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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

SEP 18 2014

DATE: OFFICE: VERMONT SERVICE CENTER

FILE:

IN RE: Petitioner:  
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 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 "Retail" business with one employee. Other evidence in the record suggests that it sells a variety of products, including hair extensions and jewelry. In order to employ the beneficiary in what it designates as a part-time Market Research 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, 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, we have determined that the director did not err in his 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 and counsel'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 Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a market research analyst 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 evidence that the beneficiary received a bachelor's degree in Fashion and Retail Management from [REDACTED]. Counsel also submitted (1) a letter, dated April 3, 2013, from the petitioner's president; and (2) counsel's own letter, dated April 4, 2013.

In his April 3, 2013 letter, the petitioner's president stated the following:

The duties of a Market Research Analyst<sup>1</sup> include, but are not limited to:

- The development and implementation of marketing strategies, based on the research and analysis of empirical data, aimed at achieving sales and profit objectives;

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<sup>1</sup> Whether the petitioner's president was stating the duties of the specific position proffered or the duties of market research analyst positions in general is not entirely clear.



- Researching market trends and conditions in local, regional, and/or national areas to determine potential sales of products.
- Gathering data and analyzing on competitors, prices, sales and methods of marketing and distribution;
- Using research results to develop marketing strategies and advertising campaigns based on consumer preferences and buying habits;
- Analyzing and evaluating service objectives and identify potential problems and opportunities and make recommendations for appropriate course of action;
- Analyzing, reviewing, and evaluating market strategies, advertising strategies, and pricing matrixes of competing companies and making recommendations for appropriate course of responsive action.

The petitioner's president also stated, "developing our own line of exclusive private label merchandise and creative designs is a primary focus of the company." As to the educational requirements of the proffered position, the petitioner's president stated: "Due to the nature of the position, we require that the incumbent possess a minimum of a bachelor's degree or the experiential equivalent associated with the professional position offered. Please note that the Foreign Labor Certification Data Center has stated that a Market Research Analyst typically must have a Bachelor's Degree."<sup>2</sup>

In his April 4, 2013 letter, counsel also asserted that the proffered position requires a bachelor's degree, but did not assert that the degree must be in any specific specialty.

On August 30, 2013, the service center issued an RFE in this matter. The service center requested, *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*, (1) a more detailed description of the proffered position; and (2) counsel's own letter, dated November 13, 2013.

The more detailed description of the proffered position states the following:

1. The development and implementation of marketing strategies, based on the research and analysis of empirical data, aimed at achieving sales and profit objectives:

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<sup>2</sup> Whether those statements indicate that the proffered position requires a degree in a specific specialty and, if it does, what that specific specialty is, are both unclear.

- Using Excel, perform data analyses to estimate sale trend of each product category (e.g. sterling silver earring [sic] sells well on Friday based on past years' volatility index)
  - Execute Internet marketing initiatives to meet strategic business goals and objectives.
  - Plan an integral role in planning and implementation of Print & Web related marketing products.
  - Develop meaningful, actionable market analysis that shape and support a wide variety of marketing initiatives.
  - Produce weekly/monthly performance summaries by tracking, measuring and analyzing website traffic patterns and online buying behavior. Recommend changes based on noted trends in data.
2. Researching market trends and conditions in local, regional, and/or national areas to determine potential sales of products:
- Continuously research competition and make pricing, merchandising and other strategy recommendations based on findings.
  - Create bi-weekly purchasing guideline (based on statistical analysis of past sales performance to identify "hot selling items")
3. Gather data and analyzing on competitors, prices, sales and methods of marketing and distribution:
- Analyze website analytics data.
  - Collects and periodically reports customer and market data including market segment performance data, data on competitor prices, sales, and methods of marketing and distribution.
  - Examine and analyzes statistical data to forecast marketing trends.
  - Perform macro-economic, market & competition data research and analysis, maintenance of the Market and Competition Repository and various analysis with regards to sales leads and market data.
  - Apply various analytic methods to discover and interpret information from multiple data sources.
  - Conduct in-depth interpretation of field data using quantitative and economic analysis.
- [4] Using research results to develop marketing strategies and advertising campaigns based on consumer preferences and buying habits:
- Contribute conceptual, strategic and tactical skills to projects.

- Develop and execute qualitative and quantitative consumer research projects.
  - Identify, develop and implement research designs using proven methodologies and techniques for consumer preferences and buying habits of prototypes and products.
  - Provide leadership and strategy towards developing a robust marketing program supporting sell established brands and new product launches.
  - Write reports that include effective graphs, tables, summaries, and narratives.
- 5 Analyzing and evaluating service objectives and identify potential problems and opportunities and make recommendations for appropriate course of action;
- 6 Analyzing, reviewing, and evaluating marketing strategies, advertising strategies, and pricing matrixes of competing companies and making recommendations for appropriate courses of responsive action.
- Interpret data and present findings with appropriate documentation, reference, and supporting material.
  - Communicate analytical information in proper format to the appropriate manager as required or directed.
  - Consult with staff and support business unites to identify their needs, budget constraints, and reasonable deadlines for the project; serves as a liaison between the client and Managers.
  - Consult with internal clients to assist them in defining research needs and developing appropriate methodology.
  - Prepares reports, including charts and graphs, and presents recommendations for action plans to senior management.
  - Recommend website changes and modifications that will attract more customers, increase sales and improve customer satisfaction.
  - Understand and resolve issues and answer questions in English and Korean.

[Errors in the original.]

As to the education required by the duties of the proffered position, that job description states that the duties grouped in the first five categories require:

BA or BS degree or higher in Fashion (with marketing research, financial Operation, E-commerce courses), Marketing (with fashion concentration), or Business (with fashion Concentration)



The job description states that the sixth group of duties requires

BA or BS degree or higher in Fashion (with marketing research, financial Operation, E-commerce courses), or Business (with fashion Concentration) or foreign language, computer and communication skills[.]

In his November 13, 2013 letter, counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for the proposition that market research analyst positions require a minimum of a bachelor's degree. Counsel stated, several times: "Due to the nature of the position, the Petitioner requires that the incumbent possess a minimum of a bachelor's degree or the experiential equivalent associated with the professional position offered."

The director denied the petition on January 17, 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).

On appeal, counsel provided eight vacancy announcements and a brief. The vacancy announcements will be addressed below.

In the brief counsel asserted that the director's decision of denial should be overturned because it is conclusory, providing no basis for the decision, and because the director misread a transcript of the classes the beneficiary attended to earn her degree. Counsel also asserted that the evidence of record demonstrates that the visa petition should be approved.

#### IV. ANALYSIS

Initially, we note that we conduct appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's assertion that the director misinterpreted evidence or that the decision below was poorly phrased is no bar to our independent examination and analysis of the evidence of record to determine whether the visa petition should be approved.

The petitioner has failed to demonstrate the substantive nature of the work the beneficiary would actually perform if the visa petition were approved. First, although the petitioner's president stated, "developing our own line of exclusive private label merchandise and creative designs is a primary focus" of the petitioner, the record contains no evidence pertinent to the existence or the extent of that line of exclusive private label merchandise. Further, although the petitioner had only one employee when it filed the visa petition, and has only three employees now, including its president, the petitioner asserts that one of those employees will work exclusively as a market research analyst. That the petitioner, which operates a retail store, would utilize one of its three workers exclusively as a market research analyst is manifestly unlikely, and we find the evidence insufficient to establish

that assertion as fact. The substantive nature of the work the beneficiary would actually perform in the proffered position if the instant visa petition were approved has therefore 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, will assume, *arguendo*, that the beneficiary would exclusively perform the duties described in the petitioner's president's April 3, 2013 letter and the duty description submitted in response to the RFE.

We turn 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 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 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 is a market research analyst position 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:

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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/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.



## 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 Sept. 17, 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 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 Sept. 17, 2014).

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

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)(1), 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.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find 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 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 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.

As was noted above, counsel did submit eight vacancy announcements on appeal.

The petitioner is a retailer of fashion items. Of the vacancy announcements submitted, many are not in the fashion industry and many were not placed by retailers. 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.

Further, all but one of the vacancy announcements provided indicate that the positions they announce require experience, and some indicate that the positions announced require a considerable amount of very specific experience. The petitioner indicated, on the LCA, that the proffered position is a Level I Market Research Analyst as described in O\*NET, indicating, as was explained above, that it is an entry-level position for an employee who has only basic understanding of the occupation. 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.

Further still, although all of the vacancy announcements provided indicate that the positions they announce require a bachelor's degree, only one states that it requires a minimum of a bachelor's degree in a specific specialty. For this additional reason, the vacancy announcements submitted do not support the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from eight announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>4</sup>

Thus, even assuming that the duty descriptions provided are accurate, 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 to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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 duty descriptions provided are accurate, 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

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<sup>4</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. 369, 376 (AAO 2010). 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).

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 degrees acceptable for such positions, including degrees not in a specific specialty. In other words, even assuming the duty descriptions provided to be accurate, 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.<sup>5</sup>

Counsel stated, in his November 13, 2013 letter, that the proffered position is a new position in the petitioner's organization. Although the fact that a proffered position is a newly-created one is not in

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<sup>5</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").



itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

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 researching market trends, gathering 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 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.