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U.S. Citizenship
and Immigration
Services

DATE: **SEP 26 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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 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 "World-leading supplier in telecommunications." To employ the beneficiary in a position it designates as a Project Manager 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 director denied the petition, finding that the petitioner failed to establish that the beneficiary is qualified for the proffered position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

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 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

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.

The degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *Cf. Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558,560 (Comm'r 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

B. BENEFICIARY QUALIFICATIONS

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

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

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In addition, 8 C.F.R. § 214.2(h)(4)(v)(A) states:

General. If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

III. EVIDENCE

The visa petition was submitted on April 3, 2013. The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Project Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1111, Management Analysts from the Occupational Information Network (O*NET).

Counsel submitted the beneficiary's résumé, employment verification letters, and certificates pertinent to the beneficiary's technical training. Those certificates indicate that he completed courses in [REDACTED]

[REDACTED] They do not reveal the number of classroom hours required by those courses.

One employment verification letter purports to be from [REDACTED] whose signature line identifies him as "Operations Manager [REDACTED]". It states that the beneficiary was employed full-time by [REDACTED] in United Kingdom as a Rigger/Microwave Commissioning

Engineer from April 1997 to July 2004. The beneficiary's résumé confirms that he claims that employment during that period.

provided another employment verification letter that states that the beneficiary was employed by in the United Kingdom as a Rigger/Microwave Commissioning Engineer from July 2004 to July 2006. In that letter, Mr. identifies himself as "Operations Manager, National Lead." The beneficiary's résumé confirms that he claims that employment during that period.

Another employment verification letter was provided by who identifies his job title as Regional Manager Australia, but does not identify the company for which he works. It states that the beneficiary worked as a contractor for the petitioner on the in Australia from July 2006 to July 2007 in a Field/Implementation Manager position. The beneficiary's résumé confirms that he claims that employment during that period.

One employment verification letter is from who states his title as "Regional Manager Egypt (July 2007 – February 2008)," but does not identify the company for which Mr. then worked. It states:

This letter is to verify that [the beneficiary] was contractor on behalf of [the petitioner] and was assigned to Egypt on the Project, as a consultant (working an average of 50 hours per week) Project/Implementation Manager from July 2007 – August 2008

It is noted that Mr. did not reveal how, if his tenure as Regional Manager Egypt ended in February of 2008, he is able to verify the beneficiary's employment through August of 2008. In any event, the beneficiary's résumé confirms that he claims employment in that capacity from July 2007 to August 2008.

On his résumé, the beneficiary claims to have worked for as a Project Manager/field engineer from August 2007 to November 2008. That employment claim is not supported by an employment verification letter.

We observe that the claim to have worked in Egypt from July 2007 to August 2008 conflicts with the claim of having worked in New Zealand from August 2007 to November 2008. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies,

¹ It appears that Mr. letter states that the project is called ; however, due to the poor quality of the printed copy of that letter, we are not certain of the project name.

absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

Returning to the beneficiary's employment history claim, an employment verification letter purports to be from [REDACTED] the CEO/Owner of [REDACTED]. It states that [REDACTED] assigned the beneficiary to [REDACTED] to work as a Project Manager/Engineer from "November 2008 - March 2008." The beneficiary's résumé indicates that he claims to have worked in that capacity from "Nov 2008 - March 2009." Given that the beneficiary claims to have worked in New Zealand through November 2008 and in Spain beginning in March 2009, we suspect that the beneficiary is claiming employment in Panama from November 2008 to March 2009, and that the statement that the beneficiary worked in Panama from "November 2008 - March 2008" was the result of a typographical error. However, given the other discrepancies in the beneficiary's employment claim, we are unable to rely on that assumption.

A letter that purports to be from [REDACTED] Manager Technical Solutions for [REDACTED] states that the beneficiary worked for [REDACTED] Spain as a TAC Customer Diagnostic Transmission & Data Lead from March 2009 to January 2010. That letter is unsigned.

Another letter that also purports to be from [REDACTED] states that [REDACTED] assigned the beneficiary to work for Ericsson Belgium as a Project Manager & Microwave Design Engineer from January 2010 to April 2010.

With the visa petition, counsel submitted no evidence that the beneficiary ever received a college degree or studied at college, but provided certificates pertinent to technical training and the employment verification letters. An evaluation in the record states that the beneficiary's training and employment experience is equivalent to a U.S. bachelor's degree in telecommunications engineering technology.

Counsel also submitted a letter, dated April 2, 2013, from [REDACTED] whose signature line identifies her as the petitioner's "Immigration Specialist II." As to the duties of the proffered position, it states:

As a Project Manager, [the beneficiary] will be accountable for planning, prioritizing and executing a project by working with Account Managers, Operations and Product Managers, and customers, including project procurement, integration, time, cost, scope, planning and initiation; develops required project documentation identifying project goals and tasks and generating assignments consistent to meet objectives; establishes change management procedures, including evaluation and communication for project duration and develops reporting strategy for project; maintain clear communication with customers regarding mutual expectations and monitors customer satisfaction; build business relationships beyond the project environment; organizes and leads a matrixed project; provide feedback and focus to all team members; take

responsibility for project and actively executes to project plan while maintaining quality standards; ensure all commitments are met in accordance with project goals/objectives; demonstrate control of equipment deliveries, service costs, project activities and customer hand-over requirements; responsible for reporting on project financial and schedule progress based upon project goals; ensure strategy for cost control is used; have a good understanding of project data to predict project success; perform risk management; manage change, formulate action plans, mitigate risks to minimize schedule delays and costs; actively take advantage of change opportunities and recommend new or revised strategies for project integration; effectively manage closure of projects through customer final acceptance and ensure an on-time and in-budget project; understand and assure quality standards are met on assigned deliverables; evaluate and communicate final project status; utilize contract information to maximize success of project; actively identify efficiencies for future implementations; actively use project methods, processes and tool skills; and drive the use of project documentation control and management.

As to the educational requirement of the proffered position, Ms. [REDACTED] stated that the proffered position "requires, at a minimum, a Bachelor's degree in Telecommunications, Business, Engineering, Engineering Technology, Computer Science, or a related field, or equivalent."

On July 31, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the beneficiary is qualified to work in the proffered position. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted: (1) additional employment verification letters; (2) a statement, dated October 22, 2013, from [REDACTED] who identified himself as the petitioner's "Director of West Region Network Build" for the petitioner; (3) an evaluation, dated October 22, 2013, of the beneficiary's qualifications; and (4) a letter, dated October 22, 2013, from counsel.

The additional employment verification letters provided include: (1) a letter, dated September 29, 2013, reiterating and further describing the beneficiary's employment for [REDACTED] in the United Kingdom from April 1997 to July 2004; (2) a letter, dated September 29, 2013, reiterating and further describing the beneficiary's employment for [REDACTED] in the United Kingdom from July 2004 to July 2006; (3) an undated letter reiterating and further describing the beneficiary's employment for the petitioner in Australia from July 2006 to July 2007; and (4) an undated letter reiterating and further describing the beneficiary's employment with [REDACTED] in Spain beginning in March 2009.

An undated employment verification letter from [REDACTED] whose signature line identifies him as "Director West Region Network Build" for the petitioner, states that the beneficiary worked for the petitioner from April 2010 to the unstated date of that letter, as a Migration Lead Implementation Engineer, Lead Implementation Manager, and Project Manager, sequentially. We observe that this

claim of employment was not included in the materials submitted with the visa petition on April 3, 2013. In his October 22, 2013 statement, [REDACTED] states that he has been the beneficiary's direct supervisor since April 2010.

The October 22, 2013 evaluation of the beneficiary's qualifications states that the beneficiary has at least 15 years of experience and training in telecommunications engineering technology and related areas, and that it is the equivalent of a U.S. bachelor's degree in telecommunications engineering technology. Counsel's October 22, 2013 letter reiterates that assertion.

The director denied the petition on December 18, 2013, finding, as was noted above, that the petitioner had not demonstrated that the beneficiary is qualified to work in a specialty occupation position.

On appeal, counsel submitted (1) a letter, dated March 4, 2014, from [REDACTED] and (2) a brief.

In his March 4, 2014 letter, [REDACTED] stated that the beneficiary worked, first for [REDACTED] UK and later for [REDACTED], as previously described, and that those two businesses are no longer operating.

In the appeal brief, counsel asserted that the evidence submitted is sufficient to demonstrate that the beneficiary is qualified to work in a specialty occupation position.

IV. ANALYSIS

As a preliminary matter, we will discuss whether the proffered position qualifies as a specialty occupation. USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). In this matter, however, it appears the director did not analyze the proffered position to determine whether it met the definition of a specialty occupation. Therefore, we will first determine whether the proffered position is a specialty occupation.

A. SPECIALTY OCCUPATION ANALYSIS

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.

We observe that the petitioner's immigration specialist stated that the minimum educational requirement of the proffered position is "a Bachelor's degree in Telecommunications, Business, Engineering, Engineering Technology, Computer Science, or a related field, or equivalent."

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 any of several disparate fields, such as, in this case, telecommunications, business, engineering, engineering technology, and computer science, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added). The assertion that the educational requirement of the proffered position would be satisfied by a degree in any of those disparate fields listed above 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.

Further, the petitioner's immigration specialist's statement included the assertion that an otherwise undifferentiated bachelor's degree in business would be a sufficient educational qualification for the proffered position. 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 is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertion that the educational requirement of the proffered position would be satisfied by an otherwise undifferentiated bachelor's degree in business is also 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.

Further still, the petitioner's immigration specialist's statement included the assertion that an otherwise undifferentiated bachelor's degree in engineering would be a sufficient educational qualification for the proffered position. The requirement of a bachelor's degree in engineering is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of degrees with generalized titles, such as engineering,² without further specification, does not establish the position as a specialty occupation.

² The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and

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 engineering also does not mark a position as a specialty occupation position.

The assertion that the educational requirement of the proffered position would be satisfied by an otherwise undifferentiated bachelor's degree in engineering is also 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.

In all three respects, the petitioner's immigration specialist has indicated that the proffered position does not 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, 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 U.S. Department of Labor's *Occupational Outlook Handbook (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* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-1111, Management Analysts from O*NET. We reviewed the chapter of the *Handbook* (2014-

aerospace engineering. It is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to the proffered position or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

³ 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.

2015 edition) entitled "Management 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 management analysts:

What Management Analysts Do

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

Duties

Management analysts typically do the following:

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

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

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

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

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

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Management Analysts," <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (last visited Sept. 24, 2014).

The description of the duties of the proffered position refers to the management of "projects" or "technical projects" but without describing those projects in any detail. As such, the scope of the management duties within the context of the projects to which the beneficiary would be assigned and the knowledge required to manage those projects cannot be readily determined.

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 satisfies 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.

Furthermore, 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 a 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." Again, 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. at 165. 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 suggest a need for a range of knowledge pertinent to installation of communications towers and associated equipment, 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)(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 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.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

The 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." 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.

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 a minimum of a bachelor's degree in a specific specialty or its equivalent is not required for some management analyst positions. 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).

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.⁴

⁴ 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").

The record contains insufficient evidence that the petitioner has ever previously hired anyone to fill the proffered position. However, the petitioner's immigration specialist indicated that a bachelor's degree in telecommunications, business, engineering, engineering technology, computer science would be a sufficient educational qualification for the proffered position. For the three reasons explained in detail above, that makes clear that the petitioner does not require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 of the proffered position, such as developing project documentation, identifying project goals and tasks, and generating assignments consistent to meet objectives contain no indication of a nature so specialized and complex that the position requires 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 management analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. We find that the generalized and generic terms in which the proposed duties are described do not convey the relative degree of specialization and complexity required to satisfy this criterion. Also, as described in this record of proceeding, the duties do not reveal complexity and specialization above those of positions in the occupation that are not usually associated with knowledge that requires at least a bachelor's or higher degree in a specific specialty. Therefore, the evidence of record does not 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 petition is denied for this reason.

B. BENEFICIARY QUALIFICATIONS ANALYSIS

The sole basis for the director's decision of denial is her finding that the petitioner has not demonstrated that the beneficiary is qualified for the proffered position. Absent a determination that the proffered position is in fact a specialty occupation, there is no basis on which the director could have determined whether the beneficiary is qualified or unqualified to perform the duties of the claimed specialty occupation.

Pursuant to the instant visa category a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, we would not typically further address the issue of the beneficiary's qualifications.

In the instant case, however, most of the evidence pertinent to the beneficiary's qualifications to work in any specialty occupation position consists of employment verification letters, and considerable doubt has been cast on the accuracy of the employment verification letters provided.

As was observed above, the beneficiary claimed, in his résumé, to have worked for [REDACTED] from July 2007 to August 2008, and for [REDACTED] from August 2007 to November 2008. Those two periods overlap and appear to be in conflict, and there is no explanation in the record for this apparent inconsistency.

In support of the claim of employment in Egypt, counsel submitted the letter from [REDACTED] verifying employment from July 2007 to August 2008, notwithstanding that Mr. [REDACTED] himself indicated that he left his position as Regional Manager Egypt during February 2008. Insufficient evidence was submitted in support of the assertion that the beneficiary worked for [REDACTED] from August 2007 to November 2008 or at any other time.

As was noted above, Pursuant to *Matter of Ho, supra*, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition, and the petitioner is obliged to resolve inconsistencies with independent objective evidence. The unreconciled discrepancy in the beneficiary's evidence of previous employment casts doubt on the accuracy of that evidence. Therefore, we can accord the beneficiary's employment claim and the employment verification letters submitted to support it very little evidentiary weight. The petitioner has not, therefore, demonstrated that the beneficiary is qualified to work in *any* specialty occupation position. The appeal will be dismissed and the visa petition will be denied for this additional reason.

V. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated

grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.