



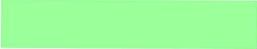
U.S. Citizenship
and Immigration
Services

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DATE: **JUL 16 2013**

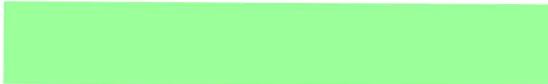
OFFICE: CALIFORNIA SERVICE CENTER

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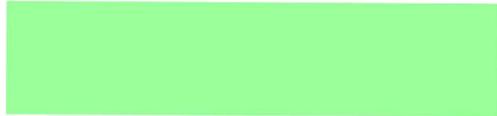
Petitioner:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director 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.

On the Form I-129 visa petition, the petitioner describes itself as a real estate consulting firm. In order to employ the beneficiary in what it designates as a Valuation & Development Analyst position, the petitioner seeks to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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 which [(2)] 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). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Real Estate Appraiser position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2021, Appraisers and Assessors of Real Estate from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a Master of Arts degree in real estate from the [REDACTED]. Counsel also provided, *inter alia*, (1) a letter, dated April 2, 2012, from the petitioner's senior vice president; and (2) six vacancy announcements.

In his April 2, 2012 letter, the petitioner's vice president stated that the following are the duties of the proffered position:

1. Consult with clients directly or indirectly to ascertain real estate investment goals, to isolate key client holdings, and to identify strategies for expansion or (re-) development (15%)
2. Research current client property holdings. Determine if current client holdings are subject to any limits on use such as easements, zoning laws, etc. Research potential limits on expansion or (re-) development such as easements, zoning laws, etc. (10%)
3. Research economic and business trends of the neighborhood of client holdings and sector of client holdings (e.g., commercial, residential, governmental, etc.) and for the trends related to expansion or (re-) development (e.g., infrastructure development, demographic shifts in the neighborhood, etc.) (10%)
4. Consult public and proprietary tools to determine current value of client holdings. Adjust value for any uncovered limits on use. Adjust value in light of economic and business trends. Use the modified value of current client holdings to determine probable value of holdings under the identified strategies for expansion or (re-)

- development. Adjust values in light of uncovered limits on use and in light of economic and business trends. (10%)
5. Determine current tax assessment on current client holdings. Calculate probable tax assessment on holdings under differing expansion or (re-) development strategies. (10%)
 6. Consult public and propriety [sic] tools to estimate potential residential and commercial rental income under differing expansion or (re-) development strategies. (10%)
 7. Estimate costs involved with realizing expansion or (re-) development strategies. Estimate probable loans the client will need in order to realize expansion or (re-) development strategies.
 8. Use information and estimates to evaluate the various expansion or (re-) development strategies. Identify key steps to be taken, such as property to be acquired, property to be divested, time and manner of acquisition or divestment, etc. Prepare report of recommendations summarizing current value of holdings, potential value of holdings under expansion or (re-) development strategies[], and actions needed to be taken in order to maximize profit. Integrate client investment goals into analyses and recommendations. (25%)

The petitioner's senior vice president also stated:

For this position, we require a candidate with at least a Bachelor of Science degree or its equivalent in real estate, finance/accounting, or a closely-related area. The knowledge and skills required to perform the above duties are so specialized and complex that they can only be obtained from an institute of higher learning or its equivalent. This requirement is standard for the industry. Most of [the petitioner's] past and current employees have held Master [sic] degrees in one or more professional fields related to real estate.

The petitioner's senior vice president observed that, in addition to having been awarded a master's degree in real estate from the [REDACTED] the beneficiary was then working on a master's degree in accounting at the same institution.

On August 16, 2012, the service center issued an RFE in this matter. The evidence the service center requested pertained to whether the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) an additional description of the proffered position, and (2) nine additional vacancy announcements

The additional position description describes the following duties of the proffered position:

- Research and gather information on investment trends with local markets to help establish appropriate capitalization rates and investment return targets.
- Analyze areawide demographic, socioeconomic, and real estate market trends affecting real estate development opportunities and patterns.
- Analyze revenue streams of income producing properties using discounted cash flow, internal rate of return, net present value and similar tools of comparative evaluation.
- Prepare cash flow spreadsheets using rents and expenses documented in the local market.
- Assist with writing project reports.
- Assist with identifying business opportunities, including preparing business proposals in response to requests for proposals.
- Assist in the management or [sic] [the petitioner's] rental housing market databases and models by working with program manager to:
 - Review results of multivariate regression analysis to assess realism of results.
 - Make adjustments to the model required by unique characteristics of local markets.
 - Identify opportunities to optimize performance of the existing databases and models.
 - Identify additional opportunities for expansion of the databases and models.

That position description also states that the proffered position requires a "Bachelor's degree in real estate, finance, economics, or a related field."

In his own letter of September 6, 2012, counsel asserted that, although the LCA submitted states that the proffered position corresponds to SOC code and title 13-2021, Appraisers and Assessors of Real Estate, the proffered position may still qualify as a specialty occupation position notwithstanding that other positions under that code and title do not.

The director denied the petition on September 24, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director observed that the *Handbook* does not support the proposition that real estate appraiser positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, counsel observed that the proffered position requires both real estate valuation and analysis of both residential and commercial properties. Counsel asserted that USCIS had incorrectly interpreted the word "normally" in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to mean "always," and had improperly focused on a single item of evidence, the *Handbook*. Counsel also

asserted that the evidence submitted is sufficient to show that the proffered position qualifies as a specialty occupation position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding. In addressing these criteria, the AAO is mindful of counsel's assertion that the proffered position may qualify as a specialty occupation position, notwithstanding that other real estate appraiser and assessor positions may not. The AAO observes that, pursuant to the salient regulation, the petitioner is free to demonstrate either that all real estate appraiser positions qualify as specialty occupation positions, or that, notwithstanding that some, or even most, real estate appraiser and assessor positions may not qualify as specialty occupation positions, the proffered position does so qualify.

However, counsel's argument, made in response to the RFE in this matter, might also be read to assert that the petitioner is free to demonstrate that the proffered position is not a real estate appraiser position as described in the *Handbook*, and that it qualifies as a specialty occupation position. In that case, however, the visa petition would be denied as not supported by a corresponding LCA. See 8 C.F.R. § 214.2(h)(4)(i)(B)(1) and 20 C.F.R. § 655.705(b). That is, if the proffered position in the instant case does not fall within the SOC code and title 13-2021, Appraisers and Assessors of Real Estate, it may not be approved, whether or not it qualifies as a specialty occupation position.

In its analysis of the specialty occupation issue, the AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2021, Appraisers and Assessors of Real Estate from O*NET. The *Handbook* describes Appraisers and Assessors of Real Estate positions as follows:

What Appraisers and Assessors of Real Estate Do

Appraisers and assessors of real estate estimate the value of real property—land and the buildings on that land— before it is sold, mortgaged, taxed, insured, or developed.

Duties

Appraisers and assessors of real estate typically do the following:

- Verify legal descriptions of real estate properties in public records

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Inspect new and existing properties, noting unique characteristics
- Photograph the interior and exterior of properties
- Use “comparables,” or similar nearby properties, to help determine value
- Prepare written reports on the property value
- Prepare and maintain current data on each real estate property

Appraisers and assessors work in localities that they are familiar with so that they know any environmental or other concerns that may affect the property's value.

Appraisers typically value one property at a time, and they often specialize in a certain type of real estate. For example,

- **Commercial appraisers** specialize in property used commercially, such as office buildings, stores, and hotels.
- **Residential appraisers** focus on appraising property in which people live, such as duplexes and condominiums, and appraise only those that house one to four families.

When estimating a property's value, appraisers note unique characteristics of the property and surrounding area, such as a noisy highway nearby. They also consider the condition of a building's foundation and roof or any renovations that may have been done. In addition to photographing the outside of the building to document its condition, appraisers might also photograph a certain room or feature. After visiting the property, the appraiser estimates the value of the property by considering things such as comparable home sales, lease records, location, view, previous appraisals, and income potential. During the entire process, appraisers meticulously record their research, observations, and methods used in calculating the property's value.

Assessors mostly work for local governments and value properties for property tax assessments. Unlike appraisers, who generally focus on one property at a time, assessors often value an entire neighborhood of homes at once by using mass appraisal techniques and computer-assisted mass appraisal systems.

Assessors must be up-to-date on tax assessment procedures. Taxpayers sometimes challenge the assessment because they feel they are being charged too much for property tax. Assessors must be able to defend the accuracy of their property assessments, either to the owner directly or at a public hearing.

Assessors also keep a database of every property in their jurisdiction, identifying the property owner, assessment history, and size of the property, as well as property maps detailing the property distribution of the jurisdiction.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Appraisers and Assessors of Real Estate," <http://www.bls.gov/ooh/business-and-financial/appraisers-and-assessors-of-real-estate.htm#tab-2> (last visited July 3, 2013).

The duties the petitioner's senior vice president attributed to the proffered position and the duties described in the separate description of the position submitted in response to the RFE are all consistent with the duties of appraisers and assessors of real estate as described in the *Handbook*, and, more particularly, with the duties of commercial real estate appraisers as therein described. On the balance, the AAO finds that the proffered position is a commercial real estate appraiser position as described in the *Handbook*.²

The *Handbook* states the following about the educational requirements of real estate appraiser and assessor positions:

How to Become an Appraiser or Assessor of Real Estate

The requirements to become a fully qualified appraiser or assessor are complex and vary by state and, sometimes, by the value or type of property. In general, most appraisers of residential real property must have at least an associate's degree, while appraisers of commercial real property must have at least a bachelor's degree. In some localities, appraisers may qualify with a high school diploma. Employers generally require these candidates to take basic appraisal courses, complete on-the-job training through an apprenticeship, and work enough hours to meet the requirements for appraisal licenses or certificates. In addition, both appraisers and assessors must be licensed or certified, but requirements vary by state. Check with your state's licensing board for specific requirements.

Education and Training

Although requirements vary by state, appraisers of residential real property usually must have at least an associate's degree, and appraisers of commercial property usually must have at least a bachelor's degree. In practice, however, most have a bachelor's degree. Courses in subjects such as economics, finance, mathematics, computer science, English, and business or real estate law can be very useful for prospective appraisers and assessors.

For assessors, most states set education and experience requirements that an assessor must meet to practice. A few states have no statewide requirements; instead, each locality sets the standards. In some localities, candidates may qualify with a high school diploma. Employers generally require these candidates to take basic appraisal

² The AAO reiterates that if the proffered position were not consistent with an appraiser or assessor position, the visa petition would be denied on other grounds.

courses, complete on-the-job training through an apprenticeship, and work enough hours to meet the requirements for appraisal licenses or certificates.

Licenses and Certification

Federal law requires that most appraisers have state certification. There is no such federal requirement for assessors, although some states require certification.

Appraisers generally value one property at a time, while assessors value many at once, but both occupations use similar methods and techniques. As a result, assessors and appraisers tend to take the same courses for certification. In addition to passing a statewide examination, candidates must usually complete a set number of on-the-job hours.

The level of certification determines what type of property a person may appraise. The two federally required certifications are:

- Certified Residential Real Property Appraiser
- Certified General Real Property Appraiser

Being a Certified Residential Real Property Appraiser is the minimum requirement to appraise a residential property with a loan amount over \$250,000 or any other type of property even if the loan amount is less than \$250,000. To get this certification requires:

- an associate's degree or 21 units of continuing education
- 200 hours of appraiser-specific classroom training
- 2,500 hours of work experience over at least 2 years

Being a Certified General Real Property Appraiser permits a person to appraise any property of any type and any value. To get this certification requires:

- a bachelor's degree or 30 units of continuing education
- 300 hours of appraiser-specific classroom training
- 3,000 hours of work experience over at least 2½ years

Most states offer a third certification: the Licensed Residential Real Property Appraiser. With this certification, appraisers may appraise noncomplex one-to-four unit residences with a value of less than \$1,000,000 and complex one-to-four unit residences with a value of less than \$250,000. To get this certification requires:

- 150 qualifying education hours
- 2,000 hours of on-the-job training over at least 1 year

For all of these certifications, candidates must:

- have 15 hours of classroom instruction on the Uniform Standards of Professional Appraisal Practice
- pass an exam

In most states, people who are working on the requirements for licenses or certification as an appraiser are considered to be trainees. Training programs vary by state, but they usually require candidates to take at least 75 hours of specified appraiser education before applying for a job as a trainee.

Unlike appraisers, assessors have no federal requirement for certification. In states that mandate certification for assessors, the requirements are usually similar to those for appraisers. Some states also have more than one level of certification.

For those states that do not require certificates for assessors, the hiring office usually requires the candidate to take basic appraisal courses, complete on-the-job training, and work enough hours to meet the requirements for appraisal licenses or certificates. Many assessors also have a state appraisal license.

Assessors tend to start working in an assessor's office that provides on-the-job training; smaller municipalities are often unable to provide this experience. An alternate source of experience for aspiring assessors is through a revaluation firm.

Both appraisers and assessors must take continuing education to keep the license or certification. Requirements vary by state.

Important Qualities

Analytical skills. Appraisers and assessors of real estate use many sources of data when valuing real estate. As a result, they must carefully research and analyze all data before producing a final written report.

Customer-service skills. Because appraisers must regularly interact with clients, being polite and friendly is important. In addition, these characteristics may help expand future business opportunities.

Organizational skills. To successfully accomplish all the tasks related to appraising and assessing a property, appraisers and assessors of real estate need good organizational skills.

Problem-solving skills. Appraisers and assessors of real estate may encounter unexpected problems when appraising or assessing a property's value. The ability to develop and apply an alternative solution is crucial to successfully completing the report on time.

Time-management skills. Appraisers and assessors of real estate often work under time constraints, sometimes appraising many properties in a single day. As a result, managing time and meeting deadlines are important.

Id. at <http://www.bls.gov/ooh/business-and-financial/appraisers-and-assessors-of-real-estate.htm#tab-4> (last visited July 3, 2013).

The proffered position is a commercial real estate appraiser position. As such, the requirements pertinent to Certified General Real Property Appraisers, those who appraise commercial real estate, are the salient consideration. Those requirements do, in fact, include a bachelor's degree. They do not, however, include a degree *in any specific specialty*. The *Handbook* does not support the proposition that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. 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. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some Appraisers and Assessors of Real Estate positions do not require such a degree.

Further still, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of technical knowledge of real estate valuation, 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.

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, 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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.

In determining whether there is 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)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.³

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.

The petitioner did submit a total of 15 vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Analyst for [REDACTED] a commercial real estate mortgage lender, to "primarily assist in sizing loans, underwriting loans, and gathering/organizing due diligence for loans," requiring a bachelor's degree with a preference for a finance and/or real estate concentration, and at least one year of experience;
2. Real Estate Appraisal Assistant for [REDACTED] requiring an otherwise unspecified bachelor's degree;
3. Residential Appraisal Analyst for [REDACTED] to "Oversee[] residential appraisal analysis process" requiring "A four-year degree in a related field" and previous banking experience;
4. Real Estate Analyst for [REDACTED] requiring a bachelor's degree in "finance, real estate, economics, accounting or related field, and "at least two years of relevant analysis experience within the real estate industry";
5. Real Estate Analyst for [REDACTED] a commercial real estate and investment management firm, stating "Bachelor's degree in finance, real estate or related field preferred (or coursework in finance, real estate or related field required)";
6. Real Estate Valuation Specialist for [REDACTED] stating, "The ideal candidate should possess a BS or BA degree" and "4 years of recent appraisal/review experience";

³ The AAO is mindful of counsel's assertion that too much weight was accorded the *Handbook* evidence pertinent to the educational requirements of real estate appraiser positions. No evidence from any other reliable and authoritative source was submitted, although the AAO would have welcomed it.

7. Financial Analyst (Real Estate) for [REDACTED] a real estate investment management company, requiring a "Bachelor's degree in Accounting, Finance and/or Real Estate," and two to six years of experience;
8. Real Estate Analyst for [REDACTED] which owns and manages multi-family residential properties, stating that an "excellent candidate for this opportunity" would have "a Bachelor's Degree in Real Estate, Finance or Economics."
9. An announcement placed by [REDACTED] a recruitment firm, for an Investment Analyst – Commercial Real Estate, to work for an unidentified commercial real estate services firm, stating that the position requires a bachelor's degree in business, economics, or a related field, and three to five years of experience;
10. Analyst – Asset Management (Real Estate) for [REDACTED] requiring a bachelor's degree in finance or business and "4+ years of real estate or related financial experience";
11. Analyst – Real Estate Workouts for [REDACTED] requiring a bachelor's degree, "preferably in Finance or Accounting," and "4+ years of real estate or related financial experience";
12. Analyst/Jr. Associate for an unidentified commercial real estate investment firm requiring a bachelor's degree in finance, real estate, accounting, or a related field, and "1-3 years experience working with a real estate investment firm";
13. Real Estate Financial Analyst for [REDACTED] a real estate investment, asset management, and development company, requiring a bachelor's degree in finance, accounting, or real estate finance;
14. Financial Analyst – Banking/Real Estate for [REDACTED] which states that it provides software engineering and systems integration, systems engineering, information assurance, program management, support, and IT infrastructure management, requiring a bachelor's degree in information technology, finance, economics, or a related field, and "a minimum of 5 years' experience in Financial Analysis"; and
15. Development Analyst for [REDACTED] which owns and manages multi-family residential properties, requiring a bachelor's degree in accounting, finance, or real estate.

The petitioner described itself as a real estate consulting firm. Many of the firms that placed the vacancy announcements upon which counsel seeks to rely have not been shown to be in that industry, and some clearly are not.

Further, the descriptions of duties in most of those vacancy announcements are insufficient to show that they announce positions parallel to the proffered position. Further still, not all of the vacancy announcements placed require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The first vacancy announcement states that a bachelor's degree is required, and that a degree with a concentration in finance and/or real estate is preferred. The fifth vacancy announcement states that a

bachelor's degree in finance, real estate or a related field is preferred. The eleventh vacancy announcement states that the position announced requires a bachelor's degree, "preferably in Finance or Accounting." Clearly, a preference for a degree, or a preference for a degree in a specific specialty, is not a minimum requirement.

The second vacancy announcement states that it requires a bachelor's degree, but not that the degree must be in a specific specialty.

The third vacancy announcement states that it requires a degree "in a related field." What fields the hiring authority would consider to be sufficiently closely related to the position announced is unclear.

The sixth vacancy announcement states that the ideal candidate should possess a bachelor's degree. Again, a preference is not a minimum requirement, and the vacancy announcement does not even indicate that the preferred degree should be in any specific specialty.

The eighth vacancy announcement states that an "excellent candidate" for the position would have "a Bachelor's Degree in Real Estate, Finance or Economics." Again, a preference is not a minimum requirement.

The ninth and tenth vacancy announcements indicate that a bachelor's degree in business would be a sufficient educational qualification for the position announced. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

As such, of the 15 vacancy announcements provided, more than half do not indicate a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for the positions announced.

In addition, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. Most of the vacancy announcements, however, are for positions that require considerable experience.

In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I real estate appraiser and assessor positions, entry-level positions requiring only a basic understanding of commercial real estate appraisal, require a minimum of a bachelor's degree in a specific specialty or its equivalent. This cannot be demonstrated by reference to positions that require extensive experience.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 15 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established

⁴ 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 these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of commercial real estate appraiser for firms similar to and in the same industry as the petitioner 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 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.

curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

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

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.⁵ The petitioner's senior vice president stated, "Most of [the petitioner's] past and current employees have held Master [sic] degrees in one or more professional fields related to real estate." However, the record contains insufficient evidence of that claim, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them 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 sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as consulting with clients to ascertain investment goals; researching property; finding easements; researching economic and business trends; estimating development and building costs, estimating future income, capitalizing it, and making various adjustments to estimate properties' market values; and preparing

⁵ 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 a 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").

appraisal reports have not been shown to be so specialized and complex that the knowledge they require is usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the petitioner has not satisfied the criterion 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 AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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. The appeal will be dismissed and the petition denied.

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