



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF C-H-I-A-F-S-, INC

DATE: AUG. 14, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an insurance and financial services agency, seeks to temporarily employ the Beneficiary as a “market research analyst” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish that: (1) the proffered position qualifies as a specialty occupation; and (2) the Beneficiary is qualified to perform services in a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and asserts that the Director’s decision was erroneous.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

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) largely restates this statutory definition, but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

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

8 C.F.R. § 214.2(h)(4)(iii)(A). We have consistently interpreted the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

## II. PROFFERED POSITION

According to the Petitioner, the market research analyst will be responsible for performing these primary duties:<sup>1</sup>

### **1. Analyze consumer behavior and monitor market trends that indicate potential customer demand for the company’s existing or new products and services;**

The Market Research Analyst will review current and past sales data, as well as sources documenting consumer behavior. Information obtained from the market research data, mass and social media, and case studies will be used and evaluated to determine the position of our company in the industry, market trends, and target groups and their needs.

For products frequently purchased by our clients, the Market Research Analyst must include such information in his marketing reports making recommendations to management and sales specialist to increase the products options and sales options.

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<sup>1</sup> Errors in the original text have not been changed. For the sake of brevity, we have not included information on the percentages of time the Beneficiary will spend on each duty and relevant coursework the Beneficiary has taken. Additionally, we will not repeat two other job descriptions the Petitioner provided, as they are substantially similar to this description.

- Analyze and interpret new and existing consumer data to make changes to continuously improve lead generation.
- Understand company's data infrastructure to guide sales specialist and management to focus on specific products that align with consumer behaviors.
- Interpret and consumer trends into understandable

**2. Research market conditions nationwide and locally to determine potential sales of products or services;**

[The Petitioner's] Market Research Analyst must conduct extensive market research.

The Market Research Analyst must identify the potential areas that our company has not been introduced to. This research will help our company's management to determine the next target area and new vendors, to conduct our sales. The Market Research Analyst will use the information to make suggestions that will help the company to determine its upcoming marketing campaigns targeted to a specific group of clients.

- Analyze and identify target demographics that will lead to a higher return on investment ration.
- Explore new target areas through attained consumer data to decide the effectiveness of marketing strategies and programs.
- Prepare vendors' event data to report and present projected investment growth to management for sponsorship relations.

**3. Devise and evaluate methods and procedures for collecting consumer purchasing behaviors, and data, with a focus on using social media methods, or arrangement to obtain existing data;**

The Market Research Analyst must conduct consumer data collection and research through the use of client surveys via social media platforms as well as more traditional data collection methods as a web, email, telephone or regular mail, and through research of current consumer trends in mass and social media.

The individual will create surveys to distribute to our existing clients. The surveys will help the company management analyze and understand the client's needs, trends and/or complaints about our company products. The information will also help prepare market campaign proposals, market research reports for management and service and distribution adjustments necessary for the company.

This information and research can help the company to identify any product performance issues or liability that may exist with products already in place in the market.

- Plan and Implement social methods to generate sales, increase agency awareness, and increase agency's online presence.
- Create social media accounts to collect insights about consumer satisfaction.
- Create templates for sales specialist to collect consumer behaviors and clients' retention ratio for products.

**4. Collect, analyze and evaluate statistical data on past sales performance, customer preferences, and competitors' prices, sales, marketing methods and distribution;**

The Market Research Analyst must carefully review and study our past sales data to analyze consumer spending and determine pricing, marketing and distribution strategies. The individual must also search for and obtain similar data from our competitors in order to analyze the entire market's trends, pricing, as well as marketing and distribution methods. By doing so, the Market Research Analyst will be able to devise unique marketing campaigns that achieve a higher profit.

- Review and analyze past customers' purchase data and sales specialists' sale methods to improve retention ratio and higher return on investment.
- Research market competition and evaluate new methods to generate higher profit margin.
- Create social media accounts to collect insights about consumer satisfaction.
- Create templates for sales specialist to collect consumer behaviors and clients' retention ratio for products.

**5. Advise company sales staff on key market information (consumer demographics, consumer behavior etc.) gathered for sales and marketing strategy development;**

The Market Research Analyst must communicate with our sales department regularly to determine preferred methods of distribution and/or areas of most sales. The Market Research Analyst will utilize the information obtained from the sales staff to identify areas or client groups most likely to purchase certain products. The Market Research Analyst will analyze the sales and purchasing trends in different areas and suggest to management to conduct surveys within different fields.

- Analyze key point indicators from the gathered data and suggest ways to increase volume and conversation.
- Increase exposure and sales of the agency through key point indicators such as v
- Inform and recommend target demographics to sales specialist from analyzing attained consumer behavior.

- Suggest different marketing strategies to management to improve prospecting for sales specialists.

**6. Utilize survey results to create a social media marketing campaign proposal;**

After extensive consumer behavior and market research, market surveys and communicating with the sales staff, the Market Research Analyst must develop future marketing campaign proposals for company management. The Market Research Analyst may have to present his proposal at company meetings to synchronize the entire company's insight in the area. The proposal will detail the market area, consumer demographic information of the area, past sales data, types of products the company should market to the area and how the company should conduct the marketing and advertising for the area. The marketing campaign should focus on using digital and social media platforms to grow our potential customer base.

- Research, gather, and analyze quantitative data for consumer satisfaction among current customer base.
- Perform A/B testing for digital marketing campaigns and social media platforms to see which will have a higher ROI.
- Create digital marketing campaigns to increase traffic and reach for the company.

**7. Measure and assess customer satisfaction;**

Conduct consumer purchasing and tracking studies designed to provide key performance indicators on product performance in key strategic areas. Consumer research and surveys will not only help the Market Research Analyst understand the clients' needs for our products, but also the clients' level of satisfaction with our operation, sales, and accounting methods. This information may be taken into consideration in changing the corporate policy or branch policy to effectively accommodate our clients' desires in products, as well as our services. The Market Research Analyst must also listen to the sales professionals' opinions toward our clients and how that impacts sales. Such customer and employee opinions assist the Market Research Analyst and our company management in determining the necessary modifications of our corporate policy/contracts.

- Gather current consumer data to analyze on how the company can improve key objectives.
- Improvise new ways to conduct surveys and gather customer satisfaction data.
- Conduct research on how we can increase reach and engagement for the company through digital platforms and traditional surveys.

**8. Develop and implement procedures for identifying advertising needs, emphasizing digital and social media marketing methods;**

The Market Research Analyst will continue to develop and search for new ideas, client opinions, and market trends through numerous sources, with a focus on digital and social media and developing a company presence on social media platforms. After a thorough search and analysis, the individual will identify and analyze ineffective marketing efforts, sales areas or client groups.

- Increase online presence, volume, and engagement for social media platforms.
- Raise the company's brand awareness through creative or collaborative efforts.
- Analyze social media insights to increase company's online presence.
- Implement methods that will promote the company's online exposure to convert this reach into sales.

**9. Compose and present research reports to company management;**

The Market Research Analyst must compile reports detailing consumer trends and market research and develop suggestions for future marketing campaigns based upon findings. The reports will consist of usage and behavioral studies, product and brand trends, packaging research and preferences, price optimization, distribution channel selection, etc.

The marketing report will help the company management determine potential areas for sales, as well as potential client groups. Our marketing campaign varies depending on the featured product, brand and/or a recipe on a monthly or seasonal basis. The campaign will be featured on our various social media platforms, website, brochures, flyers and our sales professionals will directly promote the featured products to our clients.

- Assess the results of marketing campaigns to see if key objectives were met and report to management on how the marketing campaign can be improved.
- Analyze research report to suggest preferred target demographics to sales specialists.
- Report consumer behavior and trends to management to focus on marketing selected products to target audiences.

The Petitioner states that the proffered position requires at least a bachelor's degree in psychology marketing, or a closely related field, or the foreign education equivalent.

### III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we determine that the record does not establish that the proffered position satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) in order to qualify as a specialty occupation.<sup>2</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. To inform this inquiry, we recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup>

On the labor condition application (LCA)<sup>4</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the Standard Occupational Classification (SOC) code and title 13-1161, "Market Research Analysts and Marketing Specialists," at a Level I wage rate. Based on the Petitioner's job descriptions, most of the proffered job duties reasonably fall under this occupational classification. As such, we have consulted the *Handbook* chapter on "Market Research Analysts and Marketing Specialists."

In pertinent part, the *Handbook* states that "[m]arket 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." Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Market Research Analysts and Marketing Specialists (2016-17 ed.).

The *Handbook* does not indicate that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into this occupation. That is, while the *Handbook* states that market research analysts typically need a bachelor's degree in or related to market research, it also states that many market research analysts have degrees and backgrounds in various other fields such as statistics, math, computer science, business administration, the social sciences, or communications.

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<sup>2</sup> The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one. Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>3</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed in print or at the Internet site <http://www.bls.gov/ooh/>. We do not maintain that the *Handbook* is the exclusive source of relevant information.

<sup>4</sup> The Petitioner is required to submit a certified LCA to U.S. Citizenship and Immigration Services to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the "area of employment" or the actual wage paid by the employer to other employees with similar experience and qualifications who are performing the same services. See *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 545-546 (AAO 2015).

Based on the various degrees which many research analysts can possess, the *Handbook* does not support the position's eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

In general, provided the specialties are closely related, e.g., statistics and math, 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 degrees in disparate fields, such as market research and computer science, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(b) of the Act (emphasis added).<sup>5</sup> The Petitioner has not done so here.

Also, a requirement for a degree in any of the social sciences is not indicative of a specialty occupation. The social sciences represents a broad field of study which encompasses several wide-ranging branches beyond psychology, including geography, law, and religion.<sup>6</sup> Moreover, the *Handbook* indicates that general-purpose bachelor's degrees in business administration is acceptable for entry into the "Market Research Analysts" occupation. But a minimum requirement of a general-purpose bachelor's degree in business administration, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam*, 484 F.3d at 147; cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

The Petitioner submitted an article which states that "[b]ecoming a market research analyst requires at least a bachelor's degree, but you could choose from a range of majors." This article then cites to the *Handbook's* information to the effect that statistics, math, computer science, business administration, and one of the social sciences are all acceptable majors for entry into market research analyst positions. This article confirms that market research analyst positions can be performed by individuals with degrees in disparate fields. For the same reasons discussed above, we find that this article and the *Handbook* do not support the conclusion that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into this occupation.

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<sup>5</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

<sup>6</sup> The Petitioner submitted an online dictionary print-out listing the branches of social sciences as: anthropology, economics, history, political science, psychology, sociology, education, geography, law, linguistics, criminology, archaeology, and religion.



Citing to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), the Petitioner claims that “there is no requirement that the required degree for the Market Research Analyst position be in a single academic discipline of market research.” We are not persuaded.

While we generally agree with the proposition that “[t]he knowledge and not the title of the degree is what is important” and do not require a degree in a single academic discipline, we also maintain that degrees in disparate fields are insufficient to support a requirement of a bachelor’s degree *in a specific specialty* (or the equivalent), as required. In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*.<sup>7</sup> We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.*

The Petitioner has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

#### B. Second Criterion

The second criterion presents two alternative prongs: “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[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates the common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

##### 1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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

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<sup>7</sup> We note that the district judge’s decision in that case appears to have been based largely on the many factual errors made by the Director in the decision denying the petition. We further note that the Director’s decision was not appealed to us. Based on the district court’s findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

letters or affidavits from firms or individuals in the industry establish 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) (considering these “factors” to inform the commonality of a degree requirement)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or another authoritative source, reports a requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter.

The Petitioner submitted several vacancy announcements under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). However, the Petitioner has not submitted sufficient evidence to establish that the advertising companies are in the Petitioner’s industry, i.e., the insurance and financial services industry. Although the advertisements do not contain detailed information about the posting organizations, based on the brief descriptions contained therein, many of them do not appear relevant to the Petitioner’s industry, such as the advertisements from [REDACTED] (a market research consulting company serving the pharmaceutical and related industries), [REDACTED] (a market research and consulting firm), and [REDACTED] (a staffing and recruiting company).

Moreover, these advertisements validate the conclusion that market research analyst positions can be performed by individuals with degrees in disparate fields. For instance, one advertisement requires a bachelor’s degree in wide ranging fields of psychology, sociology, economics, business administration, life sciences, or a related field. Another requires a degree in transportation, market research, statistics, math, economics, psychology, geography, engineering, or a similarly relevant field of study. Another requires a degree in marketing, math, statistics, computer science, business, psychology, library science, or another relevant social sciences branch – this advertisement further states that “a well-rounded education is very important as the position requires ability to work with diverse subject matter.” Thus, these advertisements do not demonstrate that a bachelor’s or higher degree in a specific specialty (or its equivalent) is common to the industry in parallel positions among similar organizations.<sup>8</sup>

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<sup>8</sup> Even if all of the job postings indicated that a requirement of a bachelor’s degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner has not demonstrated what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that “[r]andom selection is the key to [the] process [of probability sampling]” and that “random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error”).

For all of the above reasons, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).<sup>9</sup>

## 2. Second Prong

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

Here, we will address the opinion letter from [REDACTED] a professor of marketing and business at [REDACTED]. In particular, we highlight [REDACTED] statements about the proffered position's "particular complexity," as follows:

In fact, when considered within the context of typical occupational categories within the marketing field, it becomes clear that this position of Market Research Analyst is one of particular complexity, in that the purview of the position encompasses not only underlying marketing research and analytics, but also the realization of that analysis via the development and implementation of actual advertising and marketing-related procedures and campaigns. Often, responsibilities of market research and functional marketing campaign development are distributed among different occupational categories in the field, but in this case the functions have been unified within a singular positional profile, resulting in a particularly advanced and professional position at [the Petitioner].

[REDACTED] claims about the proffered position's relatively advanced or complex duties appear to be at odds with the Petitioner's LCA. In submitting an LCA for a Level I market research analyst position, the Petitioner additionally attested that the proffered position is a relatively low, *entry-level* position compared to others within the occupation.<sup>10</sup> This wage designation and attestation does not support [REDACTED] statements about this position's "particular complexity" or "particularly advanced" nature. Further, while [REDACTED] claims that often duties of the market research analyst encompass different occupational categories, neither [REDACTED] nor the Petitioner has explained

<sup>9</sup> Because of these fundamental deficiencies, we will not individually address each of the submitted advertisements.

<sup>10</sup> The "Prevailing Wage Determination Policy Guidance" issued by the Department of Labor provides a description of the wage levels. A Level I wage rate is generally appropriate for positions for which the Petitioner expects the Beneficiary to have a basic understanding of the occupation and (1) is expected to perform routine tasks that require limited, if any, exercise of judgment; (2) will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) will receive specific instructions on required tasks and expected results. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://fledatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://fledatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage (Level I) and progresses to a higher wage level (up to Level IV) after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.* A Level I wage should be considered for research fellows, workers in training, or internships. *Id.*

which other occupational code(s) and classification(s) apply and why they were not selected for LCA purposes. Accordingly, we must question whether [REDACTED] evaluation was based on an adequate understanding of the proffered position. We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Id.*

Thus, contrary to [REDACTED] statements, the Level I wage rate on the LCA indicates that the proffered position is not significantly different from other market research analyst positions, such that it refutes the *Handbook's* information to the effect that a spectrum of degrees, including degrees in disparate fields and generalized degrees, is acceptable for entry into this occupation. We hereby reiterate our earlier discussions on the matter.<sup>11</sup> Overall, the record does not establish eligibility under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

### C. Third Criterion

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position.

The Petitioner was established in 2009 and claims to have nine employees. Under this criterion, the Petitioner identified one other employee, [REDACTED] whom the Petitioner stated is employed in "a comparable position to that of Market Research Analyst in the instant case." But the Petitioner did not further explain what it meant by "comparable position." The Petitioner only submitted copies of [REDACTED] LCA, diploma, and H-1B approval notice, but did not specify her actual job duties for the company. Without more, the Petitioner has not demonstrated that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for this particular position.<sup>12</sup> Therefore, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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<sup>11</sup> The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, unique, and specialized compared to other positions *within the same occupation*. Nevertheless, a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation, just as a Level IV wage-designation does not definitively establish such a classification. In certain occupations (e.g., doctors or lawyers), a Level I, entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a relevant factor but is not itself conclusive evidence that a proffered position meets the requirements of section 214(i)(1) of the Act.

<sup>12</sup> Even if the Petitioner demonstrated that [REDACTED] is employed in the same position (which it has not), to merit approval of a petition under this criterion, the record must also establish that the Petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates, but is necessitated by the actual performance requirements of the position. The Petitioner cannot make this showing because, as discussed above, it has not reconciled the conflicting job descriptions to demonstrate the substantive nature of the proffered position and its associated job duties.

#### D. Fourth Criterion

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

We reviewed the Petitioner's evidence regarding the proffered position's specialization and complexity, particularly [REDACTED] evaluation. For the same reasons we discussed under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), we find that the record does not sufficiently develop relative specialization or complexity as an aspect of the proffered position. We incorporate our previous discussion on this matter. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently complex and specialized to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

#### IV. BENEFICIARY'S QUALIFICATIONS

The Director also found that the Beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the Petitioner has not demonstrated that the proffered position requires a baccalaureate or higher degree *in a specific specialty*, or its equivalent. Therefore, there is no basis for us to determine whether the Beneficiary possesses that particular degree, or its equivalent. We need not and will not address the Beneficiary's qualifications further.

#### V. CONCLUSION

The Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-H-I-A-F-S-, Inc*, ID# 425149 (AAO Aug. 14, 2017)