



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **DEC 30 2014**

OFFICE: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Printing Manufacturer and sales" business with 19 employees. In order to employ the beneficiary in what it designates as a part-time Business Analyst position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that it satisfied all evidentiary requirements.

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

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

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

III. EVIDENCE

The petitioner submitted a letter of support dated March 31, 2014 from its president. In this letter, the petitioner's president stated that the company has been engaged in printing since [REDACTED] and is currently seeking business investors from China to expand its business volume. As a result, it claims to require the services of a bilingual business advisor or business analyst to reach this goal.

Regarding the proffered position, the petitioner described the position in its letter of support as that of a "Bilingual Business Development Specialist," and provided the following overview of the position's associated duties:

The Business Development Specialist ("BDS") will assist the Company's President/Chief Executive Officer in evaluation business, discuss with CEO regarding business potential failure factors, finding new business ideas, looking for new business investors, conduct and evaluating these new ideas to make sure that all of these new ideas should fall into simple and moderate concept. Moreover, the incumbent will also help our company to conduct successful marketing campaign and efficient financial control in order to make more profit annually.

Below is the three point's outline of the duties for this position with an estimation of how much time each duty may typically require on a monthly basis:

1. Meeting with CEO for business evaluation by preparing New Business opportunity Evaluation checklist. The checklist may include opportunity and

marketability product. Collect, compile, and organize company's current market updated data and conduct analysis and research of our business sales, competitors, and customers. Once familiarized, the alien is required to prepare bilingual business updated summary report and annual marketing plan and submit it to the business owner for further review and consideration in order to establish updated business policies, updated business goals and a couple of major business decisions regarding financial control, HR and market promotion related activities. Some of good advices made by the alien in the annual marketing plan have become the guide for executives and other employees. (10%)

2. Analyze the above data that includes business summary report, our available company resources (financial and manpower), and prepare detailed business expansion plans and new marketing initiatives to be presented to management for approval. (20%)
 - a. We are looking for key areas of opportunity for reaching new potential business investors in both of China and Taiwan to increase our business investment and new business opportunities. This may involve establishing more subsidiary office and importing upgraded new printing products and related services.
 - b. We are also looking for new strategies for prospecting and pursuing new customers, as well as greater efficiencies in maintaining our business with existing customers. China is a multicultural market with a large population of Chinese business owners with premises that could be interested in our products and services. They are a key target market to focus on. If possible, we will consider to establish subsidiary offices in major cities of China within next 3-5 years.
 - c. The top executive will be expected to pitch wise management ideas, establishing attainable expectations, and presenting plans of action. We are looking for comprehensive and innovative plans with clearly defined and measurable goals.
 - d. Revise existing insufficient brochures, catalogs and project proposals, etc. with proper terminology in correct marketing format. Provide clear bilingual information in a simple and easily understandable manner.
3. Direct, participate in, and manage the execution of approved expansion plans and marketing initiatives. (70%)
 - a. This will require hands-on work in the field dealing face-to-face with prospects and existing customers. Many of whom will be ethnic Chinese and will be more comfortable communicating in their native language. The incumbent must be fluent in Chinese. Additional language fluencies will be an advantage.

- b. The alien may also be empowered and required to recruit, train, and manage any requisite subordinates to assist the business or business owner based upon business progress.
- c. Prepare and provide regular evaluation and progress reports as measured against explicit milestones and goals presented in approved plans and incentives.
- d. Meet with CPA for more efficient financial control in projecting marketing strategies. The job may include but not limited to recruit more bilingual sales, conduct job training and open more branch offices in China based upon business progress within the next three years.
- e. Prepare more detailed employee self job evaluation checklist for the purpose to improve staff's service quality and their job performance.
- f. Developing more powerful promotional activities that include producing bilingual catalogs and bilingual website in the future.
- g. May interview with potential investors from Asian Countries and conduct detail financial or investment analysis regarding their qualifications.
- h. May conduct major customer's corporate financial investigation or analysis in order to submit report to management for their final review and execute a long term contract on behalf of company.
- i. Update and implementing our current computer software and website to maximize operating efficiency.

The petitioner also claimed that it required the incumbent to have at least a bachelor's degree in Business Administration, Economics, Management, or a sufficiently related field from an accredited university. In support of its contention that the beneficiary was qualified to perform the duties of the position, the petitioner submitted evidence that the beneficiary received a master's degree in Business Administration from the [REDACTED]

In further support of the petition, the petitioner submitted (1) a copy of an offer of employment letter dated March 31, 2014;¹ (2) various documents relating to the petitioner, including a comparison of its proffered position to the position of Auditor/Accountant as described in the Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*; (3) the petitioner's recruitment report dated January 2, 2014; (4) a copy of the petitioner's business license; (5) a copy of the petitioner's organizational chart; (6) a copy of the beneficiary's daily work chart; (7) copies of various tax documents; (8) copies of the petitioner's lease, floor plan, and office photos; and (9) copies of the petitioner's worker compensation policy.

Finally, the petitioner submitted two Labor Condition Applications (LCAs) to support the visa petition. One states that the proffered position is a bilingual business and market analyst position,

¹ This letter contains an offer of employment addressed to and accepted by [REDACTED] not the beneficiary. The relevance of this document to the instant petition, therefore, is not clear. Consequently, this document will not be afforded evidentiary weight in this matter.

corresponding to Standard Occupational Classification (SOC) code and title 13-1161, Market Research Analysts and Marketing Specialists from the Occupational Information Network (O*NET). The other states that the proffered position is a financial counselor, corresponding to Standard Occupational Classification (SOC) code and title 11-3031, Financial Managers from O*NET. Both LCAs state that the proffered position is a Level I, entry-level, position.

On April 28, 2014, the service center issued an RFE in this matter. The service center requested, among other things, evidence that the petitioner would employ the beneficiary in a specialty occupation, and provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements. In addition, the service center requested additional documentation in support of the beneficiary's educational qualifications.

In response, the petitioner submitted, among other things, (1) a letter dated May 15, 2014 addressing the issues raised by the director; (2) evidence pertaining to its past business practices including its classified job posting for the proffered position; and (3) additional documentation pertaining to the petitioner and its affiliates.

In its May 15, 2014 response, the petitioner restated the previous duties associated with the proffered position, and contented that the duties of the position were akin to those of both a Market Research Analyst and a Financial Advisor. In addition, the petitioner stressed the uniqueness of its business, and relied on evidence comparing its business operations to those of its competitors to establish the need for a bilingual business analyst.

The director denied the petition on May 23, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty, or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director noted discrepancies in the petitioner's claims, noting that its claim that the proffered position simultaneously corresponded with the occupation of market research analyst and financial advisor rendered the true nature of the proffered position questionable.

On appeal, the petitioner contends that the director's decision was erroneous, and provides a brief and additional evidence in support of this contention. These submissions will be addressed below.

IV. ANALYSIS

Initially, we turn to the director's finding that numerous discrepancies exist regarding the nature of the proffered position.

Although the position is titled "Business Analyst" on the Form I-129 petition, the petitioner's letter of support dated March 31, 2014 identifies the proffered position as that of a "Bilingual Business Development Specialist." As previously noted, the petitioner submitted two certified LCAs in

support of the petition: one for the position of "Bilingual Business and Market Analyst," classified under the occupation title of Market Research Analysts and Marketing Specialist," SOC (ONET/OES) Code 13-1161; and the second for "Financial Counselor," classified under the occupation title of "Financial Managers," SOC (ONET/OES) Code 11-3031.

It is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file two separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered. While we note the petitioner's assertion on appeal that the proffered position is a combination of both market research analyst and financial planner, the proper remedy here would have been to file two separate petitions requesting concurrent, part-time employment for each occupation.

Based on its simultaneous claims that the proffered position comprises two distinct occupational categories, we are unable to determine the substantive nature of the work the beneficiary would actually perform if the visa petition were approved. Although the petitioner's description of duties focuses heavily on market research tasks, it also identifies financial related tasks and claims that the services of the beneficiary will be essential in the petitioner's global expansion efforts. Despite requesting clarification regarding the nature of the duties of the proffered position, the petitioner responded to the RFE by claiming that the proffered position was both a market research analyst and a financial advisor. Based on the petitioner's own admission, this statement prohibits a finding that the proffered position is actually akin to one classification or the other. The substantive nature of the work the beneficiary would actually perform in the proffered position if the instant visa petition were approved, therefore, has not been established.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the

second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we will assume, for the sake of argument, that the beneficiary would perform the duties of a market research analyst, since the duties described in the petitioner's March 31, 2014 letter and the duty description submitted in response to the RFE appear to closely resemble the duties of this occupation.

We must first note that the petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.² A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).³

² We note that the petitioner states this minimum educational requirement in its March 31, 20-14 letter, and further note that this claim is amended to requiring at least a master's degree in business administration or economics in response to the RFE. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz*

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, we first turned to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ The petitioner claims in the LCA that the proffered position is a bilingual business & market analyst and corresponds to SOC code and title 13-1161, Market Research Analysts and Marketing Specialists from O*NET. The *Handbook* describes the occupation of "Market Research Analysts" as follows:

Assocs., 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the excerpt from the *Handbook* regarding the occupational category "Market Research Analysts."

What Market Research Analysts Do

Market research analysts study market conditions to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.

Duties

Market research analysts typically do the following:

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

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

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop advertising brochures and commercials, sales plans, and product promotions.

Market research analysts evaluate data using statistical techniques and software. They must interpret what the data means for their client, and they may forecast future trends. They often make charts, graphs, and other visual aids to present the results of their research.

Workers who design and conduct surveys are known as survey researchers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Market Research Analysts," <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited December 22, 2014).

Most of the duties attributed to the proffered position are consistent with the duties of market research analysts as described in the *Handbook*. On the balance, based on the duties attributed to the proffered position, we find that, if the duty descriptions provided are assumed to be accurate, the proffered position is most akin to a market research analyst position as described in the *Handbook*.

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

How to Become a Market Research Analyst

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

Other Experience

Most market research analysts can benefit from internships or work experience in business, marketing, or sales. Work experience in other positions that require analyzing data, writing reports, or surveying or collecting data can also be helpful in finding a market research position.

Licenses, Certifications, and Registrations

Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts. Candidates

qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research.

Important Qualities

Analytical skills. Market research analysts must be able to understand large amounts of data and information.

Communication skills. Market research analysts need strong communication skills when gathering information, interpreting data, and presenting results to clients.

Critical-thinking skills. Market research analysts must assess all available information to determine what marketing strategy would work best for a company.

Detail oriented. Market research analysts must be detail oriented because they often do precise data analysis.

Id. at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited December 22, 2014).

The *Handbook* indicates that market research analyst positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty, or its equivalent, as it indicates that an otherwise unspecified degree in business administration may be a sufficient educational qualification for some positions. As previously discussed, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty, or its equivalent.

In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty, or its equivalent, "is normally the minimum requirement for entry into [this] particular position."

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of market research analysis but, even if the duty description were assumed to be accurate, do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

In the instant case, the petitioner has not established that, even if the duty descriptions were assumed to be accurate and the proffered position were found to be a market research analyst position, the proffered position would be within an occupational category for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry into those positions.

As was noted above, the petitioner did submit what it refers to as a "Comparison Table," where it distinguishes the petitioner's requirements regarding educational credentials, business skills, and communication/marketing skills from those of other similar positions in the "same size company." The petitioner, however, provides no evidence to support these contentions. Notably, this document indicates that its company imposes higher educational and experiential standards than that of "same size companies" for similar positions; therefore, the comparison table does little to establish an industry-wide requirement for at least a degree in a specific specialty for entry into the proffered position.

We observe that, in order to address the criterion of the first alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner would be obliged to provide evidence pertinent to organizations in the petitioner's industry. Even if the proffered position is assumed to be a market research analyst position as represented, in order to attempt to show that parallel positions require a

minimum of a bachelor's degree in a specific specialty, or its equivalent, the petitioner would be obliged to demonstrate that other Level I market research analyst positions, entry-level positions requiring only a basic understanding of market research analysis, require a minimum of a bachelor's degree in a specific specialty or its equivalent. The record contains no such documentation.

Thus, even assuming that the duty descriptions provided accurately describe a market research analyst position, the evidence of record would not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." Even assuming the proffered position is that of a market research analyst, a review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described, that are alleged to collectively constitute the proffered position, require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here. As noted by the director, it appears that the petitioner's claims of complexity arise from the language and cultural background that the beneficiary will bring to the position.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I market research analyst, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of market research analysis. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some market research analyst positions do not require such a degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific

specialty. In other words, even assuming the proffered position is in fact that of a market research analyst, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty, or its equivalent, for the proffered position.⁵

The petitioner submits a Form W-2 for 2013 issued to [REDACTED], along with copies of his diplomas indicating he holds both a bachelor's degree and master's degree in business administration. The petitioner provides no explanatory statement regarding these documents, but indicates they represent the petitioner's past hiring practices. The record, however, contains no additional evidence identifying the nature of Mr. [REDACTED] employment with the petitioner or what position he occupied. Therefore, the mere submission of these documents does not establish that the petitioner routinely hires only specialty-degreed individuals for the proffered position as required by this criterion.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires a demonstration that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The petitioner has not satisfied this criterion.

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties attributed to the proffered position, such as

⁵ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

researching market trends, gathering and forecasting data pertinent to competitors and analyzing it, and developing and implementing advertising and marketing strategies, even if they are assumed to be an accurate account of the duties the beneficiary would actually perform if the visa petition were approved, contain no indication of a nature so specialized and complex that it requires knowledge usually associated with attainment of a bachelor's degree.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I market research analyst position, a position for a beginning level employee with only a basic understanding of market research analysis. This does not support the proposition that the nature of the specific duties attributed to the proffered position is so specialized and complex that their performance would usually be associated with the attainment of a minimum of a bachelor's degree in a specific specialty, or its equivalent, directly related to market research analysis, especially as the *Handbook* indicates that some market research analyst positions require no such degree.

In other words, the proposed duties, even if they are assumed to have been accurately reported, have not been described with sufficient specificity to show that they are more specialized and complex than the duties of market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner further refers to numerous unpublished decisions in which we determined that the position of market research analyst proffered in that matter qualified as a specialty occupation. The petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

V. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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