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U.S. Citizenship
and Immigration
Services

Date: **JUN 18 2013** Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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 stated that it is a four-employee supplier of telecommunications equipment with four employees, established during 1995. To employ the beneficiary in what it designates as a market analyst position, the petitioner endeavors 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 asserts that the director's basis for denial was erroneous, and contends 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 response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

With the visa petition, counsel provided evidence sufficient to show that the beneficiary earned a bachelor's of business administration degree at the [REDACTED] Lebanon. Counsel also submitted an evaluation stating that the beneficiary's foreign education is equivalent to a bachelor's degree in business administration awarded by a regionally accredited college or university in the United States.

In his own letter, dated November 25, 2009, counsel provided the following description of the duties of the proffered position:

[The beneficiary] would be employed as a Market Analyst and would be responsible for researching market conditions for the petitioner in North Africa and the Middle East to determine potential sales of the [petitioner's] equipment and services in that region. To that end he would be consulting with the petitioner's director's to define its marketing objectives; reviewing prices for the company's equipment and services and gathering information on competitors['] prices, sales, and methods of marketing and distribution; observing telecommunications developments in the target areas; studying the monthly sales goals and how effectively they are being met; and reviewing the company credit policy.

Counsel further stated:

[The beneficiary] would analyze sales statistics to formulate policy and review market analyses to determine customer needs, volume potential, price schedules, and discount rates. He would assist in company budget preparation and represent [the petitioner] at various trade fairs.

Counsel also asserted that the beneficiary has a bachelor's degree in business administration and is qualified to work in the proffered position.

On February 4, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted a letter, dated March 4, 2010. In it, he provided the following amended description of the duties of the proffered position:

- Researching and designing marketing plans to promote the company's telecommunication semiconductors and equipment in international markets, particularly North Africa and the Middle East.
- Identifying, developing and evaluating marketing strategies, based on knowledge of the company's objectives, target market characteristics, cost and markup factors.
- Gathering information on competitors['] prices, sales, and methods of marketing and distribution.
- Planning the company marketing operations budget and supporting the development of a regional marketing budget.
- Compiling lists describing company products.
- Initiating market research studies, consulting with buyers to gain insight into the types of telecommunications equipment likely to be in demand and conducting economic and commercial surveys to identify potential markets for company products.
- Reviewing market analyses to determine customer needs, volume potential, price schedules, and discount rates to develop marketing and sales campaigns to accommodate the goals of the company.
- Coordinating and participating in promotional activities and trade shows.

Counsel further stated that the evidence presented was sufficient to satisfy the petitioner's burden of proof. Counsel cited the Department of Labor's classification of the market research analyst positions within Job Zone Four and the decision in *Unical Aviation Inc. v. INS*, 248 F.Supp.2d 931 (C.D. Cal. 2002), for the proposition that market research analyst positions are categorically specialty occupation positions.

The director denied the petition on April 12, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as one filed for a marketing manager.

On appeal, counsel objects to the director's characterization of the proffered position as a marketing manager position, stating that it is more correctly categorized as a market research analyst position. Counsel also objects to the director's interpretation of the specialty occupation regulations; according to counsel, the director's statement that, to qualify as a specialty occupation position, a job must require a minimum of a bachelor's degree or the equivalent *in a specific specialty*, is incorrect. To

the contrary, counsel asserts, in order to qualify as a specialty occupation position it is sufficient that a position require a degree in a narrow range of disciplines.

Counsel argues that a degree in a narrow range of disciplines is required for the proffered position, stating that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that market research analyst positions normally require a minimum of a bachelor's degree or the equivalent in business administration, marketing, or a very closely related discipline.

Initially, the AAO notes that it disagrees with counsel's assertion that a position need not require a minimum of a bachelor's degree or the equivalent in a specific specialty in order to qualify it as a position in a specialty occupation.

As set out above, section 214(i)(1) of the Act states that, to qualify as a specialty occupation, an occupation must require, *inter alia*, attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty for entry into the occupation in the United States, as does 8 C.F.R. § 214.2(h)(4)(ii). Counsel reads the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to indicate that, to the contrary, a specialty occupation position need not necessarily require a minimum of a bachelor's degree or the equivalent in a specific specialty. Read in a vacuum, 8 C.F.R. § 214.2(h)(4)(iii)(A) would support that assertion.

However, as was explained in detail above, the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) are additional, supplemental requirements that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation. USCIS is neither required nor permitted to interpret the regulation in such a way as to countermand the statute passed by Congress creating the instant visa category.

As a preliminary matter, counsel's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proffered 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. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.

See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 139, 147.¹

Again, counsel 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.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO is not persuaded by counsel's comments on *Unical Aviation, Inc. v. INS, supra.* That decision does not state that market research analyst positions are categorically specialty occupation positions. Rather, it appears to be limited to the facts of the case in stating that the particular position in that case was a specialty occupation position. Furthermore, the material facts of the present proceeding are distinguishable from those in *Unical*. Specifically, *Unical* involved: (1) a position for which there was a companion position held by a person with a master's degree; (2) a record of proceedings that included an organizational chart showing that all of its employees in the marketing department held bachelor's degrees; and, in the court's words, (3) "sufficient evidence to demonstrate that there is a requirement of specialized study for [the beneficiary's] position."

Also, the proffered position and related duties in the present proceeding are different from those in *Unical*, where the beneficiary was to liaise with airline and Maintenance Repair Organization ("MRO") customers for a supply of parts and services; analyze and forecast airline and MRO demands to generate plans to capture business; provide after-sales services to customers; and develop new products and services. Moreover, there is no indication in the record of proceeding that the

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

petitioner is in the same industry or is similar in size or in any other respect to the business in Unical Aviation, Inc.

Also, in *Unical Aviation* the Court partly relied upon *Augut, Inc. v. Tabor*, 71 9 F. Supp. 1158 (D. Mass. 1989), for the proposition that the Immigration and Naturalization Service (INS, now USCIS), had not used an absolute degree requirement in applying the "profession" standard at 8 U.S.C. § 1101(a)(32) for determining the merits of an 8 U.S.C. § 1153(a)(3) third-preference visa petition. That proposition is not relevant here, because the H-1B specialty occupation statutes and regulations, not in existence when INS denied the *Augut, Inc.* third-preference petition, mandate not just a baccalaureate or higher degree, or its equivalent, but a degree "in the specific specialty." Section 214(i)(1) of the Act; *see also* 8 C.F.R. § 214.2(h)(4)(ii).

Further, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel also cited the assignment of market research analyst positions to the U.S. Department of Labor's (DOL) Occupational Information Network (O*Net OnLine) Job Zone Four as evidence that the proffered position requires a bachelor's degree. O*Net OnLine does not, however, indicate a requirement for a bachelor's degree for market research analyst positions. Rather, the assignment of market research analyst positions to Job Zone Four groups them among occupations of which "most," but not all, "require a four-year bachelor's degree."² Further, O*Net OnLine does not indicate that the four-year bachelor's degrees that may be required by specific Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation.³ Therefore, O*Net OnLine information is not probative of the proffered position's being a specialty occupation.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide

² Furthermore, it is noted that the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of market research analyst positions require a "four year bachelor's degree," it could be said that "most" market research analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

³ *See* <http://online.onetcenter.org>.

variety of occupations that it addresses.⁴ In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the chapter entitled "Market Research Analysts," the *Handbook* provides the following descriptions of the duties of market research analyst positions:

Market research analysts gather and analyze data on consumers and competitors. Market research analysts study market conditions in local, regional, or national areas to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.

More concretely, the *Handbook* states the following as to the duties of market research analyst positions:

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management

The *Handbook* states, yet further:

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited May 21, 2013).

⁴ 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.

In the chapter entitled "Advertising, Promotions, and Marketing Managers," the *Handbook* provides the following descriptions of the duties of marketing manager positions:

Marketing managers estimate the demand for products and services that an organization and its competitors offer. They identify potential markets for the organization's products.

Marketing managers also develop pricing strategies to help organizations maximize profits and market share while ensuring that the organizations' customers are satisfied. They work with sales, public relations, and product development staff.

For example, a marketing manager may monitor trends that indicate the need for new products and services. Then they oversee the development of that new product.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Advertising, Promotions, and Marketing Managers," <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-2> (last visited May 21, 2013).

Most of the duties the counsel attributed to the proffered position in his March 4, 2010 letter are consistent with the duties of marketing managers as described in the *Handbook*. The AAO finds no flaw in the director's analysis of the proffered position as a marketing manager position. However, for the purpose of this decision, the AAO will assume, *arguendo*, that the proffered position is a market research analyst position, as urged by counsel.

The *Handbook* states the following about the educational requirements of market research analyst positions:

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or communications. Courses in statistics, research methods, and marketing are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty."⁵ Section 214(i)(1)(b) (emphasis added).

⁵ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty."

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner attributes to the proffered position indicate a need for a range of knowledge of marketing, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Further still, counsel has asserted that a bachelor's degree in business administration, without further specification, is a sufficient educational qualification for the proffered position. As was explained above, this makes plain that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Neither the *Handbook* nor any other evidence in the record of proceeding from any other relevant authoritative source establishes that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

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)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, normally requires market research analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence from a professional association of market research analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the telecommunications equipment industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other market research analyst positions in the petitioner industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a credential.

The record does not contain evidence sufficient to demonstrate that the proffered position is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree or the equivalent in a specific specialty.

The duties of the proffered position, researching and designing marketing plans; identifying, developing and evaluating marketing strategies; gathering information on competitors' prices, sales, and methods of marketing and distribution; planning the company marketing operations budget, supporting the development of a regional marketing budget, etc., are duties typical to market research analyst positions or, for that matter, marketing manager position. They contain no indication of complexity or uniqueness such that they can only be performed by a person with a minimum of a bachelor's degree or the equivalent in a specific specialty. The AAO finds that the petitioner has not distinguished either the proposed duties, or the position they comprise, from generic market-research-analyst work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Further, as was previously noted, counsel has asserted that the position can be held by a person with an otherwise unspecified degree in business administration, which is not a minimum of a bachelor's degree or the equivalent in a specific specialty.

For the reasons discussed above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁶

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, or the equivalent, in a specific specialty.

Again, however, the duties of the proffered position, set out above, contain no indication that they are so specialized and complex that the knowledge required to perform them is usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty, especially relative to other positions that, according to the *Handbook*, may not have such a minimum entry requirement. The AAO finds that, even given the assumption, made *arguendo*, that the proffered position is a market research analyst position, the petitioner has failed to distinguish the proposed duties from generic market-research-analyst work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Further, as was noted above, counsel has asserted that a bachelor's degree in business administration is sufficient educational preparation for the proffered position, which is inconsistent with the position requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

For the reasons discussed above, 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.

Beyond the director's decision, the record of proceeding reveals an additional issue, which, although not identified and addressed by the director, nonetheless precludes approval of this petition. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir.

⁶ 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").

2004), and it was in during this review that the AAO identified the issue which it shall now briefly address.

The evidence shows that the beneficiary has an otherwise unspecified bachelor's degree in business administration awarded by an institution of higher education in Lebanon. An evaluation in the record states that the beneficiary's foreign degree is equivalent to a bachelor's degree in business administration, without further specification, earned in the United States. As was explained above, an otherwise undifferentiated degree in business administration does not qualify as a bachelor's degree in a specific specialty. As the record contains no evidence that the beneficiary has a minimum of a bachelor's degree or the equivalent in a specific specialty, it contains no evidence that he is qualified to work in any specialty occupation position. Consequently, the visa petition must be denied on this additional basis, also.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would then have been obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. Cf. *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not further discuss the issue of the beneficiary's qualifications. However, the AAO does find that, as discussed earlier in this decision, an otherwise undifferentiated bachelor's degree in business administration does not qualify as a degree in a specific specialty so as to qualify the beneficiary for service in a specialty occupation if one had been established by the petitioner.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

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

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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.