



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

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

MATTER OF P-H- LTD.

DATE: JAN. 19, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a health and wellness spa with 10 employees, seeks to temporarily employ the Beneficiary as a spa healthcare manager 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, Vermont Service Center, denied the petition. The Director concluded the Petitioner did not establish that the proffered position qualifies as a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner asserts that the Director erred in denying the petition.

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

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.

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 H-1B petition, the Petitioner stated that the Beneficiary will serve as a “Spa Healthcare Manager.” In response to the Director’s request for evidence (RFE), the Petitioner provided the following job duties for the position:

- Plan and coordinate all daily operations, including holistic healthcare treatments and spa and recreation activities.
- Identifying needs of clients, recommending appropriate therapies, and organizing client appointments with therapists.
- Effectively administer and monitor staff and client schooling procedures to deliver quality health care and spa procedures for over 300 clients and yoga participants every month.
- Ensuring efficient delivery of holistic treatments.
- Promoting the spa’s naturopathic/holistic health education services.

The above duties will comprise about 40% of [the Beneficiary’s] time.

- Generating daily/monthly accounts and financial reports.
- Managing inventory and purchasing standards.
- Ensuring compliance and maintenance of equipment in good working order.

- Ensuring the company is meeting compliance standards for state licensing and health and fire department certification.

The above duties comprise about 15% of [the Beneficiary's] time.

- Developing the spa's marketing strategy and creating ongoing promotional activities that can stimulate clientele influx.
- Maintaining a strong menu of services with both exceptional artistic and aesthetic value.

The above duties comprise about 15% of [the Beneficiary's] time.

- Administering staff and client scheduling for maximum revenue generation and profitability and financial planning.
- Identifying trends, measuring productivity, and monitoring progress.
- Anticipating, identifying, and ensuring customer needs are satisfied in the best possible way and monitoring delivery of competitive, value-plus services to the customer.

The above duties comprise about 15% of [the Beneficiary's] time.

- Recruiting staff, including naturopathic/holistic health professionals, and performing staff evaluation to ensure professional workforce for the company's growth.
- Maintaining an up-to-date version of the spa procedure manual, ensuring compliance, and organizing staff meetings.

The above duties comprise about 15% of [the Beneficiary's] time.

According to the Petitioner, the position requires a bachelor's degree in healthcare administration or a related field.

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.¹ Specifically, the record does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.²

¹ Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

² The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. Although we may not discuss every document submitted, we have reviewed and considered each one.

A. First Criterion

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) 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.³

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 11-9111.⁴ The *Handbook* states the following about the educational requirements of such positions:

How to Become a Medical or Health Services Manager

Most medical and health services managers have at least a bachelor's degree before entering the field. However, master's degrees also 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 should 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

³ 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.

⁴ The Petitioner has designated the proffered position as a Level II position on the submitted Labor Condition Application (LCA), indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

services management, accounting and budgeting, human resources administration, strategic planning, law and ethics, health economics, and health information systems.

Id. at <http://www.bls.gov/ooh/management/medical-and-health-services-managers.htm#tab-4> (last visited Jan. 17, 2016).

Although the *Handbook* indicates that medical and health services managers “typically need at least a bachelor’s degree to enter the occupation” and that master’s degrees are “common and sometimes preferred,” the *Handbook* does not specify any particular field of study the bachelor’s degree must be in. It states 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, or business administration). Accordingly, the *Handbook* does not support the proposition that a bachelor’s degree in a specific discipline is the minimum requirement necessary to enter into the occupation. Rather, it indicates only that a bachelor’s degree, without any particular specialty, is the typical entry requirement. However, the requirement of a bachelor’s degree, without further specification, is inadequate to establish that a position qualifies as a specialty occupation. To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study or its equivalent. 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. See *Royal Siam Corp.*, *supra*, 484 F.3d at 147.

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. *Id.*⁵

⁵ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose 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.

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 *Handbook* further reports that professional certification is available within the medical and health services management profession. 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.⁶ 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 two years of experience in the health care field. Must be in support of patient care, as in 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 two 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.

⁶ For additional information regarding PAHCOM and its credentialing programs, see the Professional Association of Health Care Office Management website at <https://www.pahcom.com> (last visited Jan. 17, 2017).

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 and competence. Instead, PAHCOM stresses the importance of professional experience, along with a few courses in healthcare, business management, and information technology.

We also reviewed the AHIMA website regarding its health information management certification.⁷ 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:

- Successfully 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
- Successfully complete the academic requirements, at the master's level, of an HIM program accredited by CAHIIM and following a specific set of criteria; 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:

- Successfully 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 or to be HIM certified.

⁷ For additional information regarding AHIMA and its certification program, see the American Health Information Management Association website at <http://www.ahima.org/> (last visited Jan. 17, 2017).

Finally, we reviewed the ACHCA website regarding the Certified Assisted Living Administrator and Certified Nursing Home Administrator distinctions.⁸ 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 (CALA) distinction. These include possessing: (1) a high school diploma or General Education Diploma (G.E.D.) along with 6 years of full-time experience as an assisted living administrator/manager in an assisted living environment; (2) an associate's degree along with 4 years of full-time experience as an assisted living administrator/manager in an assisted living environment; or (3) a baccalaureate degree along with 2 years of full-time experience as an assisted living administrator/manager in an assisted living environment. 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.

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 the “Medical and Health Services Managers” occupational category normally required a baccalaureate degree (or higher) in a specific specialty, 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.

In response to the RFE, the Petitioner submitted a copy of the Occupational Information Network (O*NET) Online Summary Report for the “Medical and Health Services Managers” occupational category. In this matter, 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 Specific 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.

⁸ 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 Jan. 17, 2017).

Further, we find that, to the extent that they are described in the record of proceedings, the duties that the Petitioner ascribes to the proffered position indicate a need for a range of knowledge and abilities, such as coordinating daily operations, organizing client appointments, managing inventory, meeting compliance standards for state licensing, ensuring customer needs are satisfied, 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.

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 the 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, as previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) 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. Furthermore, 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 also did not provide any objective evidence to establish that a bachelor's degree in a specific specialty is required for similar medical and health services manager positions in its industry. A petitioner's unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly

when supporting documentary evidence would reasonably be available. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)); see also *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The Petitioner must support its assertions with relevant, probative, and credible evidence. See *Matter of Chawathe*, 25 I&N Dec. at 376.

For these reasons, the Petitioner has not 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.

In this matter, the evidence of record does not distinguish the proffered position as unique from or more complex than other healthcare manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. It does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the proffered position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Medical and Health Services Managers" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

To begin with, the record does not credibly demonstrate exactly what the Beneficiary will do that qualifies as unique or complex relative to other healthcare managers similarly placed in the industry. That is, while the Petitioner claims that the position involves focusing on "plan[ning] and coordinating all daily operations," "organizing client appointments," "managing inventory," "meeting compliance standards for state licensing," and "ensuring [that] customer needs are satisfied," the Petitioner does not demonstrate how the spa healthcare manager's duties require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them.

This is further evidenced by the LCA submitted by the Petitioner indicating that, relative to other positions located within the "Medical and Health Services Managers" occupational category, the Beneficiary would perform only moderately complex tasks that require limited judgment. Without further evidence, the evidence does not demonstrate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-

level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.⁹ For example, a Level IV (fully competent) position is designated by DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.” The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook’s* information that a bachelor’s degree in a specific specialty, or its equivalent, is not required for the proffered position.

The Petitioner claims that the Beneficiary is well-qualified for the position, and references his 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. 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) requires an employer to demonstrate that it normally requires a bachelor’s degree in a specific specialty, or its equivalent, for the position.

Here, the Petitioner states that it has “always required” its spa healthcare managers to hold at least a bachelor’s degree in healthcare administration or a related field. The Petitioner asserts that it previously employed a spa healthcare manager from December 2008 to February 2009, noting that he held a master’s degree in health administration and a bachelor’s degree in naturopathy.

First, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner’s reference to the Beneficiary’s particular education will not mask the fact that the position is not a specialty occupation. 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, supra*, 201 F.3d at 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

⁹ The issue here is that the Petitioner’s designation of this position as a Level II 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 II wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), such a 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.

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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, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, “To interpret the regulations any other way would lead to an absurd result.” *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any beneficiary with a bachelor’s degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

Regardless, even if we are to accept that the Petitioner’s employment of another spa healthcare manager for a few months is sufficient to demonstrate that it has “always required” a minimum of a bachelor’s degree in healthcare administration for the proffered position, it has not submitted sufficient evidence to substantiate the employment of this former manager and his educational credentials. For instance, the Petitioner states that the former spa healthcare manager’s former diplomas are “unavailable,” but provides no explanation for why this is the case. In lieu of documentary evidence of this former spa healthcare manager’s employment and his educational credentials, the Petitioner provides copies of his [REDACTED] page stating that he has a master’s degree in health administration and that he was employed with the Petitioner as a “health spa manager” for 3 months. However, this social media post only reflects the assertions of this employee, without any substantiating documentation. The Petitioner submits no other supporting documentation, such as its advertisements for the spa healthcare manager position or other personnel-related documentation to corroborate the former spa healthcare manager’s employment. Again, a petitioner’s unsupported statements are of very limited weight and normally will be insufficient to carry its burden of proof, particularly when supporting documentary evidence would reasonably be available. *See Matter of Soffici*, 22 I&N Dec. at 158, 165 (quoting *Matter of Treasure Craft of Cal.*, at 14 I&N Dec. 190; *see also Matter of Chawathe*, 25 I&N Dec. at 369, 376. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376.

As the Petitioner does not submit probative evidence that demonstrates the academic qualifications of individuals previously or currently employed in the proffered spa healthcare manager position, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).¹⁰

¹⁰ Although 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, supra*, 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

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 its appeal, the Petitioner asserts that the position requires the theoretical and practical application of a body of highly specialized knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The Petitioner references its use of naturopathy and holistic medicine to promote overall wellness in its clients.

However, for similar reasons we discussed under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we find that the record does not sufficiently develop relative specialization or complexity as an aspect of the proffered position. We 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 II wage, and hence one not likely distinguishable by relatively specialized and complex duties. We have also reviewed the Petitioner's description of duties for the proffered position, including the Petitioner's expanded descriptions submitted in response to the Director's RFE. While we understand that the Beneficiary may have knowledge of certain naturopathy and holistic medicine which would assist him in performing the duties of the position, the Petitioner has not sufficiently explained how these duties require the theoretical and practical application of a body of highly specialized knowledge, and the 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. In fact, it is not clear how the duties of this position would be different from any other medical and health services manager position. Further, it is reasonable to conclude that these positions would require knowledge of the particular medical specialty within which the manager works.

Upon review of the totality of the record, 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).

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. Here, that burden has not been met.

term "specialty occupation").

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ORDER: The appeal is dismissed.

Cite as *Matter of P-H- Ltd.*, ID# 239517 (AAO Jan. 19, 2017)