

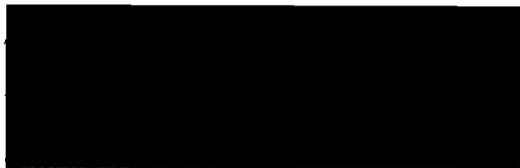
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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Date: **FEB 08 2012**

Office: CALIFORNIA SERVICE CENTER

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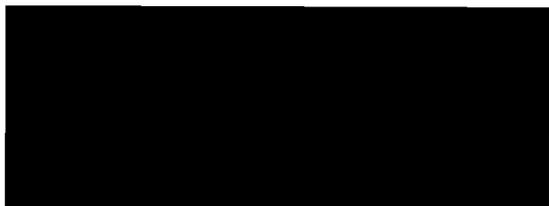
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

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

The petitioner claims to be a security services company with 10 employees and a gross annual income of \$86,000. It seeks to employ the beneficiary as a business development director and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements:

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and [(2)] which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the

minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) (hereinafter *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In the petition signed on May 5, 2010, the petitioner indicated that it wished to employ the beneficiary as a business development director for 20-40 hours per week. In the April 5, 2010, letter of support, the petitioner states that the proffered position’s duties include:

assessing the demand for products and services offered by [the petitioner] and its competitors[,] and identifying potential customers. [The] [d]uties also include developing pricing [and] strategies with the goal of maximizing [the petitioner's] profits and share of the market without compromising client satisfaction. Another crucial role of the position is monitoring trends that indicate the need for new products and services. The position also involves client retention activities that include coordinating the needs of clients, technical staff, and outside contractors and assisting with operational management, contractor coordination, and interfacing with clients as needed. Finally, the [b]usiness [d]evelopment [d]irector will initially supervise a staff of two salespersons.

The petitioner also indicates that the proffered position will initially be a part-time position, but it will transition to a full-time position as the business expands. The petitioner further indicates that the proffered position requires at a minimum a bachelor's degree in business administration.

The petitioner submitted a copy of the beneficiary's master's degree and graduate school transcripts establishing that she has a U.S. Master of Business Administration.

On May 19, 2010, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) a more detailed description of the work to be performed by the beneficiary for the entire requested period of validity; (2) a line-and-block organizational chart showing the petitioner's hierarchy and staffing levels; (3) evidence that the proffered position is a common position required by similarly sized organizations with similar annual incomes; (4) evidence to establish a degree requirement is common to the industry in parallel positions among similar organizations, such as job listings or advertisements; (5) copies of the petitioner's present and past job vacancy announcements; and (6) evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher, in a specific specialty to perform the duties of the proffered position.

On June 18, 2010, in response to the director's RFE, counsel for the petitioner broke down the day-to-day responsibilities of the proffered position as follows:

Duty	Percentage
Direct, plan, and implement the policies and objectives of the organization in accordance with the articles and resolutions of the Board of Directors	10%
Analyze operations to evaluate performance of the company and staff and to determine areas of cost reduction and program improvement or growth	10%
Confer with board members, managers, and staff members to establish policies and formulate plans	5%
Review financial statements and sales and activity reports to ensure that organization's goals and objectives are being met	10%
Direct and coordinate activities with respect to pricing and	5%

contracts	
Manage staff and contractors by preparing work schedules and assigning specific duties	20%
Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction	10%
Establish and implement departmental policies, goals, objectives, and procedures together with board members, managers, and staff	5%
Determine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes	5%
Determine equipment and services to be sold or leased, and set prices and credit terms, [sic] based on forecasts of customer demand	10%
Manage the contracting process and oversee subcontractors	10%

Counsel further indicated that once the position transitioned to full-time, the beneficiary would perform the following proffered duties:

Getting Information – Observing, receiving, and otherwise obtaining information from all relevant sources.

Monitoring and Controlling Resources – Monitoring and controlling resources and overseeing spending.

Communicating with Managers, Subordinates, and Contractors – Providing information to supervisors, co-workers, and subordinates by telephone, in written form, e-mail, or in person.

Developing Objectives and Strategies – Establishing long-range objectives and specifying the strategies and actions to achieve them.

Making Decisions and Solving Problems – Analyzing information and evaluating results to choose the best solution and solve problems.

Developing and Building Teams – Encouraging and building mutual trust, respect, and cooperation among team members.

Organizing, Planning, and Prioritizing Work – Developing specific goals and plans to prioritize, organize, and accomplish your [sic] work.

Performing Administrative Activities – Performing day-to-day administrative tasks such as maintaining information files and processing paperwork.

Providing Consultation and Advice to Others – Providing guidance and expert advice to management or other groups on technical, systems, or process-related topics.

Selling or Influencing Others – Convincing others to enter business relationships with the organization and representing the organization in public functions.

In addition, counsel submitted four job vacancy announcements in response to the RFE.

The director denied the petition on June 26, 2010.

On appeal, counsel states that the director erred by misapplying the *Handbook* and by solely relying on the *Handbook* to determine if the proffered position is a specialty occupation. Counsel further claims that the proffered position is a specialty occupation as the position is unique, complex, and requires someone with a bachelor's degree in business administration. In addition, counsel submitted two job vacancy announcements.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business administration" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO will now look at the *Handbook*, an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

The AAO agrees with the director and finds that the duties described by petitioner reflect the duties of a marketing manager. The “Advertising, Marketing, Promotions, Public Relations, and Sales Managers” chapter of the 2010-2011 edition of the *Handbook* describes the duties of a marketing manager as follows:

Advertising, marketing, promotions, public relations, and sales managers coordinate their companies' market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. In small firms the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities. In large firms, which may offer numerous products and services nationally or

¹ 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.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/ocol>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

even worldwide, an executive vice president directs overall advertising, marketing, promotions, sales, and public relations policies.

* * *

Marketing managers. Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 Ed., "Advertising, Marketing, Promotions, Public Relations, and Sales Managers," <http://www.bls.gov/oco/ocos020.htm> (accessed Jan. 25, 2012).

Under the section on "Training, Other Qualifications, and Advancement," the *Handbook* states:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs, but many employers prefer college graduates with experience in related occupations.

For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

* * *

Most advertising, marketing, promotions, public relations, and sales management positions are filled through promotions of experienced staff or related professional personnel. For example, many managers are former sales representatives; purchasing agents; buyers; or product, advertising, promotions, or public relations specialists. In small firms, in which the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Id. Because the *Handbook* indicates that working as a marketing manager does not normally

require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, the *Handbook* does not support the proffered position as being a specialty occupation. It only reports an employer preference for persons with a bachelor's or master's degree in business administration with an emphasis on marketing. Employer preferences do not equate to employers' normal requirements. Therefore, it does not demonstrate that a bachelor's degree in a specific specialty is required and does not, therefore, demonstrate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted copies of six advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the security services industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a specific specialty. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, the advertisements are for positions in different industries and dissimilar organizations

and, thus, they cannot be found to be parallel positions. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.³

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." Here, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of business development director.

Specifically, even though the petitioner and its counsel claim that the proffered position's duties are so complex and unique that a bachelor's degree is required, the petitioner failed to demonstrate how the duties of the business development director, as described, require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex or unique. While one or two courses in marketing may be beneficial in performing certain duties of a business development director position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, are required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other marketing manager positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred courses acceptable for marketing manager positions, including coursework that may lead to degrees not in a specific specialty or not in a specific specialty directly related to the field of marketing. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than marketing management or other closely related positions that can be performed by persons

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just six job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar security services companies. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of business development director for a 10-person security services company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of business development director is so complex or unique relative to other marketing manager positions 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).

With regard to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner has never hired other persons for the proffered position. The beneficiary is the only person that has held the proffered position. The AAO notes that the petitioner and counsel claim repeatedly that the duties of the business development director position can only be employed by an individual with at least a bachelor's degree or higher in business administration. While a petitioner may believe or otherwise assert that a proffered position requires a degree, 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with a degree in a specific specialty.⁴

⁴ In response to the RFE, counsel states that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other marketing manager positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Even if the proffered position were a specialty occupation, which it is not, the beneficiary would not qualify to perform the duties of that specialty occupation based on her education credentials, because it has not been demonstrated that the beneficiary possesses a degree in a specialized field of study.

Specifically, while the beneficiary possesses a U.S. Master of Business Administration degree, it fails to designate any specific business specialty. The AAO notes that a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* Thus, even if the petitioner had demonstrated that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, the petition could not be approved, because the petitioner failed to demonstrate that the beneficiary has taken courses or gained knowledge considered to be a realistic prerequisite to any specific specialty within the field of business. For this additional reason, the petition must be denied.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.

independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).