



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

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

MATTER OF V- INC.

DATE: MAR. 2, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a six-employee footwear manufacturing business, seeks to temporarily employ the Beneficiary on a part-time basis 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 Vermont Service Center denied the petition concluding that the Petitioner had not established the proffered position is a specialty occupation.

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence and asserts that the Director erroneously concluded that it had not established that the proffered position is a specialty occupation.

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

**I. LEGAL FRAMEWORK**

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” 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 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, 387-88 (5th Cir. 2000).

## II. PROFFERED POSITION

The Petitioner described the duties of the proffered position as follows (paraphrased for clarity):

### 1) Collect & Analyze Data (30% of the time)

#### Products:

- Conduct and analyze quantitative research studies to understand shopper flow, product satisfaction, and opportunities for improvement for our Chain Sales & Marketing Department, Merchandising Product Development, and Graphic Design Department.
- Conduct extensive, competitive research such as technical literature searches, product comparisons, industry analysis, compile valuable quantitative and qualitative data on current or new products in the marketplace, market potential and trends, and cost, and analyze and accurately interpret key data.
- Evaluate product sales performance through a variety of segmentation methods to help develop and update goals and objectives.

#### Pricing:

- Integrate cost and profitability data, analyze cost factors, and determine product profitability.
- Conduct financial analysis.

Competitors:

- Collect and analyze data from both internal and external sources to identify and evaluate company's existing and potential product markets in an effort to maintain and increase market share.
- Perform extensive data analysis and evaluate competitive information and strategies, product offerings, pricing patterns, and development plans.
- Monitor and research macro and micro economic and demographic market conditions or changes in the industry that may impact company performance.

Customers:

- Collect and analyze data on customer demographics, preferences, needs, and buying habits to identify potential markets and factors affecting product demand.

2) Forecast Marketing & Sales Trends (25% of time)

- Forecast marketing and sales trends that determines exactly how the company directs its marketing efforts to maximize revenue and which products the company develops.

3) Prepare Reports (25% of time)

- Present recommendations based on research to the management so that they can make critical decision in regards to market share, product offerings and awareness, and financial goals.
- Design and provide clear, accurate and concise reports on research findings in a timely manner: weekly, monthly, quarterly, and yearly.
- Create clear and compelling PowerPoint reports.
- Make internal and external presentation on findings using tables, maps, and charts that translate key findings in a concise manner with context.
- Prepare multimedia presentations and supporting documents.
- Prepare reports and recommendations of methods of marketing campaigns, change of product mix, pricing, and suggestions for operational changes to enhance effectiveness of marketing campaigns.

4) Devise & Evaluate Methods and Procedures (20% of time)

- Recommend and develop research techniques by monitoring new developments in research techniques.
- Ensure that all research activities are done accurately, on time, within budget, and with high quality.
- Develop and maintain a Geographical Information System (GIS).
- Understand and maximize the benefits of research tools, software, and resources.

According to the Petitioner, the usual minimum requirement for performance of the job duties is a Bachelor's degree in Marketing or a related field.

### III. ANALYSIS

For the reasons set out below, we have determined that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the record does not (1) describe the position's duties with sufficient detail; and (2) establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.<sup>1</sup>

On the labor condition application (LCA)<sup>2</sup> submitted in support of the H-1B petition, the Petitioner designated the proffered position under the occupational category "Market Research Analysts and Marketing Specialists" corresponding to the Standard Occupational Classification code 13-1161.<sup>3</sup> However, the Petitioner has not provided sufficient evidence of what the Beneficiary will actually do in the proposed position so that we may analyze and ascertain the educational requirements required to perform those duties. Instead of describing specific duties in relation to its particular business interests as a startup company, the Petitioner provided an overview of the duties of the market research analyst occupation. The Petitioner's overview of the occupation did not place the Beneficiary's actual duties within the context of the Petitioner's six-employee company which specializes in the manufacture and marketing of a shoe with a [REDACTED] built into [REDACTED]. Nor did this overview convey an understanding of the Beneficiary's actual day-to-day tasks for the Petitioner. Upon review of the Petitioner's general description of the proffered position, it is not possible to ascertain what specific duties will actually engage the Beneficiary on a day-to-day basis in his role developing the Petitioner's market research efforts.

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<sup>1</sup> The Petitioner submitted documentation in support of 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.

<sup>2</sup> The Petitioner is required to submit a certified LCA to USCIS 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, 545-46 (AAO 2015).

<sup>3</sup> The Petitioner classified the proffered position at a Level I wage (the lowest of four assignable wage levels). We will consider this selection in our analysis of the position. The "Prevailing Wage Determination Policy Guidance" issued by the DOL 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. This wage rate indicates: (1) that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; (2) that he will be closely supervised and his work closely monitored and reviewed for accuracy; and (3) that he 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://flcdatcenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://flcdatcenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf). A prevailing wage determination starts with an entry level wage and progresses to a higher wage level after considering the experience, education, and skill requirements of the Petitioner's job opportunity. *Id.*

<sup>4</sup> We note that the Director in this matter questioned the availability of work for the Beneficiary because of the nature of the Petitioner's business and what appeared to be inconsistencies in the record regarding the Petitioner's startup. The Petitioner, on appeal, has submitted sufficient evidence to establish that it is an active company. However, as will be discussed, the record does not include sufficient probative evidence that the Petitioner's proffered position is a specialty occupation level market research analyst position.

The Petitioner's generic description of the market research analyst occupation rather than the specific duties attached to the proffered position, 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 entry into 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.

Accordingly, as the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies for classification as a specialty occupation and the appeal must be dismissed on this basis alone. We will nevertheless perform a complete specialty occupation analysis under each of the four, alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>5</sup>

#### A. First Criterion

We turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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 Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>6</sup>

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states, in relevant part, the following: "[m]ost market research analysts need at least a bachelor's degree." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Market Research Analysts, <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Feb. 17, 2017). The *Handbook* continues, however, that "[m]any have degrees in fields such as statistics, math, and computer science" and "[o]thers have backgrounds in business administration, the social sciences, or communications." *Id.* While the *Handbook* notes that "[c]ourses in statistics, research methods, and marketing are essential for these workers," it also notes that "[c]ourses in communications and social sciences, such as economics or consumer behavior, are also important." *Id.*

<sup>5</sup> Although some aspects of the regulatory criteria may overlap, we will address each of the criteria individually.

<sup>6</sup> All of our references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. We do not, however, maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. To satisfy the first criterion, however, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement, or its equivalent, for entry.

*Matter of V- Inc.*

Accordingly, 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 "[m]any" market research analysts have degrees in various other fields such as statistics, math, and computer science.

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 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>7</sup> The Petitioner has not done so here.

Moreover, the *Handbook* indicates that general-purpose bachelor's degrees in business administration and the social sciences are acceptable for entry into the market research analyst occupation. A minimum requirement of a general-purpose bachelor's degree, such as a business administration degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp.*, 484 F.3d at 147; cf. *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

For these reasons, the *Handbook* is insufficient to establish that a generic market research analyst occupation is a specialty occupation, based on academic requirements.<sup>8</sup>

We have considered the Petitioner's citation to a recent district court case, *Raj and Company v. U.S. Citizenship and Immigration Services*, 85 F. Supp. 3d 1241 (W.D. Wash. 2015), and its claim that the case is relevant here. In the district court case, the employer designated the position as a "Marketing Analyst & Specialist" position. Upon review of the decision, however, there is no indication that aspects of the work such as the duties and responsibilities, level of judgment, complexity of the job duties, supervisory duties, independent judgement required, or the amount of

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<sup>7</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>8</sup> In response to the Director's request for evidence, the Petitioner submitted a position evaluation prepared by [REDACTED]. This evaluation will be discussed in the following section.

supervision received, are analogous to the position proffered here. Accordingly, aside from the claimed job title and occupational category, there is no indication that the positions are similar.

Further, in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with U.S. Citizenship and Immigration Services' (USCIS) reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor[s] degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." The court also stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.

In *Raj*, the court concluded that the employer met the first criterion. We note, however, that the court stated that "[t]he first regulatory criterion requires the agency to examine the generic position requirements of a market research analyst in order to determine whether a specific bachelor's degree or its equivalent is a minimum requirement for entry into the profession." Thus, the decision misstates the regulatory requirement. That is, the first criterion requires a petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the particular position. If the court meant to suggest that any position classified under the occupational category "Market Research Analysts" would, as it stated, "come within the first qualifying criteria" – we must disagree. As noted above, the occupational category designated by a petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements it addresses; however, to satisfy the first criterion, the burden of proof remains on the petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement or its equivalent for entry. Again, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. We must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor*, 201 F.3d at 387-88.

The Petitioner also cites to *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012). The Petitioner asserts that the district court found in *Residential Finance* that "a market research analyst 'is a distinct occupation with a specialized course of study that includes multiple specialized fields,'" and further "[e]xplained that '[d]iplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.'"

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." Here, however, the Petitioner has not met its burden to establish that each of the disparate fields referenced in the *Handbook* are directly related to the duties and responsibilities of

its particular position. Furthermore, as in *Raj*, the H-1B petition in *Residential Finance* was never appealed to our office through the available administrative process. We note that the district judge's decision in *Residential Finance* appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. Had we been afforded the opportunity to do so, 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 our *de novo* review of the matter. It is important to note that in a subsequent case that was reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Finance*. See *Health Carousel, LLC v. U.S. Citizenship & Immigration Services*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

In any event, 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.*

In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the criterion at 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 concentrates upon 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.

When determining whether there is such 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative sources) reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry’s professional association indicating that it has made a degree a minimum entry requirement.

We have reviewed the advertisements initially submitted in support of this criterion. However, none of the advertisements submitted provide sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the Petitioner. For example, all but two advertisements appear to be from organizations that are much larger and more established than the Petitioner. The information provided is insufficient to demonstrate that these advertising organizations are similar in type, scope, and size to this Petitioner. Additionally, the descriptions of duties for the various positions advertised do not appear parallel to the duties of the proffered position, except in the most general sense. Further, while the advertisements require a bachelor’s degree, the specific field of study varies and includes as acceptable degrees, degrees in business, a field of general applicability.

Moreover, the majority of the advertisements require that the successful application have between three and 5 years of specific experience. As the Petitioner here has designated the proffered position at a wage Level I on the LCA, a wage level that does not demand any experience, it appears that the advertised positions are for more senior positions than the position proffered here. It is not possible to conclude from the information provided in the advertisements that the positions are parallel in type of duties and level of responsibility to the proffered position. Accordingly, the job advertisements do not establish that similar organizations to the Petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the Petitioner’s industry.

As the record does not include probative evidence that a “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, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

## 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. The evidence of record does not establish this element.

(b)(6)

Matter of V- Inc.

As determined above, the record does not credibly demonstrate exactly what the Beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. That is, the evidence of record does not establish that this position is significantly different from other market research analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for market research analysts' positions, including degrees in fields of general applicability.

We have reviewed the position evaluation prepared by [REDACTED] Professor and Chairperson, Department of [REDACTED]

[REDACTED] repeats the duties of the position as described by the Petitioner and opines that a bachelor's level education in marketing or a related field will equip the market research analyst to perform the duties at the Petitioner. However, there are many other degrees, according to the *Handbook*, that will also equip an individual to perform market research duties.

[REDACTED] also paraphrases the duties of the position and opines that to perform these duties, the "critical knowledge can only be acquired through the minimum completion of curricula at a university Bachelor's level in Marketing or a related field or equivalent," and that "[g]eneral knowledge of business and marketing alone is not sufficient for the Market Research Analyst at [the Petitioner] to successfully meet the functional position requirements." [REDACTED] concludes that "only an individual with at least a Bachelor's degree in Marketing or a related field can competently execute the required duties of the proffered position." To support this conclusion, [REDACTED] references the *Handbook* and asserts that the appropriateness of a specific field of study for a position should be analyzed in the context of the business, in this case a startup company, where the market research analyst is required to cover a wider range of market research and marketing problems. We are uncertain if [REDACTED] is claiming that (1) the individual in the proffered position will be required to perform more complex and advanced duties as the Petitioner is a small company, or (2) is disputing the *Handbook's* report that more than one field of study is acceptable to perform the duties of a market research analyst. We do not find, however, that [REDACTED] has sufficiently distinguished the proffered position from the *Handbook's* overview of the occupation and the variety of fields of study adequate to equip a candidate to perform the duties of a Level I wage market research analyst, even at a startup company.

[REDACTED] also cites the knowledge requirements for a market research analyst and marketing specialist as set out in the Occupational Information Network (O\*NET) Summary Report for this occupation and concludes that the knowledge requirements clearly require coursework that is not taught in bachelor's degree programs in mathematics, computer science, or communications. [REDACTED]

[REDACTED] however, does not offer an analysis or foundational basis for this conclusion. Significantly, [REDACTED] does not adequately explain how a specific curriculum is necessary to perform the duties the Petitioner generally describes. It is also apparent that he is unaware that the Petitioner assigned a Level I wage to the proffered position, a wage-level which is appropriate for a comparatively low, entry-level market research analyst position, relative to others within the same

*Matter of V- Inc.*

occupation, and which signifies that the Beneficiary is only expected to possess a basic understanding of the occupation.

Thus, we question the foundation of [REDACTED] opinion and do not find the opinion sufficient to support the Petitioner's assertion that the proffered position requires a bachelor's degree in a specific specialty, or its equivalent, and thus qualifies as a specialty occupation. 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.*

Upon review, the record does not include sufficient consistent information relevant to a detailed course of study leading to a specialty degree and the Petitioner has not established how such a curriculum is necessary to perform the duties it claims are so complex. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated 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 proffered position.

Additionally, we again note that the Petitioner has designated the proffered position as requiring only a Level I wage, that requires only a basic understanding of the occupation.<sup>9</sup> Given the *Handbook's* indication that market research analysts positions do not normally require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement. Thus, 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. Consequently, as the Petitioner does not demonstrate how the proffered position is so complex or unique relative to other market research analysts positions 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).

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<sup>9</sup> The Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique 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.

### C. Third Criterion

The Petitioner indicates that it is a new company and offers no evidence that it previously employed a market research analyst. To satisfy this specific criterion the record must include evidence that the performance requirements of the position generated the Petitioner's recruiting and hiring history. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has not previously recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). We also note that a petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. We must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation.<sup>10</sup> *See generally Defensor*, 201 F.3d 387-88. The record here is insufficient to conclude that the Petitioner has satisfied the third criterion.

### 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.

The Petitioner asserts that the job duties of the proffered position are specialized and complex and describes the role of a non-specific market research analyst and not the duties of the proffered position as those duties specifically relate to its business operations. We find that the Petitioner has not sufficiently developed relative specialization and complexity as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. We also incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the same occupational category. Therefore, it does not appear that the position is one with specialized or complex duties, as such a higher-level position would be classified as a wage Level III or Level IV position, requiring a significantly higher prevailing wage.

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<sup>10</sup> The critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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, or its equivalent, as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. If USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any beneficiary with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.*

*Matter of V- Inc.*

Upon review of the totality of the record, it does not include probative evidence that the duties as generally described require more than technical proficiency in the marketing research field. The Petitioner has not demonstrated in the record that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

#### IV. CONCLUSION

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. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V- Inc.*, ID# 220137 (AAO Mar. 2, 2017)