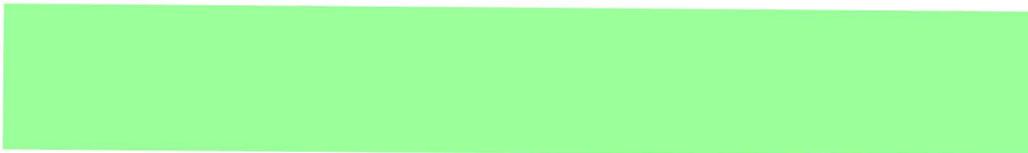




U.S. Citizenship
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Services

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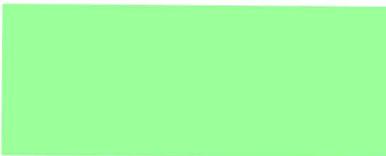


DATE: **JUN 19 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the 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 an Information Technology Consulting firm. To employ the beneficiary in what it designates as a financial 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 the petitioner 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. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's two requests for additional evidence (RFEs); (3) the responses to the RFEs; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

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 is certified for a Financial Analyst position pursuant to occupational code 160, a prevailing wage of \$59,717, and a wage rate of \$62,000. The record also contains evidence that the beneficiary received a bachelor's degree in finance from [REDACTED]

In a letter dated April 1, 2009, the petitioner's recruiting manager provided the following description of the duties of the proffered position:

[The beneficiary] will be responsible for analyzing service revenues using financial spreadsheets and draw charts; evaluating and assessing billability of consulting organizations; calculating new consultant investment time; monitoring, analyzing, and documenting monthly billing, profit contributions, and training classes by regions, reviewing cross billing; analyzing, evaluating, and interpreting internal vs. external (sub-contractors) revenues, margins, and costs to effectively predict business, industry, and economic conditions; monitoring fundamental economic, industrial, and corporate developments; preparing financial plans of action; recommending financial modifications to the company's bonus program; assessing, modifying, and improving analytical reporting processes; and supporting special financial projects with company management.

As to the educational requirement of the proffered position, the petitioner's recruiting manager stated:

The [proffered position] is clearly a 'specialty occupation' since it involves sophisticated job duties in the field of financial analysis, requiring in-depth academic and practical preparation normally attained through completion of at least a Bachelor's degree in Finance or a closely[-]related field.

On April 16, 2009 the service center issued an RFE in this matter. The evidence requested on that occasion, however, is not relevant to the subsequent basis for denying the visa petition or to today's decision.

On May 8, 2009, the service center issued another RFE, seeking additional evidence that the proffered position qualifies as a specialty occupation. The service center specifically requested that the petitioner "explain why the work to be performed requires the services of a person who has a college degree or its equivalent in the occupational field."

In response to the second RFE, counsel provided, *inter alia*, (1) copies of the petitioner's 2006 and 2007 Form 1120S U.S. Income Tax Returns for an S-Corporation; (2) printouts of six vacancy announcements financial analyst positions taken from web content; (3) a letter, dated May 20, 2009, from the accounting department chair at [REDACTED]; (4) counsel's own letter, dated June 16, 2009, and (5) a letter, dated June 15, 2009, from the petitioner's recruiting manager.

The May 20, 2009 letter from the department chair at [REDACTED] purports to be an evaluation of the proffered position, its duties, and the minimum education required for such a position. It states that the duties of the proffered position require a minimum of a bachelor's degree in accounting, finance, or a related field. It further states that organizations like the petitioner hiring a financial analyst require a minimum of a bachelor's degree in accounting, finance, or a related field. The letter lists the duties of the proffered position and states that they require skills in accounting, finance, and related areas. It further states that such skills are often taught in accounting courses. The letter concludes that the proffered position requires a minimum of a bachelor's degree in accounting, finance, or a related field.

In his letter of June 16, 2006, counsel cited a portion of the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*) that related to financial analyst positions and asserted that the *Handbook* supports his contention that the proffered position is a specialty occupation. Counsel cited the evaluation of May 20, 2009, as additional evidence for those propositions.

The June 15, 2009 letter from the petitioner's recruiting manager stated, in pertinent part, that the duties of the proffered position "are clearly senior professional-level finance duties in every respect and clearly fit within those duties typically performed by Financial Analysts as described by [the *Handbook*]." It further states, "[The *Handbook*] could not state more clearly that a bachelor's degree in a specialized finance, accounting, or related field is required for corporate financial analyst positions."

The director denied the petition on June 25, 2009, 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 in a specific specialty or its equivalent.

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

On April 4, 2013, noting that the petitioner's corporate status in Minnesota was "administratively dissolved," the AAO issued a request for evidence pertinent to the petitioner's corporate status and whether it continues to do business. On April 30, 2013, counsel submitted the petitioner's response which included, *inter alia*, (1) evidence that the petitioner's corporate status was reinstated on April 10, 2013, (2) the petitioner's bank statements, (3) copies of the petitioner's 2010 and 2011 corporate tax returns.

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, 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 is a financial analyst position. The *Handbook* describes the duties of financial analysts as follows:

What Financial Analysts Do

Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments.

Duties

Financial analysts typically do the following:

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.

- Recommend individual investments and collections of investments, which are known as portfolios
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting the company's future earnings
- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy side analysts and sell side analysts.

- Buy side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.
- Sell side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and are impartial, falling into neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is become more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

Portfolio managers supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio but also are expected to explain investment decisions and strategies in meetings with investors.

Fund managers work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

Ratings analysts evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

Risk analysts evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last visited June 17, 2013).

The duties the petitioner's recruiting manager attributed to the proffered position are consistent with the duties of financial analysts as described in the *Handbook*. The AAO will analyze the proffered position as a financial analyst position as described in the *Handbook*.

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

How to Become a Financial Analyst

Financial analysts typically must have a bachelor's degree, but a master's degree is required for advanced positions.

Education

Many positions require a bachelor's degree in a related field, such as accounting, business administration, economics, finance, or statistics. Employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

Licenses

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job.

Certification

Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst certification from the [REDACTED] which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.

Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.

Decision-making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.

Detail oriented. Financial analysts must pay attention to details when reviewing possible investments as small facts may have large implications for the health of an investment.

Math skills. Financial analysts use mathematical skills when estimating the value of financial securities.

Technical skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.

To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

Id. at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited June 17, 2013).

As to those financial analyst positions that do require a minimum of a bachelor's degree, the *Handbook* does not indicate that the requisite degree must necessarily be in a specific specialty, as it indicates that a degree in accounting, business administration, economics, finance, or statistics may suffice.

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).

In any event, however, the inclusion of an otherwise undifferentiated degree in business administration in the array of degrees that may qualify one for a financial analyst position makes yet more clear that financial analyst positions do not necessarily qualify as specialty occupation positions. 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. Clearly, some financial analyst positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent, as an otherwise undifferentiated degree in business administration may be a sufficient educational qualification for them. The *Handbook* does not support the proposition that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position proffered.

Further, 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 knowledge of financial analysis, 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.

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

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.

Also, there are no submissions from professional associations 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 May 20, 2009 letter from the department chair at [REDACTED] asserts that skills necessary to the proffered position are often taught in accounting classes. Whether those skills are often taught in accounting classes is not at issue. The issue is whether a minimum of a bachelor's degree in a specific specialty or its equivalent is necessary for entry into the proffered position. In addressing that point, the writer stated that a minimum of a bachelor's degree in accounting, finance, or a related field is required for such a position.

The evaluation, however, does not list any reference materials on which the evaluator relied as a basis for his conclusion that the proffered position requires a bachelor's degree. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment. Further, the evaluator did not address the information in the *Handbook*, to the effect that some financial analyst positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). The position evaluation provided will be accorded very little weight.

The petitioner did submit six 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 vacancy announcements for the following positions posted on the Internet:

1. An announcement placed by [REDACTED] a recruiting firm, for a Financial Analyst to work for an unidentified company in an unidentified industry, requiring a bachelor's degree in accounting or finance or master's degree in business administration;
2. An announcement placed by [REDACTED] a recruiting firm, for a Financial Analyst to work for an unidentified company in an unidentified industry, requiring a "BS/BBA in accounting or finance";
3. An announcement for a Financial Analyst placed by [REDACTED] a company that provides testing and statistical analysis to various industries, especially education, requiring a bachelor's degree in finance or accounting;
4. An announcement for a Financial Analyst for [REDACTED] a marketer of dairy-based foods and food ingredients, requiring a four-year accounting or finance degree;
5. An announcement for a Financial Analyst for [REDACTED] a company that provides electronic processing solutions for credit cards, debit cards, prepaid cards, and gift cards, requiring a bachelor's degree in a financial discipline or a master's degree in business administration; and
6. An announcement for a Financial Analyst/Credit Analyst 4 for [REDACTED] requiring a bachelor's degree in finance or accounting.

The AAO observes that the stated educational requirements of the first and fifth vacancy announcements would be satisfied by an otherwise undifferentiated master's degree in business administration. As was explained above, an otherwise undifferentiated master's degree in business administration is not a degree in a specific specialty.

Further, none of the companies hiring people in those positions have been shown to be in the petitioner's industry, and some clearly are not.

Further still, the brief duty descriptions contained in those vacancy announcements are insufficient to show that the positions announced are truly parallel to the proffered position.

Yet further, 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 six announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

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 or perform 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 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.

² 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 financial analyst for IT consulting firms similar to 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 necessarily require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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 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.

In his April 1, 2009 letter, the petitioner's recruiting manager stated, "Due to our ongoing expansion, we are seeking the professional services of a Financial Analyst" This implies that the petitioner has not previously employed a financial analyst. In any event, 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 at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).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 analyzing revenues using spreadsheets and charts; evaluating the billability of consulting organizations; calculating new consultant investment time; monitoring, analyzing, and documenting monthly billing, profit contributions, and training classes by regions, etc., have not been shown to be so specialized and complex that they require knowledge usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent.

³ 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").

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of financial analyst positions that are not usually associated with at least 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 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.