



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 12 2014** OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be affirmed. The appeal will be dismissed.

The petitioner is an importer, exporter, and wholesaler of spices. It seeks to employ the beneficiary as a "business application analyst" and 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 on the ground that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

The record of proceeding contains: (1) the Form I-129 petition and supporting documentation; (2) a request for evidence (RFE) from the director and the petitioner's response thereto; (3) the director's decision; and (4) the Form I-290B, an appeal brief, and supporting materials.

LAW AND REGULATIONS

Section 101(a)(15)(H)(i)(b) of the Act defines an H-1B nonimmigrant in pertinent part as an alien:

subject to section 212(j)(2), who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 214(i)(1) . . . , who meets the requirements for the occupation specified in section 214(i)(2) . . . , and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section 212(n)(1)

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) provides further details to the definition:

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) provides that the position must meet one of the following criteria to qualify as a specialty occupation:

- (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.

FACTUAL AND PROCEDURAL HISTORY

In the Form I-129, filed on April 8, 2013, the petitioner stated that it was established in 2001, had 10 U.S. employees, and had gross annual income of \$9,358,584. The petitioner proposes to hire the beneficiary as a business application analyst for three years on a part-time basis of 13 hours per week at an annual salary of \$18,759. In a letter accompanying the Form I-129 the petitioner's chief executive officer (CEO) described his company as "a leading importer, manufacturer and processor of spices, chilies and herbal ingredients" and summarized the job duties of the business application analyst as follows:

- Analyze business procedures of the company's operations in the area of spices, herbs and chilies to devise the most efficient methods of accomplishing work and fluidity of production and distribution throughout the company as a whole (20%);
- Analyze and make proposals on how to improve problems and procedures on issues, such as target customer[s] and demographics, contribution of domestic sales teams, manufacturing timelines, qualification and channels of distribution, and effective methods of communications information flow, integrated production methods, and cost analysis (20%);
- Gather and organize information on problems and procedures including present operating procedures (15%);
- Analyze data gathered on sales objectives versus overhead and production costs, developing methods to acquire the desired account base, and consider available solutions or alternate methods of proceeding toward pre[-]determined goals in the area of spice importing and exporting (15%);

- Organize and document findings of studies and prepare recommendations for company management for implementation and new procedures (10%);
- Develop and maintain functional and operational manuals outlining established methods of performing work in accordance with organizational policy (10%); and
- Scout for spices for import and export from all over the world including Sri Lanka, India, China, Greece, Peru, Bulgaria, Indonesia, Malaysia, Mexico, Thailand and Vietnam (10%).

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in business administration, management, or a related field, plus at least six months of related experience. As evidence that the beneficiary meets the educational requirement the petitioner submitted copies of the beneficiary's diploma and academic record from [REDACTED] which show that he graduated from that institution with a Bachelor of Science in Management on May 25, 2012.

The director issued an RFE on July 10, 2013, requesting additional evidence to establish that the business application analyst qualifies as a specialty occupation. In response the petitioner submitted another letter from its CEO with additional information about the company's recent operations and an expanded description of the proffered position. Building on the previously submitted list of job duties, the CEO letter described the "nature of the position" as follows:

The . . . Business Application Analyst . . . will primarily be engaged in analyzing current business practices with a focus on establishing maximum efficiency for business operations. He will analyze the current organizational structure and recommend new systems, procedures or organizational changes in order to remain competitive in the market. . . .

The role of the Business Application Analyst is to understand the business goals, objectives and strategies of an organization and use extensive knowledge of business processes to help design and implement new business systems that align with the organization's goals. The position requires extensive knowledge of business processes in order to develop tactical and strategic processes that support the business goals and ensure operational effectiveness and excellence. . . .

In the course of the Beneficiary's regular job performance, he will be required to consult with management to determine goals and objectives. Furthermore, the Beneficiary will be required to prepare cost-benefit and return-on-investment analyses to determine the feasibility of implementing proposed processes and oversee the implementation of required components for approved processes while overseeing their implementation to ensure proper performance. When any approved processes have been implemented, the Beneficiary will also be needed to continually monitor the efficiency of said business practices and to ensure maximum output, ensure that the business itself is complying with the goals set out, and recommend solutions that ensure the continued operational effectiveness of the organization. . . .

The petitioner also submitted printouts from the company's website, the company's organizational chart, job postings from other companies advertising for a business application analyst or similar positions, financial documents, a loan approval for the purchase of commercial property, and the petitioner's federal income tax returns for 2010, 2011, and 2012.

In the denial decision, dated November 19, 2013, the director confirmed that the duties of the proffered position are comparable to those of a management analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* and consistent with the petitioner's categorization of the job in its Labor Condition Application (LCA), ETA Form 9035/9035E, certified by the U.S. Department of Labor (DOL). The director quoted from the *Handbook*, 2012-13 edition, regarding the educational requirements for this occupation, in pertinent part as follows:

Most management analysts have at least a bachelor's degree. . . .

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Based on this *Handbook* assessment the director concluded that "management analyst is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation." (Emphasis in the original.)¹ The director determined, therefore, that the proffered position does not qualify as a specialty occupation under the first regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). As for the second criterion under the regulations, the director stated that the job postings from other companies for business analysts or similarly-named positions did not involve companies that were comparable to the

¹ In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, U.S. Citizenship and Immigration Services (USCIS) routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). USCIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

petitioner and did not require a bachelor's degree in any specific specialty. Nor had the petitioner submitted documentation from any industry association, including its own, attesting that a bachelor's degree in a specific specialty is routinely required for employment in a management analyst position. Thus, the petitioner failed to show that the degree requirement is common to the industry in parallel positions among similar organizations. The director also found that the petitioner's description of the job duties was generic in nature, and failed to show that the proffered position is so complex or unique that it can only be performed by an individual with a degree. Accordingly, the evidence of record did not show that the proffered position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). With regard to the third criterion, the director noted that the petitioner had not provided any evidence of a prior employment history with respect to business application analysts to show that it normally requires a degree or its equivalent for the position. Thus, the record did not establish that the position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Finally, with regard to the fourth criterion, the director found that the duties of the proffered position, as described by the petitioner, were not more specialized or complex than those of other management analyst positions, which as a rule do not have a knowledge level requirement usually associated with a baccalaureate or higher degree in a specific specialty. Therefore, the record did not show that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). In accordance with the foregoing analysis, the director concluded that the petitioner failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that, contrary to the director's findings, the proffered position qualifies as a specialty occupation under all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The Form I-290B is supplemented by a brief from counsel, an O*NET OnLine printout for management analysts, additional job advertisements for management analyst and business analyst positions, copies of previously submitted commercial lease documents and tax returns, the petitioner's sales report and sales records for November 2013, a company profile, and a report on the Sri Lankan spices industry in the United States. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

LEGAL ANALYSIS

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 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), 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.

Moreover, to ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, etc. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Addressing the first regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), the director noted in her decision that the AAO recognizes the DOL *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation of management analyst. As previously quoted on page 5 of this decision, the *Handbook* indicates that the typical entry level requirement for management analysts is a bachelor's degree that may be in a range of different fields including business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

On appeal the petitioner acknowledges that there is no particular field of study to prepare for a management analyst career, and that “there are indeed several fields that adequately prepare a given individual for the position of a Management Analyst.” (Appeal Brief, p. 4.) In the petitioner’s view, however, the director drew an erroneous conclusion from the lack of a singular academic program for “management consulting” – *i.e.* that there is no standard for how one prepares for a career as a management analyst. The petitioner cites a summary report for management analysts from O*NET OnLine (<http://onetonline.org/link/summary/13-1111.00>, January 16, 2014), which includes a list of knowledge items (incorrectly labeled “skills” by the petitioner) that are common to everyone in this occupational field. The knowledge categories include the following:

- **Customer and Personal Service** – Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
- **Administration and Management** – Knowledge and business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
- **English language** – Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- **Personnel and Human Resources** – Knowledge of principles and procedures for personnel recruitment, selection, training, compensation and benefits, labor relations and negotiation, and personnel information systems.
- **Computers and Electronics** – Knowledge of circuit boards, processors, chips, electronic equipment, and computer hardware and software, including applications and programming.
- **Clerical** – Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, stenography and transcription, designing forms, and other office procedures and terminology.
- **Sales and Marketing** – Knowledge of principles and methods for showing, promoting, and selling products or services. This includes marketing strategy and tactics, product demonstration, sales techniques, and sales control systems.
- **Education and Training** – Knowledge of principles and methods for curriculum and training design, teaching and instruction for individuals and groups, and the measurement of training effects.

The petitioner does not explain how this list of common knowledge requirements among management analysts equates to a baccalaureate or higher degree in a specific academic specialty, which is the criterion in 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) to qualify as a specialty occupation. The knowledge items listed above are rather generic in nature and would appear to be applicable to multiple occupations. The petitioner asserts that even if a bachelor’s degree in a specific specialty is not required, a position may nonetheless qualify as a specialty occupation if specialized work experience amounting to the equivalent of a specialized bachelor’s degree is required. Once again, however, the petitioner does not explain how the experience required for

entry into the management analyst position at issue in this proceeding amounts to the equivalent of a bachelor's degree in a specific specialty.

Based on the foregoing analysis, we determine that the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position. Accordingly, the job does not qualify as a specialty occupation under the first regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

On appeal the petitioner acknowledges that the job postings submitted earlier in this proceeding involved companies in many different lines of business and that while bachelor's degrees were the minimum educational requirements for those positions, they did not generally require a specific specialty. In support of the appeal the petitioner has submitted 12 new online job postings for management or business analysts by other organizations. Five of the postings are from companies in totally different industries – including two health insurance companies, a university, a bank, and a media company. The other seven postings are from companies that may be tangentially related to the petitioner's line of business – including a market research company in the food and hospitality industry, an export-import company, a beer importer, and four companies that appear to be involved in agriculture and food – though none of them, like the petitioner, appear to be directly in the spice industry. There is little or no information in any of the advertisements about the size of the companies, their number of employees, and the scale of their business operations. So it is impossible to determine how similar these organizations are to the petitioner, and whether the advertised positions are parallel to the position at issue in this proceeding. As for the educational requirements in the seven job postings from companies that are at least broadly related to the food industry, one requires a bachelor's degree in business administration, hotel administration or hospitality management, five require a bachelor's degree without further specification, and one does not appear to require any degree. Thus, the job advertisements do not show that a bachelor's degree in a specific specialty is required for the subject business and management analyst positions. In accordance with the foregoing analysis, we conclude that the job postings submitted by the petitioner on appeal do not show that a bachelor's degree requirement is common to the petitioner's industry in parallel positions among similar organizations, as required to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not submitted any other documentary evidence of an industry standard among importers, exporters, and wholesalers of spices to require at least a baccalaureate degree in a specific specialty. Thus, the evidence of record fails to establish that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner makes the broad assertion on appeal that the nature of the proffered position is so complex and unique that it can only be performed by an individual with a specialized bachelor's degree. No specific evidence in the record is cited, however, to support this claim. Accordingly, the petitioner has not established that the proffered position qualifies as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third regulatory criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), requires an employer to demonstrate that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

In this case, the petitioner has not submitted any evidence on appeal, or in earlier stages of this proceeding, that it has previously employed a business application analyst. Thus, the petitioner has not established a prior history of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Accordingly, the record does not establish that the proffered position qualifies as a specialty position under the third regulatory criterion 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)(4), requires the petitioner to establish that the nature of the specific 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 specialty, or its equivalent. On appeal, the petitioner submits evidence of the planned expansion of its business operations, and asserts that the job duties of its business application analyst will be very demanding. Supplementing the list of job duties submitted in its original letter to USCIS, the petitioner offers a new description of the duties of the proffered position:

As a result of the petitioning company's ongoing plans for expansion not only in the accruing of more office space but also the expansion of business operations to now include food processing, the Petitioner will need a Business Applications Analyst to analyze, interpret, and suggest new implementations for the larger company, formulate proposals on how to improve problems and procedures on issues, gather and organize information on problems and procedures including present operating procedures, organize and document findings of studies and prepare recommendations for company management for implementation of new procedures, and scout for spices for import and export from all over the world. Currently, the petitioning company is responsible for an overwhelming amount of data input, as can be seen through the Petitioner's sales budget itemized lists and

import bills. It will ultimately be the Beneficiary's proposed duty to analyze data gathered on sales objectives versus overhead and production costs, develop methods to acquire the desired account base, and consider available solutions or alternate methods of proceeding toward pre-determined goals in the area of spice importing and exporting. The Beneficiary will be integral in compiling the given statistical information and preparing an updated Company Report for management that reflects more recent and accurate data than the existing Company Report. The Beneficiary will be invaluable in consistently reviewing current sales reports in order to ensure that the organization is thereby meeting their (*sic*) pre-determined sales goals and subsequently suggesting and implementing new company-wide policies to better facilitate the attainment of those goals. It will be the Beneficiary's proposed duty to conduct a comprehensive evaluation of industry-wide practices and propose strategic initiatives based off of acquired evidence and prudent analysis. A current sample of such work that the petitioning company has used is hereby being submitted to contextualize to specific and extremely specialized work the Beneficiary will be responsible for executing. The Beneficiary will be called upon to create custom reports similar to and more in-depth than this current base in order to facilitate more narrowly targeted policy implementation for the organization to implement in order to simultaneously encourage business growth and identify new sources of revenue and investment. Through the study of current market initiatives, baseline world product availability and pricing, obstacles in quality control, and recently implemented policies and operations – both at the global level as well as within the microcosm of the petitioning company at hand – the Beneficiary will be required to determine new avenues for investment and innovative operating procedures that will benefit [the Petitioner].

. . . the petitioner's continuous expansion activities necessitate the hiring of an in-house Business Applications Analyst who will provide a thorough examination of the company's current procedural policies, financial earnings of each product as well as overarching statistics and wider market trends in order to determine the company's current and future value and provide reliable projections of the company's future earnings as well as steps the company as a whole should implement in order to maximize productivity and increase profit margins.

As a matter of comparison, the *Handbook, 2014-15 Edition*, in its subchapter entitled "What Management Analysts Do," describes the typical duties of the occupation, in pertinent part, as follows:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.

Duties

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

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Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

.....

<http://www.bls.gov/ooh/business-and-financial/management-analysts.htm> (accessed 8/8/2014).

While the job duties described in the *Handbook* appear to relate more to management analysts in larger organizations than the petitioner, the nature of the duties so described are essentially in line with the job duties of the proffered position, as described in the petitioner's original letter to USCIS and in the appeal brief. The duties of the petitioner's business application analyst do not appear to be any more specialized or complex than those of a typical management analyst as described in the *Handbook*. Though a bachelor's degree is ordinarily required to become a management analyst, it need not be in any one specific specialty, or even in a select few specialty areas. As the *Handbook* makes clear, baccalaureate degrees in a wide range of fields are suitable for entry into management analyst positions. While the duties of certain management analysts may be so specialized and complex in their nature that baccalaureate-level knowledge in a specific specialty is required to perform them, the evidence of record in this case does not demonstrate that the duties of the proffered position meet such a threshold.

Thus, the petitioner has not established that the proffered position qualifies as a specialty occupation under the fourth regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Conclusion

For the reasons discussed above, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, the record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden.

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