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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **JUN 06 2014**

OFFICE: VERMONT 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:

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. A subsequent motion to reopen was granted, but the visa petition was again denied. The director then reopened the matter *sua sponte*, then denied the petition again. 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 clothing designer, manufacturer, and distributor with 15 employees. In order to employ the beneficiary in what it designates as a business development specialist position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The AAO observes that the petitioner has been represented by two attorneys during the pendency of the instant visa petition. In today's decision, they are both referred to interchangeably as "counsel."

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

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

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

## II. THE LAW

The issue before the AAO 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 Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a business development specialist position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1161, Market Research Analysts and Marketing Specialists from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted a transcript of classes the beneficiary has taken at the [REDACTED]. Counsel also submitted a letter, dated September 2, 2011, from the Office of the Registrar at the [REDACTED] stating that the beneficiary has completed all of the requirements for a bachelor's degree in economics.

Counsel also submitted a letter, dated October 14, 2011, from the petitioner's president, which states that, in the proffered position, the beneficiary would collect and analyze financial data and industry statistics on the petitioner's behalf. More concretely, it states:

[The beneficiary] will devise and evaluate methods and procedures for collecting and arranging data, such as surveys, opinion polls, or questionnaires. He will collect and



analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand. [The beneficiary] will gather data on our competitors and will analyze their prices, sales, and methods of marketing and business procedures. He will use this information to ensure that our company is competitive within its respective industries [sic] and that we remain highly competitive within the U.S. market. Additionally, he will also analyze our financial records and past marketing and advertising strategies to determine the overall effectiveness of our existing marketing, advertising and communications efforts.

By drawing upon his analyses of consumer trends, competitor and industry trends and or own strategies, [the beneficiary] will develop and implement procedures for identifying advertising needs and more cost effective marketing and management strategies on behalf of [the petitioner]. He will utilize the results of his findings to prepare reports of his findings, illustrating data graphically and translating complex findings into written text. [The beneficiary] will present the results of his research and reports to our marketing and management department, and will offer suggestions as to how to improve marketing strategies and market position. Moreover, he will attend industry conferences to collect information and proposals concerning the promotion, design and pricing of company products or services. He will serve as a representative of [the petitioner] to secure future business.

As to the educational qualification required by the proffered position, the petitioner's president stated:

The standard minimum educational requirement for the position of Business Development Specialist is a Bachelor's Degree in Economics, Management, Business Administration, Marketing, a related field, or an equivalent combination of education and work experience.

Subsequently, the visa petition was denied as abandoned based on the finding that the petitioner had not responded to an RFE issued in this matter. In a motion to reopen, the petitioner asserted that it did not receive an RFE. Pursuant to that motion, the matter was reopened. It was then denied again and subsequently, the director reopened the matter again, based on a finding that USCIS had not sent the RFE in question.

The service center issued an RFE on November 16, 2012, requesting, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted, *inter alia*, a letter, dated January 18, 2013, from [REDACTED], the petitioner's CEO,<sup>1</sup> and six vacancy announcements placed by other firms. The vacancy announcements will be addressed below.

In his January 18, 2013 letter, the petitioner's CEO again asserted that the proffered position requires a bachelor's degree in business, economics, finance, marketing or a related field. He cited O\*NET, the vacancy announcements provided, and the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that the proffered position requires such a degree.

The director denied the petition on August 29, 2013, 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).

On appeal, counsel submitted (1) evidence pertinent to other people who work for the petitioner; (2) an undated letter from the petitioner's president,<sup>2</sup> (3) a list of the petitioner's employees, and (4) a brief.

The evidence pertinent to the petitioner's other employees shows that two of the petitioner's employees have bachelor's degrees. One of those degrees is in business administration and the other is in fashion design. Additional evidence shows that one of the petitioner's employees has an associate's degree in fashion merchandising management. No evidence was submitted to show that any of those employees work, or have worked, in the proffered position.

In his undated letter, the petitioner's president provided the following amended list of the duties of the proffered position:

1. Work to analyze initiatives, provide cost/benefit analysis, and define measurement objectives in our operational departments (sourcing, logistics, distribution, marketing etc. to identify opportunities for management to improve the company's bottom line. [Missing right parenthesis as per the original]
2. Perform various analytical functions, including presenting accounting reports and financial statements, etc. and provide actionable insights.
3. Perform internal auditing, analyze & update accounting methods, taxation rules, business processes, etc.
4. Research and analyze data to create comparison spreadsheets & reports on expenses (sourcing costs), sales, and profits for new projects.
5. Analyze expense budget for existing and future planned products.

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<sup>1</sup> Elsewhere in the record, [REDACTED] is identified as the petitioner's president.

<sup>2</sup> That letter was signed by [REDACTED] who previously signed correspondence as the petitioner's CEO.

The petitioner's president reiterated that the proffered position requires a minimum of a bachelor's degree in business administration, economics, marketing, or a related field.

In the appeal brief, counsel asserted that the evidence provided demonstrates that the proffered position qualifies as a specialty occupation. Counsel also stated that the petitioner, which now has nine employees, has not previously employed anyone in the proffered position, and that its employees in similar positions have bachelor's degrees. As evidence, counsel referred to the list of the petitioner's employees provided with the appeal.

The list of the petitioner's employees states that the petitioner's Head Fashion Designer has a bachelor's degree in fashion design, that its Marketing Development Specialist has the equivalent of a Bachelor of Arts degree in Fashion Merchandising Management, that one of its production coordinators has a bachelor's degree in fashion industry and the other has an otherwise unspecified bachelor's degree in liberal arts, that its business analyst has a bachelor's degree in business administration, that its production manager has a "BA of Science," that an administrative worker has no degree, and that the petitioner's production coordinator has an "Associated degree." The petitioner's president is identified by name on that list, but whether he has any college degree is not stated.

#### IV. ANALYSIS

As a preliminary matter, the AAO observes that the petitioner has never claimed that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, the petitioner's president's indicated in his letters that the educational requirement of the proffered position would be satisfied by an otherwise unspecified bachelor's degree in business. The petitioner has never retracted that assertion and has never stated an educational requirement for the proffered position that would not be satisfied by an otherwise unspecified bachelor's degree in business.

A degree with a generalized title, such as business, 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 or business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner's assertion pertinent to the educational requirement of the proffered position is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next 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 considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-1161, Market Research Analysts and Marketing Specialists from O\*NET. The AAO reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of 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

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

- 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 May 15, 2014).

The duties that [REDACTED] who has indicated that he is the petitioner's president and CEO, attributed to the proffered position are consistent with the duties of market research analysts as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a market research analyst position as described in the *Handbook*.

As was noted above, [REDACTED] cited O\*NET for the proposition that the proffered position requires a minimum of a bachelor's degree in business, economics, marketing, or a similar field, or its equivalent.

On May 15, 2014, the AAO accessed the pertinent section of the O\*NET Internet site, which addresses Market Research Analysts and Marketing Specialists under the Department of Labor's Standard Occupational Classification code of 13-1161. Contrary to [REDACTED]'s statement, O\*NET does not state a requirement for a bachelor's degree. Rather, it assigns Market Research Analysts and Marketing Specialists a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a

specific specialty closely related to the requirements of that occupation. Therefore, the O\*NET information is not probative of the proffered position's being a specialty occupation.

The AAO next returns to the *Handbook* chapter pertinent to Market Research Analysts, which states the following about the educational requirements of those positions:

### **How to Become a Market Research Analyst or Marketing Specialist**

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 May 15, 2014).

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>4</sup> Section 214(i)(1)(b) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." 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

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<sup>4</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree in a specific specialty is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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." Going on 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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 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 still, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of marketing and statistical analysis, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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 the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, 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.

The petitioner did submit six vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Business Development/Proposal Specialist for a recruiting company's unidentified client in the utilities industry requiring a "Bachelor's degree in relevant field and 2+ years' relevant work experience or compatible combination of education and experience";
2. Marketing and Business Development Specialist for a law firm requiring a bachelor's degree, "preferably in Marketing, Business, or a research, or communications-related degree" and "four or more years demonstrated success in a marketing, research, management, and/or communications-related field";
3. Business Development Officer/Relationship Manager for a recruiting company's unidentified client in the banking/financial services industry stating, "Bachelor's degree in Business or related area preferred" and requiring a minimum of three years of experience in sales, sales management and marketing in financial services";
4. Business Analyst for Global Publishing Company requiring a "Bachelor's Degree or equivalent experience[:] 3-5 years prior experience in a BA or Jr. BA role."
5. Marketing Manager for The Chronicle of Higher Education requiring a bachelor's degree, "preferably in marketing," and "3-5 years of in-depth experience in marketing communications"; and



6. Digital Marketing Manager for AIS Media, a digital marketing agency, stating, "The ideal candidate will have a BS/BA (or equivalent) in marketing, communications, journalism, or related discipline."

The first vacancy announcement states that the position announced requires a bachelor's degree "in a relevant field." However, the range of fields the hiring authority would consider relevant to the position is unknown to the AAO, as is whether that range of fields would constitute "specific specialty." That vacancy announcement cannot be shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The second vacancy states that a bachelor's degree is required for the position, and that a bachelor's degree in "Marketing, Business, or a research, or communications-related degree" is preferred for the position. A preference is not a minimum requirement. As such, the second vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The third vacancy announcement states that the hiring authority prefers a bachelor's degree in business or a related area for the position announced. The AAO observes, first, that a preference is not a minimum requirement. As such, that vacancy announcement does not contain a requirement of a minimum of a bachelor's degree or its equivalent.

Further, the degree preferred is an otherwise unspecified bachelor's degree in business. As was explained above, a requirement of an otherwise unspecified bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, even if that vacancy announcement stated that a bachelor's degree in business is a requirement for the position announced, rather than merely a preference, it would not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, that vacancy announcement states a preference for an unspecified bachelor's degree in business "or [a] related area." The range of fields the hiring authority would consider sufficiently closely related to business is, again, unknown to the AAO, as is whether that entire array of fields, considered together, would constitute a specific specialty. Even if that vacancy announcement stated a requirement, rather than a preference, of a degree in business or a related area, and even if a requirement of a degree in business were a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, that vacancy announcement still would not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The fourth vacancy announcement states that a bachelor's degree is generally required for the position announced, but not that the degree should be in any specific specialty, or any array of specialties. Clearly, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In addition, the fourth vacancy announcement indicates that three to five years of experience may be substituted for the otherwise requisite bachelor's degree. Three to five years of experience is not

equivalent to a bachelor's degree pursuant to the salient regulation, which requires a minimum of three years of specialized training and/or work experience, and various other conditions, for each year of college-level training to be compensated for by experience in order for experience to qualify as equivalent to a four-year bachelor's degree. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this additional reason, the fourth vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The fifth vacancy announcement, like the second, states a preference for a particular degree, rather than a minimum requirement. As was explained above, a preference is not a requirement, and that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The sixth vacancy announcement states that the "ideal candidate" would have a bachelor's degree, or the equivalent, in "marketing, communications, journalism, or [a] related discipline." That an ideal candidate would have such a degree does not indicate that such a degree is a minimum requirement. As such, the sixth vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, what disciplines the hiring authority would consider to be sufficiently closely related to marketing, communications, journalism, or the position announced is unknown to the AAO. For this additional reason, that vacancy announcement has not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Furthermore, the second and third vacancy announcements indicate that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the positions they announce. As was explained above, an educational requirement that may be satisfied by an otherwise unspecified degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For this additional reason, those two vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Additionally, to satisfy the alternative requirement of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for *parallel positions in the petitioner's industry in organizations similar to the petitioner.*

To demonstrate that one of the companies that placed those vacancy announcements is "similar" to the petitioner, the petitioner would be obliged to submit evidence sufficient to demonstrate that the petitioner and the other organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). As none of the vacancy announcements have



been shown to have been placed by organizations similar to the petitioner, they are not persuasive evidence for the proposition that parallel positions in organizations similar to the petitioner and in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Not only is the petitioner obliged to show that the positions announced are in organizations similar to the petitioner, but also to demonstrate that they are in the petitioner's industry. The AAO observes, however, that the first vacancy announcement is for a position with a utility company, the second vacancy announcement was placed by a law firm, the third vacancy announcement is for a position in the banking and financial services industry, the fourth vacancy announcement is for a position with a publishing company, the fifth vacancy announcement is for a position with a periodical pertinent to higher education, and the sixth vacancy announcement was placed by a digital marketing agency. None of the vacancy announcements provided were placed for positions in the petitioner's industry. For this additional reason, none are persuasive evidence for the proposition that parallel positions in organizations similar to the petitioner and in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even further, although each of the vacancy announcements contains some descriptions of the duties of the positions they announce, none contain a description so detailed that it shows that the position announced is truly parallel to the proffered position and would necessarily require the same type and amount of education as the proffered position. For this additional reason, none of the vacancy announcements provided has been shown to be within the scope of the first alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from six announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>5</sup>

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>5</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).



The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties 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 that 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.

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

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>6</sup>

Counsel stated, on appeal, that the petitioner has never previously hired anyone in the proffered position, and the record contains no evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as devising and evaluating methods and procedures for collecting and arranging data, collecting and analyzing data, and producing reports illustrating his findings contain no indication of a nature so specialized and complex that they require knowledge usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

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

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<sup>6</sup> 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").

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

## 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.