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U.S. Citizenship
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FILE: EAC 07 150 50508 Office: VERMONT SERVICE CENTER Date: **NOV 24 2008**

IN RE: Petitioner:
Beneficiary:



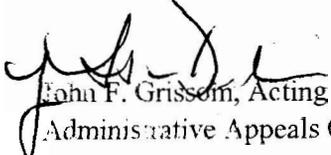
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner builds custom homes and is a land developer. It was established in 2004 and claims to employ one individual and to have had approximately \$350,000 in gross annual income when the petition was filed. It seeks to employ the beneficiary as a market research and business operations analyst. Accordingly, the petitioner endeavors to classify the beneficiary 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 record of proceeding before the AAO contains: (1) the Form I-129 filed April 2, 2007 and supporting documentation; (2) the director's June 13, 2007 request for evidence (RFE); (3) counsel for the petitioner's July 11, 2007 response to the director's RFE and supporting documentation; (4) the director's July 24, 2007 denial letter; and (5) the Form I-290B, counsel's brief, and documents submitted in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

On July 24, 2007, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation.

The issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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, the position must 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner states that it is seeking the beneficiary's services as a market research and business operations analyst. In a March 29, 2007 letter appended to the petition, the petitioner stated:

As a Market Research and Business Operations Analyst, [the beneficiary] will have multiple duties and responsibilities. His primary duty will be to collect and analyze data on the Houston real-estate market and the customer demographics that [the petitioner] targets. He will then use this data to identify the preferences and buying habits of our target customers. [The beneficiary] will be responsible for preparing reports that integrate numerical data and graphically illustrate his findings, as well as forecast future trends within the market.

This market research will also include, but not be limited to, identifying local ordinances, land title, and other areas that could potentially impact [the petitioner's] decisions on choice of development areas. Furthermore, he will be responsible for utilizing his market analysis to identify real-estate that has potential for development in line with [the petitioner's] target demographic, and determine the feasibility of development based upon the behavior of [the petitioner's] competitors and previously identified customer preferences. Additionally, [the beneficiary] will review monthly surveys of existing customer satisfaction in order to measure the effectiveness of [the petitioner's] product and its marketing campaigns, and, based upon these surveys, identify areas of improvement for the company, as well as areas of potential future growth. In order to successfully accomplish these tasks, it is necessary for [the beneficiary] to have a strong theoretical, as well as practical knowledge, of marketing principles.

In a July 11, 2007 response to the director's RFE, the petitioner provided a more detailed job description dividing the job responsibilities into three main categories, the preconstruction stage, the construction stage, and the post construction stage. The petitioner stated:

The preconstruction stage requires the Market Research Analyst and Business Operations [Analyst] to complete a thorough research before the acquisition of the land. The

geographical location of the land is determined by researching the per capita income for that county, location of the plot, labor costs in addition to requirements and limitations by the city. The above will enable the builder to determine the design of the construction based on the market value of the plot and the potential retails of the constructed structure.

The petitioner indicated that this stage would require Internet research, meeting with the petitioner's realtors, and conducting a feasibility study, including working with survey companies, banks, engineers, and architects, verifying the City of Houston's requirements and identifying potential issues, obtaining planning letters, and submitting plans to the City of Houston for review and approval. The petitioner noted that when all the research and the feasibility studies are evaluated, the plot is then purchased and the hours required for this stage usually range between 120-140 hours per plot.

Regarding the construction stage, the petitioner stated:

During the entire construction stage, the Market Research Analyst ensures new home buyer's requirements are met, materials meet the quality control as specified by the general contractors and the construction meets the specifications as designed and proposed. The construction stage requires daily interaction with the general contractors for every plot. It takes about 2 hours a day for each plot. In addition, the following assignments are to be fulfilled:

- Verify general contractors are building new houses according to city codes and specifications.
- Monitor and coordinate cleanliness/drainage at the property to meet city codes and requirements.
- Assist in updating [the petitioner's] website for preconstruction marketing of the property.
- Continue working with the city for appropriate permits and approvals.
- Works closely with the new home buyers to ensure their satisfaction is met such as carpet, tile, appliances, hardware, cabinets, etc.
- Work[s] very closely with the real estate company in marketing the property in various publications that include brochures and flyers.
- Coordinate with realtors for marketing and listing of the property on Multiple Listing Service (MLS).

Regarding the post construction stage, the petitioner stated:

- A check list has to be prepared and approved by the Market Research Analyst to ensure all City codes and requirements were met and obtain occupancy certificate from the City of Houston. Websites are detailed which include virtual tours, pictures of new homes and sale prices.
- Finalize point of sale by working closely with buyers and realtors providing them with information on the floor plans, occupancy certificates, titles, licensing, market value of the property, promotions, property tax details, mortgage options, interest rates, brokerage fees and legal advice on acquiring the property.

- The Market Research Analyst personally walks the house for inspection to verify that all the items in the house are functioning properly and ensuring the satisfaction of the buyer to complete the closing.
- After the closing of the house, the Market Research Analyst has a crucial task that involves providing customer service to the new home buyers by visiting them to assist with outlying issues. This task requires lots of patience and diligence. Customer service calls need to be handled very efficiently, professionally and sensitively by arranging any service work that needs to be performed. The general contractors need constant supervision by the Market Research Analyst while conducting this task both to meet the requirements of the home owner as well as for security reasons. The customer services calls and jobs are very important to retain clients and their satisfaction for future business and therefore a minimum of 2-3 hours a day is designated for this task.

The petitioner also submits a position description wherein the petitioner indicates that its market research analyst will work in the City of Houston directly supporting all development, acquisitions, construction, and management functions with the following key responsibilities:

- Manage and make recommendations to investment committee concerns with land acquisition and development
- Conduct analysis on land acquisition based on market and geographic perspective, reporting on a wide range of quantitative data
- Populate and maintain proprietary land database within the City of Houston
- Create and update site and market analysis, zoning and demographic data for existing and upcoming developments
- Manage and develop new tools and systems that can be utilized in conjunction with available market research equipment
- Continually expand knowledge and application to real estate development
- Conduct construction drives and prepare periodic construction progress reports for all projects under [the petitioner]
- Acquire new construction permits for projects under [the petitioner]
- Monitor property sales and profitability of existing projects
- Research and analyze property prices to stay competitive
- Research new properties and available plots and keep management informed on potential development
- Review journals, publication and other related resource materials concerning the housing industry
- Monitor all sales for [the petitioner] and coordinate appropriate documentation
- Prepare specific analytic deliverables, including reports, graphs, presentations and models
- Assist in development of proposals and timelines for database marketing projects.

Upon review of the record, the director found that the petitioner had failed to establish that the job duties are so specialized and complex that the knowledge required to perform the duties is associated with the attainment of a baccalaureate or higher degree or that its equivalent would be the normal minimum for entry into the position. The director found that the record did not establish that the degree requirement is common

to the industry in parallel positions among similar organizations, that the position is so complex or unique that it can only be performed by an individual with a degree, or that the petitioner historically required a degree for the position. The director concluded that the petitioner had not established that the proffered position qualified as a specialty occupation.

On appeal, counsel for the petitioner asserts that the proffered position requires, in addition to the business operational aspect, specialized skills in market analysis and sales. Counsel also provides a position evaluation prepared by [REDACTED] Ph.D. who opines: "the job at [the petitioner] for a Marketing Research and Business Operations Analyst absolutely requires at least a bachelor's degree." Dr. [REDACTED] bases her assessment, in part, on her involvement as an active member of the American Marketing Association, wherein she sees weekly job-available listings for the Houston area that list both the duties of each job and the qualifications required. Dr. [REDACTED] offers her opinion that the key responsibilities of market analysis, maintenance of a proprietary database, management and development of research systems, competitive analysis, report preparation and presentation and assistance in proposal development are responsibilities that would require a four-year business or engineering degree, a bachelors of science or art in marketing, business, engineering, or a related field or a bachelor's degree or higher in a business related field. Dr. [REDACTED] references three specific job announcements included with her opinion that require these degrees. Dr. [REDACTED] acknowledges that the job listings she references do not entirely match the responsibilities of the proffered position but appear comparable. Dr. [REDACTED] also references the Department of Labor's *Occupational Outlook Handbook's* (*Handbook*) report on management analysts and a website job profile for marketing research analysts. Dr. [REDACTED] observes: "an individual offering data to guide decision-making where significant dollars are at stake needs to be correct and needs to inspire confidence that he or she is correct," and "[f]our-year degree programs in Business or Engineering foster both sets of skills."

The record on appeal includes the job announcements referenced by Dr. [REDACTED] as well as several others. Upon review of the 25 job announcements submitted, the AAO finds job announcements for: (1) a market research analyst for an undisclosed company that requires a masters degree; (2) a marketing program manager for a major lubricant company that requires a bachelor's of science in marketing, communications business or related degree; (3) a manager of e-marketing for the Houston Rockets website that lists a bachelor's degree but does not indicate if the degree is preferred or required; (4) a prospect researcher for university fundraising that requires a bachelor's degree or equivalent related experience in lieu of education; (5) a project sales manager to manage contract governance with the BP, an oil company, that lists a bachelor's of science degree in engineering but does not indicate if it is preferred or required; (6) a marketing coordinator for an undisclosed company that requires a bachelor's degree or equivalent in a related field; (7) an infrastructure service marketing coordinator for event coordination and collateral production logistics that lists a bachelor's degree but does not specify whether it is preferred or required; (8) a field marketing representative for Creative Channel Services that lists a bachelor's degree in the education field of the Internet listing but does not list any degree in its job requirement specifications; (9) a marketing specialist for Service Corporation International that requires a bachelor's degree in business, marketing, advertising or related field; (10) a marketing coordinator for Technology Recruiting Solutions, Inc. that requires a bachelor's degree; (11) a marketing specialist for an undisclosed company that indicates a bachelors degree in marketing, communications, journalism, or related field or equivalent experience is required; (12) a marketing analyst for [REDACTED] Consulting Group that indicates a four-year degree is required and a degree in marketing is preferred; (13) a marketing programs manager for Integraph Corporation that lists a bachelor's degree but does not

specify whether the degree is preferred or required; (14) a sales development manager for a provider of products, technologies, solutions and services to consumers and business that requires a bachelor's degree in business administration or marketing or a non-business/technical field of study with a minimum of six years related experience and notes that a masters degree is a plus; (15) a market research and analysis manager for AIG that requires a bachelor's degree; (16) a business analyst for an undisclosed company that requires an undergraduate degree in finance, accounting or engineering and prefers either a CPA or an MBA; (17) a marketing manager for an undisclosed company that requires a bachelor's degree in business or marketing or equivalent in a related field with strong statistical research orientation and preference for a master's degree; (18) a marketing coordinator for WhiteFence that requires a bachelor's degree (business related); (19) a contracts/closing coordinator for an undisclosed company that requires a bachelor's degree or equivalent related experience; (20) an assistant project manager for Perry Homes that prefers two years of supervisory experience and a college degree; (21) an assistant manager customer relations for Pulte Homes, Inc. that requires a bachelor's degree in business or equivalent in a related field; (22) a construction intern for Pulte Homes, Inc. that lists a bachelor's degree but does not specify if the degree is preferred or required; (23) a land development estimator for Toll Brothers that lists a college degree and one to three years experience as the qualifications for the position; (24) a land acquisition manager for Toll Brothers that lists a J.D. or bachelor's degree in civil engineering or urban planning; and (25) an assistant planning designer for Toll Brothers that lists a bachelor's degree in landscape architecture, planning or a related field.

Counsel also provided a listing of marketing undergraduate degree programs. Counsel asserts that given the complexity of the job duties with the applications of business and marketing, it is essential that the applicants for the proffered position have the minimum education of a baccalaureate degree or its equivalent.

The issue is whether the petitioner has provided sufficient evidence to establish that its proffered position is a specialty occupation, an occupation that requires a baccalaureate or higher degree, in a specific specialty that is directly related to the proffered position. In this matter the petitioner has not provided such evidence.

The AAO turns first to an analysis of the duties of the proffered position and the occupation that includes the described duties. To determine whether a particular job qualifies as a specialty occupation, CIS 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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations when considering the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The petitioner's description of the proffered position includes elements from several different occupations outlined in the *Handbook*. For example, the petitioner initially indicated that the beneficiary's "primary duty will be to collect and analyze data on the Houston real-estate market and the customer demographics that [the petitioner] targets. He will then use this data to identify the preferences and buying habits of our target customers." The petitioner also noted that the beneficiary would "conduct analysis on land acquisition based on market and geographic perspective, reporting on a wide range of quantitative data." This description appears to include the duties of a market research analyst. However, the petitioner

also notes that the beneficiary would: create and update site and market analyses, zoning and demographic data for existing and upcoming developments; manage and develop new tools and systems that can be utilized in conjunction with available market research equipment; monitor property sales and profitability of existing projects; research and analyze property prices to stay competitive; and research new properties and available plots and keep management informed on potential development. These duties correspond more closely to that of an individual monitoring and managing the petitioner's general marketing of its developments. In addition, the petitioner noted in response to the director's RFE that the beneficiary would work closely with the real estate company in marketing properties and would coordinate with realtors for marketing and listing of property and that the beneficiary would work closely with new home buyers to ensure their satisfaction on carpet, tile, appliances, etc. and would provide customer service to new home buyers to assist with any issues. These duties reflect an individual marketing the petitioner's individual homes as well as providing a customer service role and a construction manager role. Similarly, the beneficiary's verification that the general contractors were building new houses according to city codes, monitoring cleanliness/drainage at the property site, working with the city on permits and approvals and preparing a check list to ensure that all codes and requirements were met to obtain the certificate of occupancy are more construction related than that of a market research analyst.

The *Handbook* discusses the position of a marketing manager under the heading of advertising, marketing, promotions and sales managers. The *Handbook* reports:

The objective of any firm is to market and sell its products or services profitably. . . . Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

* * *

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

* * *

Sales managers maintain contact with dealers and distributors

The *Handbook* discusses the educational requirements imposed on individuals who seek employment in the advertising, marketing, promotions, public relations, and sales manager positions as follows:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy among other subjects, is acceptable. However, requirements vary depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous

* * *

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists

Regarding the duties of the position that include monitoring and managing the construction aspect of the petitioner's business, the AAO notes that the duties include elements that could be related to that of a cost estimator or a construction manager. The *Handbook* reports that cost estimators:

Accurately forecasting the scope, cost, and duration of future projects is vital to the survival of any business. Cost estimators develop the cost information that business owners or managers need to make a bid for a contract or to decide on the profitability of a proposed new product or project. They also determine which endeavors are making a profit.

* * *

The methods for estimating costs can differ greatly by industry. On a construction project, for example, the estimating process begins with the decision to submit a bid. After reviewing various preliminary drawings and specifications, the estimator visits the site of the proposed project. The estimator needs to gather information on access to the site; the availability of electricity, water, and other services; and surface topography and drainage. The estimator usually records this information in a signed report that is included in the final project estimate.

The *Handbook* indicates that the educational level for cost estimators vary by industry:

In the construction industry, employers increasingly prefer to hire cost estimators with a bachelor's degree in construction science, construction management, or building science, although it is also possible for experienced construction workers to become cost estimators.

The *Handbook* discusses construction managers

Construction managers are salaried or self-employed managers who oversee construction supervisors and workers. They are often called project managers, constructors, construction superintendents, project engineers, program managers, construction supervisors, or general contractors. Construction managers may be owners or salaried employees of a construction management or contracting firm, or may work under contract or as a salaried employee of the property owner, developer, or contracting firm overseeing the construction project.

These managers coordinate and supervise the construction process from the conceptual development stage through final construction, making sure that the project gets done on time and within budget. They often work with owners, engineers, architects, and others who are involved in the construction process. Given the designs for buildings, roads, bridges, or other projects, construction managers oversee the planning, scheduling, and implementation of those designs.

The *Handbook* discusses the educational requirements of construction managers:

For construction manager jobs, employers increasingly prefer to hire individuals who have a bachelor's degree in construction science, construction management, building science, or civil engineering, plus work experience. Practical construction experience is very important, whether gained through an internship, a cooperative education program, a job in the construction trades, or another job in the industry. Traditionally, people advanced to construction management positions after having substantial experience as construction craftworkers—carpenters, masons, plumbers, or electricians, for example—or after having worked as construction supervisors or as owners of independent specialty contracting firms. However, as construction processes become increasingly complex, employers are placing more importance on specialized education after high school.

The *Handbook* reports that customer service representatives are:

[E]mployed by many different types of companies to serve as a direct point of contact for customers. They are responsible for ensuring that their company's customers receive an adequate level of service or help with their questions and concerns. . . . All customer service representatives interact with customers to provide information in response to inquiries about products or services and to handle and resolve complaints. They communicate with customers through a variety of means—by telephone; by e-mail, fax, regular mail; or in person. Some customer service representatives handle general questions and complaints, whereas others specialize in a particular area.

The *Handbook* indicates that most customer service jobs require at least a high school diploma although employers are increasingly seeking candidates with some college education. Most employers provide training to workers before they begin serving customers.

Although the petitioner has indicated that the beneficiary will provide a wide variety of services, the *Handbook* does not include a definitive statement indicating that these duties would require a baccalaureate or higher degree in a specific discipline. Rather, the *Handbook* indicates generally that entry into positions that

include the general marketing and construction management tasks vary greatly from a high school diploma, to experience in the field, to a bachelor's degree in a general discipline, or to a master's degree. The *Handbook* does not identify a specific degree requirement for employment in the occupations of marketing manager, public relations manager, or salesperson/manager. Although the *Handbook* indicates a broad liberal arts background in various degrees may be acceptable for entry into advertising, marketing, promotions, public relations, and sales and a college degree combined with public relations experience is considered excellent preparation for public relations work, the *Handbook* does not indicate a college degree is normally required or further that a college degree in a specific discipline is required. Likewise, the *Handbook* notes that it is possible for experienced construction workers to advance to a position as a cost estimator in the construction industry or to a position as construction manager. The *Handbook* recognizes that most customer service jobs require at least a high school diploma although employers increasingly seek candidates with some college education.

Although the petitioner asserts that the proffered position is that of a market research and business analyst and Dr. [REDACTED] suggests that the position is a management analyst position, the petitioner's description of the duties does not substantiate that the beneficiary will perform the tasks of either a market research analyst or a management analyst. The *Handbook's* report on the occupation of market research analysts overlaps somewhat with the occupation of someone involved in marketing:

Market and survey researchers gather information about what people think. *Market, or marketing, research analysts* help companies understand what types of products people want and at what price. They also help companies market their products to the people most likely to buy them. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales.

Market research analysts devise methods and procedures for obtaining the data they need. Often, they design surveys to assess consumer preferences through Internet, telephone, or mail responses. They conduct some surveys as personal interviews, going door-to-door, leading focus group discussions, or setting up booths in public places such as shopping malls. Trained interviewers usually conduct the surveys under the market research analyst's direction.

After compiling and evaluating the data, market research analysts make recommendations to their client or employer. They provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services. The information also may be used to determine the advisability of adding new lines of merchandise, opening branches of the company in a new location, or otherwise diversifying the company's operations. Market research analysts also might develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways.

The *Handbook* discusses the employment of management analysts as follows:

As business becomes more complex, firms are continually faced with new challenges. They increasingly rely on management analysts to help them remain competitive amidst these

changes. Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits.

For example, a small but rapidly growing company might employ a consultant who is an expert in just-in-time inventory management to help improve its inventory-control system. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have provided new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace.

The petitioner has not provided sufficient evidence to demonstrate that the actual day-to-day duties of the position would involve either of these two occupations. The petitioner has not provided the detail necessary to distinguish the duties of the proffered position from that of a marketing/sales person. The AAO acknowledges that the petitioner's initial reference to the beneficiary's primary duty suggested that the beneficiary would be involved in a market research type position, but the daily tasks detailed by the petitioner in the response to the director's RFE failed to substantiate that the beneficiary would be involved in a market research position at a level requiring a baccalaureate or higher degree. The AAO observes that the petitioner repeated portions of the *Handbook's* description of a market research analyst occupation, but a restatement of the *Handbook's* description of a particular occupation is insufficient to establish a position as a specialty occupation. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. Describing a number of different types of tasks that involve gathering information, including information for a feasibility study, participating in the research of city and county codes, monitoring construction, acting as a liaison between customers and contractors, and otherwise providing customer service is insufficient to elevate a generalist's position to one that requires university level-knowledge in a specific discipline. Rather, the multiple types of tasks associated with the proffered position are all tasks that can be performed by an individual with less than a bachelor's degree in a specific discipline. The combination of a variety of tasks that all may be performed without benefit of a four-year university-level education does not elevate the position to one that requires a four-year degree in a specific discipline. The record does not establish that the proffered position is a market research analyst, a management analyst, or any position that requires the theoretical and practical application of a body of highly specialized knowledge associated with the attainment of a bachelor's or higher degree in a specific specialty.

The AAO has reviewed the opinion presented by Dr. [REDACTED] who opines that the key responsibilities of market analysis, maintenance of a proprietary database, management and development of research systems, competitive analysis, report preparation and presentation and assistance in proposal development are responsibilities that would require a four-year business or engineering degree, a bachelors of science or art in marketing, business, engineering, or a related field or a bachelor's degree or higher in a business related field. The variety of degrees that Dr. [REDACTED] suggests would be necessary to perform these duties undermines the specialty nature of the proffered position. The AAO has reviewed the three specific job announcements Dr.

references on which she has based her opinion. The position for a project manager for BP, a petroleum company does not provide a description of duties comparable to that of the proffered position. Moreover the advertisement although listing a bachelor's degree in engineering does not indicate whether the degree is preferred or required. The advertisement for a marketing specialist indicates that the qualified candidate would have a bachelor's degree in marketing, communications, journalism, or related field or equivalent experience. The advertisement does not discuss the criteria for equivalent experience. The advertisement for a marketing programs manager, although listing a bachelor's degree in the education field, does not specify whether the degree is required or preferred and does not identify a specific discipline. The AAO notes that when a job can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of 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. Again, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position.

Upon review of Dr. [REDACTED] opinion, the AAO finds that the position evaluation fails to establish the proffered position as a specialty occupation under the first criterion. Although Dr. [REDACTED] references the *Handbook* and a job profile for marketing research analysts, Dr. [REDACTED] has not related the duties of the proffered position to either of those occupations. The AAO notes Dr. [REDACTED]'s opinion that an "individual offering data to guide decision-making where significant dollars are at stake needs to be correct and needs to inspire confidence that he or she is correct," and "[f]our-year degree programs in Business or Engineering foster both sets of skills." However, Dr. [REDACTED] does not take into account that those same sets of skills may be gained by experience in the construction field, or with an associate's degree, or with education in an unrelated field. In addition, Dr. [REDACTED] does not indicate whether she has reviewed the different descriptions of the proffered position provided by the petitioner. Further, Dr. [REDACTED] does not indicate that she has interviewed the petitioner's personnel, visited their offices, or otherwise examined the petitioner's records. Rather, Dr. [REDACTED] appears to focus on several general statements regarding the duties of the proffered position and concludes that these several duties require a bachelor's degree in one of several different disciplines. Such a conclusion does not establish that the proffered position is a specialty occupation. 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 Caron International*, 19 I&N Dec. 791 (Comm. 1988). Dr. [REDACTED] opinion is insufficient to establish that the position proffered by the petitioner is a specialty occupation.

The petitioner has not established that the proffered position is a position that normally requires a baccalaureate or higher degree or its equivalent for entry into the position. Accordingly, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation pursuant to the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish its proffered position as a specialty occupation under the second criterion, a petitioner must prove that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that only an individual with a degree in the specific specialty can perform the duties of the position. The AAO has considered the numerous job

advertisements submitted and observes that the majority of the advertisements do not provide a description of duties that is parallel to the proffered position. The advertisements provided are for a myriad number of occupations and list a variety of ways to qualify for the positions. Moreover, the advertisements do not consistently require a bachelor's degree in a specific discipline and when listing a generic bachelor's degree on the advertisement often do not specify whether the degree is preferred or required. The advertisements do not establish that a specific degree requirement is common to the industry in a position that is parallel to the proffered positions and do not provide sufficient information regarding the advertising companies to identify the companies as similar to the petitioner's organization.

As observed above, the AAO has considered Dr. [REDACTED] opinion in conjunction with the advertisements provided and notes that Dr. [REDACTED] references only three of the twenty-five to substantiate her opinion that the proffered position is a specialty occupation. Of those three, Dr. [REDACTED] does not offer an analysis or comparison of the duties of the advertised positions to the proffered position, but rather a conclusion that the positions described in the advertisement are comparable. Concluding that these advertisements suggest that a majority of employers would expect an individual in the proffered position to hold a bachelor's degree without a complete analysis and discussion of all the advertisements, their descriptions of duties, and the variety of educational and experience requirements is insufficient to establish an industry standard. Neither does Dr. Gelb address the similarity or dissimilarity of the employers advertising for the various positions to the nature of the petitioner's organization. Upon review of the advertisements, the AAO finds insufficient information to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. Going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. Upon review of the duties of the proffered position, the AAO does not find any specific duty that is described in the detail necessary to establish that the duty or duties are so complex or unique that the proffered position would require an individual with a degree to perform it. Again, providing a job description that includes multiple types of tasks similar to elements in a variety of occupations, without establishing or explaining the complexity or uniqueness of a specific element or elements is insufficient to establish the position as a specialty occupation pursuant to the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, CIS often reviews the employment history of the position, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. In this matter the petitioner notes that it had not previously hired an individual to perform the duties of the proffered position, but that one of the co-owners of the company, an individual with an engineering degree, had previously performed the duties. The record does not include the detailed information regarding the prior performance of the position necessary to establish that the duties of the proffered position would be similar and does not contain evidence of the individual's degree that had previously performed the duties of the position. Moreover, the petitioner states that it needs a market research analyst with a bachelor's degree and the skill set to negotiate and research the development at every

stage of the construction and to promote sales and analysis at the final stage, to allow the owners time to develop and expand their business. The petitioner indicates only that the degree should be in a business related field, not in an engineering field. The petitioner's requirement of only a general business degree diminishes the petitioner's conclusion that the proffered position must be that of a specialty occupation. When a job can be performed by a degree of generalized title or a range of degrees, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). 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 corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). In this instance, the petitioner has not described duties that require a precise and specific course of study and that require 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 petitioner has not provided a basis for establishing the position as a specialty occupation pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific discipline. When assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. The AAO has reviewed the description of the proffered position's duties and does not find specific duties that are complex or specialized. Again, the petitioner has provided information that would distinguish the proffered position from that of an individual involved in marketing, managing, and following through with the construction and selling of the petitioner's product. The petitioner has not submitted the detail necessary to identify the position as that of a market research analyst or management analyst. Nor do the described duties represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a marketing or construction manager. That the beneficiary may be required to work at advertising, promotion, sales, customer service, and cost estimation tasks as well as marketing and monitoring construction does not elevate the position to a specialty occupation. The petitioner has not described specific tasks that require the theoretical and practical application of a body of highly specialized knowledge attained only through a four-year course of study resulting in a bachelor's or higher degree in a specific specialty. The job duties described, when reviewed as a whole, do not reflect the specialization or complexity that requires the individual performing the tasks to have attained a bachelor's degree or the equivalent.

Regarding Dr. [REDACTED]'s evaluation of the proffered position, the AAO again notes that Dr. [REDACTED] relied on a few advertisements and apparently on only a few statements in one of the petitioner's descriptions of the proffered position. The AAO does not find that the conclusions in the opinion are based on a sufficiently substantiated factual foundation. The opinion is insufficient to establish that the proffered position is a specialty occupation pursuant to the fourth criterion.

The AAO recognizes that the described duties of the proffered position comprise duties in a challenging area of business. The AAO, however, does not find the nature of any of the generally described duties so complex

or specialized that the duty requires university-level knowledge acquired in a four-year program of academic study. The petitioner has not established that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific discipline.

Upon review of the totality of the evidence submitted in support of the petition, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition on this issue.

Beyond the decision of the director, the AAO finds that although the beneficiary may be qualified to perform the duties of the proffered position, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is

equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The AAO acknowledges that the beneficiary has three years of academic coursework at the University of Bombay, India resulting in a foreign degree titled Bachelor's of Commerce. However, AACRAO Electronic Database for Global Education (EDGE), a web-based resource for educational evaluations, indicates that the Indian *Bachelor of Commerce* degree represents the attainment of a level of education comparable to two or three years study at a university in the United States. Thus, the beneficiary does not have a foreign degree determined to be equivalent to a United States baccalaureate or higher degree from an accredited college or university. The petitioner has submitted an evaluation of the beneficiary's foreign degree and the evaluator opines that the beneficiary's three-year course of study is equivalent to three years of academic coursework from an accredited institution of higher education in the United States.

The evaluator, in this matter, also reviewed the beneficiary's resume and found that the beneficiary's foreign work experience was sufficient to reflect at least two additional years of bachelor's level academic training in marketing. However, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The evaluation submitted in this matter establishes only that the beneficiary's three years of education in India is the equivalent of three years of academic study at a U.S. college or university. The record does not include letters from the beneficiary's former foreign employers or other evidence that the AAO could evaluate to determine whether the beneficiary's work experience is the equivalent of an additional year of study at the university level in the United States in a specific discipline directly related to a specialty occupation. Thus, the record fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a specific discipline. For this additional reason, the petition will be denied.

The petition will be denied and the appeal dismissed for the above stated reasons. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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