

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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**

PUBLIC COPY



D2

Date: **MAR 08 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 director of the California Service Center denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be an Ohio corporation with 26 employees engaged in large-scale repair and refurbishment of display products. It seeks to employ the beneficiary as a budget analyst 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 concluding that the evidence is insufficient to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree in a specific specialty and, therefore, the proffered position does not meet any of the criteria for classification as a specialty occupation.

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

The AAO will therefore consider whether the 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] 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, the position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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 this matter, the petitioner seeks the beneficiary’s services as a budget analyst. The petitioner’s support letter dated September 4, 2009 and submitted with the initial filing indicates the proffered position would require the beneficiary to perform the following duties:

[P]erforming budget financial analysis/forecast and preparing budget finance-related quantitative and narrative reports and memorandums. He/she must participate in the company's budget development and implementation of goals, objectives, policies, grants, and priorities for various operations. He/she must identify resources needs, recommend and implement policies and procedures, and recommend and prepare budget drafts for proposed revisions. He/she must also participate in the development and administration of all programs, forecast additional funds needed for staffing, equipment, materials and supplies, direct the monitoring of and approve expenditures and recommend adjustments. Finally, he/she must perform cost analysis of various operations to ensure that resources are applied in an effective and efficient manner.

The support letter goes on to state that the position normally requires a minimum of a bachelor's degree or equivalent in business administration or related field. The petitioner submitted the beneficiary's degree of Bachelor of Science in Business Administration and transcripts from The Ohio State University.

The submitted LCA was certified for a "Budget Analyst" to work at the petitioner's office in Batavia, OH at a wage of \$22.42 per hour.¹

On October 13, 2009, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation.

In response to the director's RFE, counsel asserted that according to the *Occupational Outlook Handbook (Handbook)*, 2008-09 edition, at the very least a bachelor's degree in business, accounting, finance or a similar degree must be attained to be proficient in a budget analyst position. Counsel also submitted the petitioner's organizational chart showing its 11 management employees and their positions as well as five advertisements as evidence that a bachelor's degree in a specific specialty is common to the petitioner's industry in positions that are parallel to the proffered position and located in organizations that are similar to the petitioner.

The response also includes a letter dated November 6, 2009 from the petitioner. In this letter, the petitioner stated that due to the tremendous growth within the petitioning entity, with business demands increasing at break neck speed, the need for a competent budget analyst professional is no longer a desire but a necessity. The petitioner provided a more detailed description of duties for the proffered position. According to the letter, the beneficiary would be employed as a budget analyst within the petitioner's accounting and finance department on a full-time, albeit temporary basis. The beneficiary's duties are basically divided into the following three aspects: budget preparation (the beneficiary will spend approximately fifty percent (50%) of his work week functioning in this capacity), fiscal management and analysis (the beneficiary will spend approximately thirty percent

¹ This is the prevailing wage at Level I of Budget Analysts (SOC code: 13-2031) in Cincinnati-Middletown, OH-KY-IN MSA for 7/2008 - 6/2009. See <http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-2031&area=17140&year=9&source=1> (last accessed February 27, 2012)

(30%) of his work week functioning in these duties), and communication with executives (the beneficiary will spend approximately twenty percent (20%) of his work week functioning in this capacity).

The director denied the petition, finding that the position did not meet any of the criteria for classification as a specialty occupation. Specifically, the director determined that without evidence showing that the petitioner's business currently supports an accountant or financial staff, there is no reasonable expectation that the petitioner could utilize the beneficiary in the capacity as a budget analyst exclusively in the development, analysis, and execution of budgets, which are used to allocate current resources and estimate future financial requirements, for the requested three year validity period. The director therefore concluded that the record is insufficient to establish a credible offer as a budget analyst and the evidence is insufficient to show that the job offered could not be performed by an experienced individual whose education falls short of a baccalaureate degree.

On appeal, counsel for the petitioner contends that the petitioner's organizational chart submitted in response to the director's RFE indicates that the petitioner holds a *bona fide* accountant, and that the nature of the specific duties of the proffered position are both specialized and complex that the knowledge required to perform the duties is generally associated with the attainment of a baccalaureate or higher degree.

To make its determination whether the proffered position, as described in the initial petition and in the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO turns first 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 *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)).

It is important to note that the director concluded in her decision that the petitioner's claim that it requires a budget analyst is merely an exaggeration, because the evidence does not indicate that the petitioner's business currently supports an accountant. On appeal, counsel for the petitioner argues that the director erred in reaching that conclusion, because the petitioner's organizational chart submitted in response to the director's RFE evidences that the petitioner holds a *bona fide* accountant. The AAO concurs with the director's statement that when determining whether a particular job qualifies as a specialty occupation, USCIS does not use a title by itself. However, the AAO does not find that the proposed duties for the proffered position involve any duties that are

normally performed by an accountant. Therefore, whether the petitioner has employed an accountant is irrelevant in determining whether the proffered position is a specialty occupation.

However, the AAO notes that the director correctly found that the record is insufficient to establish a credible offer as a budget analyst. In response to the director's RFE, the petitioner stated that its gross annual income was \$1,141,509 in 2008 and, due to its growing business demands, it is in need of a budget analyst. However, the AAO notes that the petitioner's net income for that year was negative \$667,428. With such a huge negative net income, the AAO cannot find any necessity for the petitioner to expand its business with at least six new employees, including the instant beneficiary.²

To prove its job offer is *bona fide*, the petitioner must also demonstrate that it is capable of paying the proffered wage to the beneficiary of the petition at the time of the petition is filed. With negative net income in 2008, which remains negative when not factoring in general depreciation deductions, the AAO cannot find, absent evidence to the contrary, that the petitioner had demonstrated its realistic ability to comply with the law and pay at least the prevailing wage to all of those beneficiaries including the instant beneficiary for whom the petitioner filed nonimmigrant petitions in 2009.

As of the proffered position's status, the petitioner provided inconsistent information. The petitioner clearly indicated that the proffered position is a part-time position by (1) checking "No" to the question "Is this a full-time position?", (2) typing in 30 as the hours per week the beneficiary would work in item 6 of Part 5. Basic information about the proposed employment and employer on Form I-129, and (3) indicating the rate of pay per year as \$33,000.00 on item 6 of Part A on Form I-129 H-1B Data Collection Supplement.³ However, in the letter dated November 6, 2009 submitted in response to the director's RFE, the petitioner states that "Our company has offered to employ [the beneficiary] as a team member of our finances department as a Budget Analyst on a full time, albeit a temporary basis." This letter also states that the beneficiary will fulfill a specialty occupation position for the petitioning company enterprise as a budget analyst within its accounting and finances department.

While the petitioner's organizational chart submitted in response to the director's RFE indicates that the beneficiary in a budget analyst position and another alien employee in an accountant position would work under the CFO, it does not indicate that there is any accounting and finance department or finance department within that organization. Further, as the director correctly pointed out, the petitioner listed management employees only on the organizational chart. However, 11 management employees within a business entity with only 26 employees indicates an extremely high ratio of management to lower level workforce employees which casts doubt as to the actual positions and

² The record does not contain any evidence showing how many new employees the petitioner hired in 2009, however, USCIS records show that the petitioner filed seven H-1B petitions and at least five of them were approved.

³ The underlying Labor Condition Application (LCA) indicates that the rate of pay the petitioner offered and the prevailing wage in this matter is \$22.42 per hour. Based on working 30 hours per week, 52 weeks a year, the beneficiary's approximate annual compensation should be approximately \$34,975.20.

duties performed by each individual. Despite these discrepancies, the record does not contain any documentary evidence, such as the petitioner's personnel records, its employees' payroll records, etc., to support or otherwise corroborate the organizational chart. It is incumbent upon the petitioner to resolve any inconsistencies in the record by 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). Therefore, the AAO cannot give the petitioner's organizational chart full evidentiary weight in determining whether the job offer of the proffered position to the beneficiary is bona fide.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). For the reasons discussed above, the AAO concurs with the director's finding that the record is insufficient to establish a credible offer as a budget analyst. Accordingly, the AAO shall not disturb the director's denial of the petition.

Nevertheless, the AAO will continue its analysis to determine whether the proffered position, as described, qualifies as a specialty occupation. To that end and as noted above, the petitioner quoted the *Handbook* under "Budget Analysts" to support its assertion that a budget analyst is a specialty occupation. The petitioner claimed the proffered position as a budget analyst on the LCA and obtained the prevailing wage of a Level I budget analyst (SOC/O*NET code: 13-2031.00) for the position of business analyst for the petitioner. The *Handbook*, 2010-11 ed., published by the U.S. Dept. of Labor, Bureau of Labor Statistics and available at <http://www.bls.gov/oco/ocos003.htm> (last accessed February 27, 2012), describes "Budget Analysts" as follows (emphasis added):

Budget analysts help organizations allocate their financial resources. They develop, analyze, and execute budgets, as well as estimate future financial needs for private businesses, nonprofit organizations, and government agencies. In private sector firms, a budget analyst's main responsibility is to examine the budget and seek new ways to improve efficiency and increase profits. In nonprofit and governmental organizations, which usually are not concerned with profits, analysts try to find the most efficient way to distribute funds and other resources among various departments and programs.

In addition to managing an organization's budget, analysts are often involved in program performance evaluation, policy analysis, and the drafting of budget-related legislation. At times, they also conduct training sessions for company or government personnel regarding new budget procedures.

At the beginning of each budget cycle, managers and department heads submit operational and financial proposals to budget analysts for review. These plans outline the organization's programs, estimate the financial needs of these programs, and propose funding initiatives to meet those needs. Analysts then examine these budget estimates and proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives. Sometimes they

employ cost-benefit analyses to review financial requests, assess program tradeoffs, and explore alternative funding methods. They also examine past budgets and research economic and financial developments that affect the organization's income and expenditures.

After the initial review process, *budget analysts consolidate individual departmental budgets into operating and capital budget summaries. These summaries contain statements that argue for or against funding requests. Budget summaries are then submitted to senior management, or as is often the case in government organizations, to appointed or elected officials. Budget analysts then help the chief operating officer, agency head, or other top managers analyze the proposed plan and devise possible alternatives if the projected results are unsatisfactory. The final decision to approve the budget usually is made by the organization head in a private firm, or by elected officials, such as State legislators, in government.*

Throughout the year, analysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual spending, budget analysts may write a report explaining the variations and recommending revised procedures. To avoid or alleviate deficits, budget analysts may recommend program cuts or a reallocation of excess funds. They also inform program managers and others within the organization of the status and availability of funds in different accounts.

Data and statistical analysis software has greatly increased the amount of data and information that budget analysts can compile, review, and produce. Analysts use spreadsheet, database, and financial analysis software to improve their understanding of different budgeting options and to provide accurate, up-to-date information to agency leaders. In addition, many organizations are beginning to incorporate Enterprise Resource Planning (ERP) programs into their budget-making process. ERP programs can consolidate all of an organization's operating information into a single computer system, which helps analysts estimate the effects that a budget alteration will have on each part of an organization.

As noted above, while the *Handbook* states that in private sector firms, a budget analyst's main responsibility is to examine the budget and seek new ways to improve efficiency and increase profits, the petitioner's proposed duties for the proffered position focus on budget preparation, i.e., that the beneficiary will spend 50% of his time on budget preparation. However, the proposed duties are basically covered by the duties described in the section of Budget Analysts in the *Handbook* as it states that "Budget analysts help organizations allocate their financial resources. They develop, analyze, and execute budgets, as well as estimate future financial needs for private businesses." Therefore, the AAO agrees with the director that the duties set forth by the petitioner for the proffered position most closely resemble that of the position described in the section of Budget Analysts in the *Handbook*.

Although the AAO agrees that the proffered position as described is best classified as a budget analyst, the director erred in concluding that the position of budget analyst as defined in the *Handbook* qualifies as a specialty occupation. Consequently, this part of the director's decision will be withdrawn. That said, the AAO agrees with the director, however, that the petitioner has failed to demonstrate that the proffered position constitutes a specialty occupation and therefore affirms the director's decision to deny the petition.

The overarching reason for the AAO's dismissal of this appeal would be that, even if the petitioner had established that it offered a *bona fide* job offer to the beneficiary, the proposed duties as described in the record do not establish that performance of the proffered position requires the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, as required by the H-1B specialty occupation provisions of the Act and their implementing regulations. In this regard, the AAO has considered all of the assertions of counsel in support of the requirements of the position, but finds that they are not supported by sufficient documentation in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). As stated previously, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

With respect to the education and training requirements for "Budget Analysts," the *Handbook* states as follows:

A bachelor's degree usually is the minimum educational requirement for budget analyst jobs, but some organizations prefer or require a master's degree. Entry-level budget analysts usually begin with limited responsibilities but can be promoted to intermediate-level positions within 1 to 2 years, and to senior positions with additional experience.

Education and training. *Employers generally require budget analysts to have at least a bachelor's degree, but some prefer or require a master's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level budget analyst position. State and local governments have varying requirements, but usually require a bachelor's degree in one of many areas, including accounting, finance, business, public administration, economics, statistics, political science, or sociology. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful, regardless of the prospective budget analyst's major field of study. Some States may require a master's degree. Occasionally, budget-related or finance-related work experience can be substituted for formal education.*

In most organizations, budget analysts usually learn the job by working through one complete budget cycle. During the cycle, which typically lasts 1 year, analysts become familiar with the various steps involved in the budgeting process. Many budget analysts also take professional development classes throughout their careers.

The *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos003.htm> (last accessed February 27, 2012) (emphasis added).

Even though the *Handbook* states that a bachelor's degree is usually required for budget analysts, the bachelor's degree is not required to be in a specific specialty as required under Section 214(i)(1) of the Act. 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. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, a budget analyst does not qualify as a specialty occupation under the first criterion.

As the record's descriptions of the proposed duties are limited to generic and generalized functions, which are normally performed by management analysts pursuant to descriptions in the *Handbook*, and based on the fact that the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this occupation, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Again, 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).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. In response to the RFE, counsel for the petitioner submitted five job advertisements. The advertisement for Contracts Pricing and Budget Analyst place by [REDACTED] indicates that a bachelor's degree in an associated discipline is required and the company is in the engineering services industry. The second advertisement is for Budget Analyst, placed by [REDACTED]. It requires a four year degree and BA/BS in finance or related field is preferred. The

third advertisement is also for Budget Analyst, but placed by [REDACTED] in the computer software consulting industry. This advertisement requires a graduate degree but does not specify the major of the required degree. The fourth is for Financial Budget Analyst, placed by [REDACTED]. It shows that the employer is in the accounting and auditing services and computer software/IT services industries and that this Virginia corporation does not set forth any educational requirement for the position. The last one is for Finance and Budget Analyst, placed by [REDACTED]. The advertisement shows that the employer is in the food and beverage production industry and requires a bachelor's degree in accounting or finance at minimum.

Upon review, only one advertisement requires a bachelor's degree in a specific specialty. Further, none of these companies except for [REDACTED] are in the petitioner's industry. In addition, the advertisements do not contain any description about the employers upon which the AAO can determine whether they are similar to the petitioner. However, it is reasonably concluded without further information provided that [REDACTED] is not similar to the petitioner from the point of size, organizational structure, products, and services. Accordingly, the advertisements provided are not evidence of a common degree-in-a-specific-specialty requirement in positions in the same industry that are both parallel to the proffered position and located in organizations similar to the petitioner. Therefore, the petitioner failed to demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has 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." To begin with and as discussed previously, the petitioner itself does not require at least a baccalaureate degree or its equivalent in a specific specialty. In addition, the petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Furthermore, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of budget analyst.

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 budget analyst duties 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 and unique.

Therefore, the evidence of record does not establish that this position is significantly different from other budget analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for budget analyst 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 budget analyst or other closely related positions that can be performed by persons 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

budget analyst is so complex or unique relative to other budget analyst 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).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. Although the petitioner asserted in its September 4, 2009 support letter that, due to the nature of the duties performed by the budget analyst, the position normally requires a minimum of bachelor's degree or equivalent in business administration or related field, the petitioner provided no information about its normal education requirements for the position. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴

Further, in this matter the petitioner only claims to require a bachelor's degree in business administration as a minimum educational requirement for the proffered position. It must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business administration or a related field" 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.

⁴ 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").

See Royal Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007).⁵

Again, 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.

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. In response to the director's RFE and on appeal, counsel for the petitioner argued that the detailed description of the job duties was sufficiently specified to indicate ample complexity to meet the fourth element of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel stated that the comprehensive depiction of the beneficiary's budget analyst position does not appear to be either vague or generic, considering the provided descriptions of actual duties to be performed by the beneficiary on a day-to-day basis with a percentage of time to be spent on each duty. Counsel further claims that the ability to accurately formulate, institute and analyze the petitioner's budget, certainly displays a specialized knowledge gleaned from a related bachelor's degree from a university as a mandatory prerequisite. In consideration of the demanding duties to be tended to by the beneficiary, which also include complex and data analysis, advanced fiscal book keeping and intimate familiarity with the petitioner's instituted budget and financial frameworks, the nature of said duties, according to counsel, are almost always associated with a bachelor's or higher degree.

However, merely providing a description of duties that is not vague and generic is insufficient to establish that the particular position is so complex or unique that it qualifies for a specialty occupation. As previously quoted, according to the *Handbook*, helping organizations allocate their financial resources, including developing, analyzing, and executing budgets, as well as estimating future financial needs for private businesses, are normal duties for a budget analyst. In addition to managing an organization's budget, analysts are often involved in program performance evaluation, policy analysis, and the drafting of budget-related legislation. Budget analysts use spreadsheet,

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.

database, and financial analysis software to improve their understanding of different budgeting options and to provide accurate, up-to-date information to agency leaders. Budget analysts in many organizations use Enterprise Resource Planning (ERP) programs into their budget-making process and estimate the effects that a budget alteration will have on each part of an organization. Again, these are normal duties for budget analyst positions, which the *Handbook* does not indicate require at least a bachelor's or higher degree in a specific specialty or its equivalent.

The record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. Neither the petitioner nor its counsel has provided evidence to distinguish the proffered position as unique from or more complex than budget analyst positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent. It is further noted that, according to the petitioner's LCA, the proffered position is not a senior position performing duties much more specialized and complex than what entry-level budget analysts usually do. More specifically, the LCA provided in support of the instant petition lists a Level I prevailing wage level for budget analysts in Los Angeles–Long Beach–Glendale, California. As such, the beginning level or entry-level position offered to the beneficiary cannot be found to require the performance of duties so specialized and complex that a bachelor's or higher degree in a specific specialty would be required for entry into that position.

Relative complexity is not sufficiently developed by the petitioner and, absent evidence to the contrary, the duties of the proposed position are not so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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. Section 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.