locations. Schedule and coordinate the necessary support services such as dietary, recreation, housekeeping, clothing and transportation to ensure quality of life for residents.
- Oversees the development and maintenance of integrated and coordinated active treatment program for each individual resident. Monitors the implementation of each program, and documents and reports progress toward meeting outcomes through communications with professional consultants and other service agencies. Makes recommendations for additional types of activities.
- Identifies and requests specialized services for residents such as physical therapy, hearing and speech, psychiatric, medical, dental, vocational assessments and psychological testing.
- Oversees the Quality Assurance plans to monitor the implementation of each program to ensure active treatment.
- Schedules and conducts pre-release conferences concerning residents and makes recommendations as to the type of placement, location, physical needs, activities, and degree of needed supervision.
- Maintains relationships with Federal, State and County service agencies. Acts as liaison between the facility and community schools and workshop programs.

2. **Supervision and Administrative Duties:** **20%** **5 hrs/week**

- In coordination with the owner, manages personnel by hiring, evaluating, supervising and helping to develop the most qualified individuals to work as direct support professionals.
- Provides effective and efficient scheduling of staff to meet the needs and goals of individuals supported and provides on-call 24 hour staff assistance.
- Oversee and provide staff training and supervision to ensure that staff provides quality active care and treatment according to regulations and policy following established routines. Assess areas requiring more training and ensure that training programs are provided.
- Ensure Basic Assurances requirements are met. Ensures current state licensing and certification rules and regulations, accreditation requirements and agency policies and procedures are followed.

- Manages and implement program budgets. Provide input for budget development. Ensure programs stay within allocated budget and follow policies and procedures for procurement.
- Maintain resident records and personnel records.

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 qualifies as a specialty occupation.² Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.³

Initially, we observe that the Petitioner has never effectively claimed that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. To the contrary, the Petitioner stated that it would find acceptable a degree in any of the health sciences, in health administration, or in a related field. While we do not claim to provide an exhaustive list of all of the health sciences, we note that the list would include, for instance, the diverse fields of anesthesiology, audiology, dentistry, genetic counseling, medical physics, medical technology, midwifery, nursing, dietetics, occupational therapy, optometry, pharmacology, physical therapy, psychiatry, and speech-language pathology.

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 two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," 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. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each

² Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

³ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the Petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in, among other subjects, any medical science, a general category which would include, for example, dentistry, genetic counseling, midwifery, and speech-language pathology. Those subjects do not delineate a single specific specialty. The educational requirement placed on the proffered position by the Petitioner demonstrates that the proffered position in the instant case is not a specialty occupation position. The proffered position is not a specialty occupation for this reason alone.

Nevertheless, we will continue our analysis of whether the proffered position qualifies as a specialty occupation for the purpose of performing a comprehensive analysis. We will next discuss the record of proceedings in relation to the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We will conduct this analysis pursuant to the assumption, made *arguendo*, that the wide variety of degrees the Petitioner indicates would be a sufficient educational qualification for the proffered position does not disqualify it from being found to be a specialty occupation position.

A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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. To inform this inquiry, we recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

On the labor condition application (LCA) submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category SOC 11-9111, Medical and Health Services Managers.⁵ The *Handbook* states the following with regard to positions located within this occupational category:

⁴ All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <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.

⁵ The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection 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 she will be closely supervised and her work closely monitored and reviewed for accuracy; and (3) that she will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing*

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. Educational requirements vary by facility.

Education

Medical and health services managers typically need at least a bachelor's degree to enter the occupation. However, master's degrees are common and sometimes preferred by employers. Graduate programs often last between 2 and 3 years and may include up to 1 year of supervised administrative experience in a hospital or healthcare consulting setting.

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. For example, a degree in health administration or health information management often includes courses in health services management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems.

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Work Experience in a Related Occupation

Many employers require prospective medical and health services managers to have some work experience in either an administrative or a clinical role in a hospital or other healthcare facility. For example, nursing home administrators usually have years of experience working as a registered nurse.

Others may begin their careers as medical records and health information technicians, administrative assistants, or financial clerks within a healthcare office.

Licenses, Certifications, and Registrations

All states require licensure for nursing home administrators; requirements vary by state. In most states, these administrators must have a bachelor's degree, complete a state-approved training program, and pass a national licensing exam. Some states also require applicants to pass a state-specific exam; others may require applicants to have previous work experience in a healthcare facility. Some states also require licensure

Wage 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.*

for administrators in assisted-living facilities. For information on specific state-by-state licensure requirements, visit the National Association of Long Term Care Administrator Boards.

A license is typically not required in other areas of medical and health services management. However, some positions may require applicants to have a registered nurse or social worker license.

Although certification is not required, some managers choose to become certified. Certification is available in many areas of practice. For example, the Professional Association of Health Care Office Management offers certification in medical management, the American Health Information Management Association offers health information management certification, and the American College of Health Care Administrators offers the Certified Nursing Home Administrator and Certified Assisted Living Administrator distinctions.

Advancement

Medical and health services managers advance by moving into higher paying positions with more responsibility. Some health information managers, for example, can advance to become responsible for the entire hospital's information systems. Other managers may advance to top executive positions within the organization.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Medical and Health Services Managers, <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited Oct. 11, 2016).⁶

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 the degrees are in various fields of study (health administration, health management, nursing, public health administration, or business administration). In addition, the *Handbook* reports that degrees that focus on both management and healthcare combine business-related courses with courses in medical terminology, hospital organization, and health information systems. For example, the *Handbook* states that a degree in health administration or health information management often includes courses in health services management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems. Therefore, although the

⁶ It is not entirely clear that the proffered position was properly classified as being located within this occupational category. For example, we observe that the Petitioner's organizational chart indicates the Beneficiary would be supervised by an Administrator/Licensee and a Co-Administrator/Licensee. The duties those two workers provide has not been established. However, that two administrators are above the Beneficiary in the chain of command suggests that the duties the Beneficiary would perform may not involve management at the level contemplated by the *Handbook's* discussion of Medical and Health Services Manager positions. As the petition is otherwise unapprovable, we will not pursue this issue further, except to note that it raises questions as to whether the LCA corresponds to and supports the H-1B petition.

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 administration, health management, nursing, public health administration, and business administration).

Again, 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 two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

The *Handbook* also 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. *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Again, 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 Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988). Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.

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

We reviewed the PAHCOM website regarding its requirements for professional certification.⁷ The PAHCOM website states that its Certified Medical Manager (CMM) and its Health Information Technology Certified Manager for Physician Practice (HITCM-PP) certifications are nationally recognized as the standards of excellence in physician office management. It further indicates that the programs provide recognition to office managers having the knowledge, skills, and experience necessary to successfully manage today's medical practices. The requirements for certification include:

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

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

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

We also reviewed the AHIMA website regarding its health information management certification.⁸ The AHIMA website states that it is the premier association of health information management (HIM) professionals worldwide. The website also states that AHIMA credentials are earned through a challenging program of examinations, education, and experience, and maintained through continuous review and education.

The AHIMA website indicates that there are two types of HIM certifications: (1) Registered Health Information Administrator (RHIA) certification; and (2) Registered Health Information Technician (RHIT) certification. According to the website, RHIA applicants must meet one of the following eligibility requirements:

⁷ For additional information regarding PAHCOM and its credentialing programs, see the Professional Association of Health Care Office Management website at <https://www.pahcom.com> (last visited Oct. 11, 2016).

⁸ For additional information regarding AHIMA and its certification program, see the American Health Information Management Association website at <http://www.ahima.org/> (last visited Oct. 11, 2016)

- Complete the academic requirements, at the baccalaureate level, of an HIM program accredited by the Commission on Accreditation for Health Informatics and Information Management Education (CAHIIM); or
- Graduate from an HIM program approved by a foreign association with which AHIMA has a reciprocity agreement.

In addition, RHIT applicants must meet one of the following requirements:

- Complete the academic requirements, at an associate's degree level, of an HIM program accredited by the CAHIIM; or
- Graduate from an HIM program approved by a foreign association with which AHIMA has a reciprocity agreement.

However, the AHIMA website does not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is required to work as a health information management professional and/or be HIM certified.

Finally, we reviewed the ACHCA website regarding the Certified Assisted Living Administrator and Certified Nursing Home Administrator distinctions.⁹ According to ACHCA, its professional certification program identifies and honors administrators and managers who are performing at an advanced level of skill and knowledge. The website states that its professional certification program promotes quality in the profession and improves the public image of administrators, as well as allows experienced and practicing administrators to validate their knowledge, skill and abilities.

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

The requirements for the Certified Nursing Home Administrator distinction include the following: (1) two year licensure as a nursing home administrator; (2) two years of experience as a nursing home administrator; and (3) a baccalaureate degree if licensed after January 1, 1996. We note that a

⁹ For additional information regarding ACHCA and its certification programs, see the American College of Health Care Administrators website at <http://www.achca.org/> (last visited Oct. 11, 2016).

candidate is not required to have a degree in a specific specialty, but rather a degree in any field or a general-purpose degree is sufficient.

Thus, the *Handbook*, PAHCOM, AHIMA, and ACHCA do not support the claim that the “Medical and Health Services Managers” occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), to satisfy the first criterion, the Petitioner would still need to provide evidence to support a finding that the particular position proffered would normally have such a minimum, specialty degree requirement, or its equivalent.

On appeal, the Petitioner submitted a copy of the Occupational Information Network (O*NET) OnLine Summary Report for the “Medical and Health Services Managers” occupational category. However, O*NET does not establish that the proffered position qualifies as a specialty occupation. In general, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O*NET Job Zone designations make no mention of the specific field of study from which a degree must come. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O*NET’s Job Zone designations, are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do 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. Therefore, O*NET does not establish that the proffered position qualifies as a specialty occupation.

Further, we find that, to the extent that they are described in the record of proceedings, the numerous duties that the Petitioner ascribes to the proffered position indicate a need for a range of knowledge and abilities, such as scheduling appointments, conducting interviews, and similar duties, but do not establish any particular level of formal, postsecondary education leading to a bachelor’s or higher degree in a specific specialty as minimally necessary to attain such knowledge.

In the instant case, 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).

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 casts its gaze upon 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 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* (or other independent, authoritative source) reports an industry-wide 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, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

The Petitioner provided two letters written other individuals working in facilities which care for clients with developmental disabilities. One letter states, “A **Program Director** for residential care facilities like ours requires a minimum of Bachelor Degree in Psychology.” The other letter states, “To be a Program Director of a Day Program for adults with Developmental Disabilities and Behavior Management, it is a plus to be a Medical Professional such as a holder of a Bachelor’s Degree in Psychology.”

Thus, one letter states that a psychology degree is a minimum requirement for such a position, and the other indicates that such a degree would be “a plus,” but not necessarily a minimum requirement for entry.

The Petitioner also provided vacancy announcements for positions entitled Program Director, Program Manager – Autism Services, Program Manager – Supported Living Services, Program Manager Community Living Services, Director, Day Program Manager, Program Manager for Adults with Developmental Disabilities, Program Manager – Developmental Services, Program Manager – DT&H (Day Training and Habilitation) Employment Services, Program Director of Community Living Services, and Program Director for Adult Residential Facilities.

Some of the vacancy announcements state a requirement for a bachelor’s degree, but not for a degree in any specific specialty. One states that the position requires a “Bachelor’s Degree in Psychology, Social Work or any major which includes at least 24 semester college units in one or more of the following subject areas: a) psychology, b) social work, c) sociology, d) behavioral health sciences,

or e) psychiatric nursing.” A requirement for a degree with less than two semesters of credits in that wide array of subjects is not a requirement of a minimum of a bachelor’s degree in a specific specialty or its equivalent.

One of the announcements indicates that the advertised position is open to someone who is a registered nurse with one year of experience or a licensed nursing home administrator with one year of experience, or a licensed psychiatric technician with five years of experience. The record contains no indication that any of those qualifications equate to a minimum of a bachelor’s degree in a specific specialty or its equivalent.

One of the announcements states that the position announced requires a bachelor’s degree (with no major specified) or two years of administrative/program experience. Neither of those alternative requirements is a requirement of a minimum of a bachelor’s degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the Petitioner and in the Petitioner’s industry and required a minimum of a bachelor’s degree in a specific specialty or its equivalent, the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from a small number of announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.¹⁰

Thus, the evidence of record does not establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common to parallel positions with organizations that are in the Petitioner’s industry and otherwise similar to the Petitioner. The Petitioner has not, therefore, satisfied the criterion of 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.

Even when considering the Petitioner’s general descriptions of the proffered position’s duties, the evidence of record does not establish why a few related courses or industry experience alone is insufficient preparation for the proffered position. While a few related courses may be beneficial, or

¹⁰ USCIS “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the Petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the Petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

even required, in performing certain duties of the position, the Petitioner has not demonstrated 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.

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

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. As noted above, the Petitioner attested on the submitted LCA that the wage level for the proffered position is a Level I (entry-level) wage. Such a wage level is for a position which only requires a basic understanding of the occupation; the performance of routine tasks that require limited, if any, exercise of judgment; close supervision and work closely monitored and reviewed for accuracy; and the receipt of specific instructions on required tasks and expected results, and is contrary to a position that requires the performance of complex duties.¹¹

The Petitioner claims that the Beneficiary is well-qualified for the position, and references her qualifications. 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 did not sufficiently develop relative complexity or uniqueness as an aspect of the duties of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

¹¹ The issue here is that 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, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an 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 consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

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.

The Petitioner has not expressly asserted eligibility under this criterion. Although the Petitioner stated, on the H-1B petition, that it was established in 2002, it has not submitted evidence pertinent to anyone it employed in the position in the past or identified the person who performed the duties of the proffered position before the Petitioner hired the Beneficiary.

A first-time hiring for a position is not a basis for precluding a position from recognition as a specialty occupation. However, absent evidence pertinent to the educational credentials of the people who have previously performed the duties of the proffered position, it is unclear how an employer would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).¹²

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.

In the instant case, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. The duties of the proffered position, such as managing consulting services, arranging for residents to attend community programs, overseeing patient screening, selection, admission and program assignments, implementing injury and illness prevention programs, etc., contain insufficient indication of a nature so specialized and complex that

¹² While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the 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 degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

We again refer to our earlier comments and findings with regard to the implication of the Petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels) wage. That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties.¹³

Upon review of the totality of the record, the Petitioner has not established that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher 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).

E. The Case Law Cited by the Petitioner

1. *Tapis Int'l*

The Petitioner cites to *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000) which is often cited for the proposition that “[t]he United States District Court [in *Tapis*] has held that in positions where an employer requires a Bachelor's degree, but does not specify a field, the regulatory definition of specialty occupation may be satisfied by looking at a combination of education with experience in a specific field.”

Specifically, in *Tapis*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for “various combinations of academic and experience based training.” *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that “[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience.” *Id.* at 177.

We agree with the district court judge in *Tapis*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty, or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. Since there must be a close correlation between the required “body of highly

¹³ Again, 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*.

specialized knowledge” and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),” unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

Moreover, we also agree that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor’s degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor’s degree in that field. In other words, we do not find that *Tapis* stands for either (1) that a specialty occupation is determined by the qualifications of a beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of a beneficiary. A beneficiary’s credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560.

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term “specialty occupation” could not be expanded “to include those occupations which did not require a bachelor’s degree in the specific specialty.” Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214). More specifically, in responding to comments that “the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations,” the former INS stated that “[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor’s degree in the specific specialty, or its equivalent]” and, therefore, “may not be amended in the final rule.” *Id.*

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis*. 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, 719-20 (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.*

2. Residential Finance

Next, the Petitioner cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), which is often cited for the proposition that “[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.”

For the reasons just discussed, we agree that “[t]he knowledge and not the title of the degree is what is important.” For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks. It is important to note that in a subsequent case reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Fin. Corp.* See *Health Carousel, LLC v. U.S. Citizenship & Immigration Services*, No. 1:13-CV-23, 2014 WL 29591, 2014 WL 29591 (S.D. Ohio 2014).

The Petitioner has also furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.¹⁴ See *Matter of K-S-*, 20 I&N Dec. at 719-20.

3. Unpublished AAO Decisions

Finally, the Petitioner refers to unpublished decisions in which we determined that the positions proffered in those matters qualified as a specialty occupation. When “any person makes application for a visa or any other document required for entry, or makes application for admission, . . . the burden of proof shall be upon such person to establish that he is eligible” for such benefit. Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and

¹⁴ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director's decision was not appealed to us. 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 for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

inefficient, would also be a shift in the evidentiary burden in these proceedings from the Petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the Director nor our office was required to request and/or obtain a copy of the unpublished decisions cited by the Petitioner, and the Petitioner did not submit a copy of the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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-S-L-M- Corp.*, ID# 123137 (AAO Oct. 12, 2016)