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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: EAC 07 143 54405 Office: VERMONT SERVICE CENTER Date: JUN 0 4 2009

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

for

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a corporation that seeks to employ the beneficiary in a position to which the petitioner assigned the job title Business Analyst. Accordingly, the petitioner endeavors to classify the beneficiary 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 based upon his determination that the evidence of record failed to establish that the proffered position is a specialty occupation. As will be discussed below, on the basis of its independent review of the entire record, including all of the submissions on appeal, the AAO concludes that the director's decision to deny the petition was correct, as the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the director's decision to deny the petition will not be disturbed.

The AAO analyzes the specialty occupation issue according to the statutory and regulatory framework below.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184 (i)(l), 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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, the 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, 8 U.S.C. § 1184(i)(1), 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 illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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.

Based upon its review of the entire record including the matters submitted on appeal, the AAO concludes that the petitioner failed to establish that the beneficiary would perform specialty

occupation services for the period sought in the petition. As will be discussed below, the AAO bases this conclusion on its evaluation of the evidence of record about the proposed duties and the knowledge required to perform them. The AAO finds this evidence insufficient to satisfy any of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A), that is, by establishing that the particular position proffered in this petition is either (*a*) one for which the normal minimum requirement for entry is at least a bachelor's degree, or its equivalent, in a specific specialty (criterion 1); (*b*) parallel to positions for which organizations similar to the petitioner, and in its industry, commonly require at least a bachelor's degree, or its equivalent, in a specific specialty (the first alternative prong of criterion 2); (*c*) shown to be so complex or unique that it can be performed only by an individual with a degree (the second alternative prong of criterion 2); (*d*) one for which the employer normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (criterion 4); or (*e*) one with specific duties so specialized and complex that their performance requires knowledge usually associated with the attainment at least a bachelor's degree in a specific specialty.

The foundation of the director's decision to deny the petition is his assessment that, because of a lack of "adequate documentation highlighting the nature, scope, and activity of the [petitioner's] business," the evidence of record "failed to establish that the duties as described for the position of business analyst are so complex, unique, or specialized as to require a four[-]year baccalaureate degree." On appeal, counsel for the petitioner (hereinafter, counsel) correctly notes that, contrary to the director's assertion, the service center's request for evidence (RFE) had not expressly requested evidence of the nature, scope, and activity of the petitioner's business. However, the lack of such an express request in the RFE does not abridge any procedural right of the petitioner. The director's decision gave the petitioner adequate notice of the lack of evidence about the petitioner's business operations sufficient to indicate the substantive nature of the work that the beneficiary would perform in executing the generalized duties that the petitioner has ascribed to the proffered position. Even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Further, the RFE was issued on June 27, 2007. On April 17, 2007, the Department of Homeland Security published notice in the Federal Register of a Final Rule that includes amendments to 8 C.F.R. § 103.2 which establish that USCIS has no obligation to issue an RFE in any case. *See* 72 Fed. Reg. 19100, 19104. Per the Federal Register notification, the Final Rule became effective on June 18, 2007. The relevant amendments promulgated by the Final Rule include the following in pertinent part :

8 C.F.R. § 103.2(b)(1):

> *Demonstrating eligibility at time of filing.* An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's

instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

8 C.F.R. § 103.2(b)(8):

*Request for Evidence; Notice of Intent to Deny*--(i) *Evidence of eligibility or ineligibility.* If the evidence submitted with the application or petition establishes eligibility, USCIS will approve the application or petition, except that in any case in which the applicable statute or regulation makes the approval of a petition or application a matter entrusted to USCIS discretion, USCIS will approve the petition or application only if the evidence of record establishes both eligibility and that the petitioner or applicant warrants a favorable exercise of discretion. If the record evidence establishes ineligibility, the application or petition will be denied on that basis.

(ii) *Initial evidence.* If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.[1]

(iii) *Other evidence.* If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

As will be discussed below, based upon its independent review of all of the evidence of record, the AAO concludes that the petitioner has not established that the proffered position is a specialty occupation.

The Form I-129 identifies the petitioner's business as "real estate management & retail services." In its March 30, 2007 letter that it submitted with the Form I-129, the petitioner describes itself as a Florida corporation in active operation since 2002 that is "engaged in both real estate management and operations management of two retail enterprises." The letter states that the petitioner's real estate is worth an estimated $7.5 million, that it employs a staff of 10, and that its gross sales exceed

[1] It should be noted that the Final Rule delayed the application of this amendment to petitions or applications filed without all required initial evidence, stating, in pertinent part: "USCIS' discretion to deny cases for lack of required initial evidence without first issuing an RFE, however, will only extend to petitions and applications that are filed on or after the effective date of this regulation [that is, June 18, 2007]." *See* 72 Fed. Reg. 19100, 19104.

$2,000,000. The letter further states, "In light of our success, we are presently seeking to improve our operations in order to accommodate, develop, and expand our business, including the possible acquisition of additional establishments."

The petitioner's September 10, 2007 letter responding to the RFE contains substantially the same information about the petitioner as its March 30, 2007 letter.

In its letter submitted on appeal, dated November 12, 2007, the petitioner expands on the previous information by revealing its real estate is a "large commercial lot" and that its two retail enterprises are convenience stores. The letter states, in pertinent part, that the petitioner "was formed in 2002 and purchased a large commercial lot containing two convenience stores among other businesses."

The petitioner's letter on appeal also states that "the petitioner took over the operation and management of the two convenience stores, and continued as landlord for the other business tenants." The AAO notes that the record nowhere reveals the size of the petitioner's commercial lot, the number of business tenants located there, the nature of the businesses renting space, or any particulars regarding its rental operations. This letter further states that, in 2006 (which is prior to the April 2007 filing of this petition), the person who was the petitioner's president and majority shareholder "formed a sister business, Awad & Iba, LLC, which acts as a holding company and handles the property management and rent collection for this property."[2] Aside from a copy of its U.S. Corporate Income Tax Return for the year 2006, no other information is provided about Awad & Iba, LLC and its relationship with the petitioner. The letter also states that the petitioner is actively negotiating with 7-11 Corporation to convert the two convenience stores to 7-11 stores and to purchase at least two additional 7-11 stores within two to three months.

The petitioner's most expansive description of the proffered position and its duties is in its September 10, 2007 letter responding to the RFE. There the petitioner asserts that the position "involves high levels of specialized expertise as well as autonomy and responsibility" and that it "requires complex managerial and marketing research and analysis." The letter also asserts that, working with a great deal of independence and very little supervision, the holder of the position will be "expected to manage his own research, studies, and projects in an efficient and responsible manner"; "will be responsible for coordinating with management and presenting reports upon completion"; "will be [the petitioner's] resident expert in management analysis'; and "will be expected to advise the management regarding his research." These are all conclusory statements with no probative value. Neither the letter nor any other document in the record conveys a factual basis for the petitioner's characterizing the proffered position as requiring complex analysis in management and marketing research and analysis. No substantive details are provided about whatever management and marketing matters may engage the beneficiary. Concrete components of

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[2] The AAO notes that the address for the petitioner on the Form I-129 and the related Labor Condition Application, 7400 SW 57th Street, Miami, is also the business address of Awad & Iba, LLC as recorded with the Florida Secretary of State and stated on the record's copy of that company's tax return.

whatever research and analysis the petitioner would be expected to provide are not described. Likewise, the petitioner does not illuminate the substantive aspects of the reports and management coordination expected from the beneficiary and how production of such reports would require both the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in business management or any related specialty.

This September 10, 2007 letter from the petitioner in response to the RFE also provided the following paragraphs as describing the "specific duties" of the proffered position and the relative percentage of the beneficiary's worktime that they would involve:

1) [45%] Analyze and assess the company's daily management procedures to determine level of efficiency and to identify problem areas. Report to company executives and suggest methods to improve efficiency, minimize overhead costs, increase productivity, and increase sales, based upon analysis. Document findings of studies and prepare recommendations for implementation of new managerial methods, systems, procedures, organizational changes. Prepare cost-benefit analysis of office automation/investing in technological tools/equipment to streamline procedures and build more efficient management processes. Conduct organizational studies and evaluations, design systems and procedures, conduct work simplifications and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively.

2) [35%] Review, analyze, and assess current marketing policies to determine where improvements or adjustments need to be made in consideration of current market prices and fluctuation. Recommend revisions to current marketing strategies to ensure [that the] company continues to attract customers while also keeping marketing costs down. Research and analyze current market trends and customer preferences and suggest marketing and sales strategies that will capture the attention of our targeted markets and effectively increase sales of all products. Research competitors' marketing and sales strategies in order to more effectively formulate our own policies.

3) [20%] Research the possibility of expansion/diversification of current locations and conduct feasibility studies testing the various options. Based on market research and analysis, create reports for management assessing the possibility of diversifying [the] current product base and make recommendations regarding the direction the diversification might take. Examine and analyze competitors' product range and pricing in order to ensure [the petitioner's] own competitive pricing and comparative or superior offers and products. Conduct market and geographical studies (in-state, national, and international) to explore acquisition opportunities for additional business locations; such acquisitions may include purchasing existing businesses or establishing a new business in a new location. Research and analyze market trends in potential geographical areas and conduct feasibility studies to determine the most profitable approach to future business expansion. Research, examine, and analyze

> competitors in those geographical areas, including their marketing strategies, products and pricing, and customer preferences. Based on market studies, recommend to management a hierarchy of profitable business expansion options regarding geographical location, product diversity, and local pricing.

As evidenced by the above listing of proposed duties from the record of proceeding, the petitioner describes the position and its duties in exclusively generalized and generic terms that do not relate any concrete information about either the specific work that the beneficiary would do for the petitioner, or the content and educational level of specialized knowledge that the beneficiary would apply in that work. Likewise, the issues that would engage the beneficiary are presented in exclusively abstract terms that do not relate the level of theoretical and practical knowledge that would actually be applied in addressing them.

As examples of the exclusively abstract information that the petitioner provides about the duties comprising the proffered position, the AAO notes that the record contains no substantive information about the analysis and assessment that the beneficiary would conduct on daily management procedures; the nature of those management procedures; the "studies" that the beneficiary would conduct; the type of "automation/investing in technological tools/equipment" upon which the beneficiary would apply cost-benefit analysis; the marketing methodologies that the beneficiary would employ in the second category of described duties; the nature of "the market research and analysis" that the beneficiary is to employ in pursuit of the third category of described duties. In this regard, the AAO finds that the generalized and generic terms to which the petitioner restricts its description of the proposed duties contain no content from which the AAO may reasonably extrapolate that the beneficiary would theoretically and practically apply a particular educational level of highly specialized knowledge in any specialized discipline.

The letter proceeds to the following explanation from the petitioner of why the above described duties require at least a bachelor's degree or the equivalent in Business Management:

> We feel that the individual who fills this position with our company would need to have at least a Bachelor's degree or equivalent in Business Management in order to be able to successfully carry out the above-referenced tasks and responsibilities. We would not entrust these duties to a person who had not obtained a Bachelor's degree or equivalent, as such would not be able to function independently with only minimal supervision, nor would they be able to complete the complex and specialized tasks assigned to them.
>
> Our company's continued growth and expansion depends on the advice and expertise of the Business Analyst, as our Management will rely on his research, analysis and reports in making high-risk decisions regarding the direction our company will take. Therefore, we require that the Business Analyst have attained a U.S. Bachelor's degree or equivalent in Business Management.

The AAO finds the explanation void of any helpful information, as it lacks substantive information about the "advice and expertise" that it would require from the beneficiary. Further, the petitioner's characterization of the beneficiary's tasks as "complex and specialized" and its assertion of the necessity of a bachelor's degree in business management have no weight, as they are not supported by the evidence of record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO finds that counsel's submissions of the Department of Labor's *Occupational Outlook Handbook (Handbook)* chapters "Market and Survey Researchers" and "Management Analysts" have no probative value in the context of the evidentiary record in this particular proceeding. Counsel submits the two *Handbook* chapters without documentation to support her assertion that they are representative of the proffered position. As reflected in the above discussions of the record's information about the duties comprising the proffered position, the petitioner has failed to establish the substantive nature of the beneficiary's duties and what their performance would likely require in terms of formal education in a specific specialty. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the record does not establish that the beneficiary would actually be performing services that would substantiate his position as being substantially similar to a market and survey researcher and/or a management analyst.

Further, qualification as a specialty occupation is not determined by a position's title or how closely a petitioner's general description of the position approximates the *Handbook's* description of an occupation. Neither the Act nor the implementing regulations support such an approach, which would allow specialty occupation status without substantive evidence of specific work into which the particular position's duty descriptions would translate when actually executed in the context of the petitioner's business.

To determine whether a particular job qualifies as a specialty occupation, USCIS focuses on the record's evidence of specific work involved in actual performance of the job. *Cf Defensor v. Meissner,* 201 F. 3d 384 (5th Cir. 2000). In order for a petitioner to rely on the *Handbook's* reporting of an occupation's degree requirement, the evidence of record must develop the performance aspects of the proffered position in terms sufficiently concrete to manifest the same degree requirement reported by the *Handbook.* Such is not the case here. Neither the duty descriptions nor any other evidence of record conveys specific substantive work that the beneficiary would perform that would normally require at least a bachelor's degree level of knowledge in a specific specialty.

The AAO also notes that the *Handbook's* chapters submitted by counsel do not indicate that the two occupations that they address normally require at least a bachelor's degree in a specific specialty.

The following excerpt from the "Training, Other Qualifications, and Advancement" section 2008-2009 *Handbook's* chapter "Market and Survey Researchers" indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold for entry into the market-research-analyst occupation:

> **Training, Other Qualifications, and Advancement**
>
> A bachelor's degree is usually sufficient for entry-level market and survey research positions. Higher degrees may be required for some positions, however. Continuing education and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data also is important for advancement.
>
> ***Education and training.*** A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree may be required, especially for technical positions.
>
> In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.
>
> While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable later in obtaining a fulltime position in the field, because much of the initial work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

The excerpt indicates that a bachelor's degree is a normal minimum entry requirement for the market and survey researchers occupation, but not that the degree must be in a specific specialty.

The AAO also notes that while the 2008-2009 *Handbook's* "Job prospects" subsection states that "the best" market-and-survey-researcher opportunities for bachelor's degree holder's are for those "with good quantitative skills, including a strong background in mathematics, statistics, survey design, and computer science," it does not specify any particular academic majors or types of bachelor's degrees as requirements for entry into the occupation. Further, the AAO's review of the Marketing Research Association (MRA) Internet site (*www.mra-net.org*), provided at the *Handbook's* "Sources of Additional Information" section, found no reference to a specific degree

requirement for attaining the organization's Professional Researcher Certification. In fact, the Internet site's Certification Overview section indicates that a particular academic degree is not a requirement for certification, stating that "Professional Researcher Certification (PRC) was developed as a powerful tool for researchers of all levels of work experience and education."

Likewise, the 2008-2009 *Handbook's* chapter "Management Analysts" indicates that this occupational category is not characterized by a minimum entry requirement of a least a bachelor's degree in a specific specialty. As may be gathered from the following excerpt from that chapter, management analysts have a wide range of educational and experiential backgrounds and are not characterized by common degrees. The "Training, Other Qualifications, and Advancement" section of the chapter reads as follows:

> Entry requirements for management analysts vary. For some entry-level positions, a bachelor's degree is sufficient. For others, a master's degree, specialized expertise, or both is required.
>
> ***Education and training.*** Educational requirements for entry-level jobs in this field vary between private industry and government. Many employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult. Other firms hire workers with a bachelor's degree as research analysts or associates and promote them to consultants after several years. Some government agencies require experience, graduate education, or both, but many also hire people with a bachelor's degree and little work experience for entry-level management analyst positions.
>
> Few universities or colleges offer formal programs in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, or engineering. Most analysts also have years of experience in management, human resources, information technology, or other specialties. Analysts also routinely attend conferences to keep abreast of current developments in their field.
>
> ***Other qualifications***. Management analysts often work with minimal supervision, so they need to be self-motivated and disciplined. Analytical skills, the ability to get along with a wide range of people, strong oral and written communication skills, good judgment, time-management skills, and creativity are other desirable qualities. The ability to work in teams also is an important attribute as consulting teams become more common.

> ***Certification and advancement.*** As consultants gain experience, they often become solely responsible for specific projects, taking on more responsibility and managing their own hours. At the senior level, consultants may supervise teams working on more complex projects and become more involved in seeking out new business. Those with exceptional skills may eventually become partners in the firm, focusing on attracting new clients and bringing in revenue. Senior consultants who leave their consulting firms often move to senior management positions at non-consulting firms. Others with entrepreneurial ambition may open their own firms.
>
> A high percentage of management consultants are self-employed, partly because business startup and overhead costs are low. Since many small consulting firms fail each year because of lack of managerial expertise and clients, persons interested in opening their own firm must have good organizational and marketing skills. Several years of consulting experience are also helpful.
>
> The Institute of Management Consultants USA, Inc. offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Certification is not mandatory for management consultants, but it may give a jobseeker a competitive advantage.

The AAO's review of the Institute of Management Consultants USA (IMC USA) Internet site (*www.imcusa.org*), listed at the *Handbook's* "Sources of Additional Information" section, found that a bachelor's degree is one of the requirements for attaining the organization's Certified Management Consultant (CMC®) designation, which IMC USA describes as "conforming to the global standards for management consultants." However, as indicated in the pertinent excerpt below from the Internet site's informational section on the requirements for CMC® designation, there is no requirement that the bachelor's degree be in a specific specialty:

- A CMC candidate must have earned a Bachelor's degree.
- A candidate without a Bachelor's degree may apply for certification if they have a minimum of five years of experience as an independent or internal management consultant, provided they can demonstrate an ongoing commitment to professional development in management, the consulting profession, and their area of specialty.

The AAO accords no probative weight to the advisory opinion on the educational requirements of the proffered position, which is provided by [redacted]., an Associate Professor of Management Science at the Robert H. Smith School of Business of the University of Maryland, who opines (1) that the proffered position requires at least a Bachelor's Degree, or the equivalent, in Business Management, and (2) that the proffered position is a specialty occupation.

lists 16 responsibilities of the proffered position. They substantially comport with the descriptions of the position's duties presented in the petitioner's letter of reply to the RFE. [redacted] states that, after analyzing these responsibilities "in detail," "it becomes apparent that a minimum of a Bachelor's Degree in Business Management or the equivalent provides the student with the core competencies and skills needed for a Business Analyst position with [those] responsibilities." As explanation for this assertion, he states:

> This is because the nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of such a degree. Courses required by a Business Management major such as Operations Management, Marketing, Business Communications, Finance, Accounting, Consumer Behavior, Market Research, Logistics Management, Statistics and other related courses directly correspond to and prepare the student for the specific responsibilities of the position.

[redacted] also states:

> Furthermore, this type of position is a typical job placement for students completing a Bachelor's Degree at our school. Employers with openings for Business Analysts and similar professional positions have recruited at our campus, always seeking graduates with the minimum of a Bachelor's Degree in Business Management or a related area.

The content of [redacted] evaluation, dated September 18, 2007, indicates no more knowledge of the petitioner's operations and the proffered position than appears in the petitioner's September 10, 2007 letter in response to the RFE. [redacted] description of the petitioner and duties of the proffered position substantially comport with and do not extend beyond the information provided in that letter, which contains the three-part summation of the beneficiary's duties that are quoted earlier in this decision. As discussed earlier in this decision, that information about the proposed duties contains no substantive information about what they would involve in their execution. Accordingly, the AAO finds this information to be an inadequate factual basis for [redacted]'s opining that the nature of these duties and the knowledge required to perform them is "so specialized and complex" as to be usually associated with a bachelor's degree in business management. Another reason for dismissing [redacted]'s evaluation is its conclusory nature. It provides no substantive analysis about how [redacted] reached his conclusions. While [redacted] asserts that he analyzed the proposed duties in detail, the evaluation letter contains no evidence of such analysis. Further, the letter does not indicate that [redacted] had any concrete knowledge of the petitioner's actual operations. It is remarkable, for instance, that he does not indicate knowledge of the fact that the "two retail enterprises" that he references were convenience stores. Another indication of the superficiality of the professor's evaluation is that it cites no research, studies, treatises, or authorities. The professor's only empirical observation, that employers "with openings for Business Analysts and similar positions have recruited at our campus, always seeking graduates with the minimum of a

Bachelor's Degree in Business Management or a related area," is too narrow a sampling to be accepted as evidence of the extent to which employers of business analysts require a degree in a particular specialty. Further, the professor has not established that the employers approaching his campus and their business analyst positions are substantially similar to the petitioner and its particular position. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner has submitted a letter from the Executive Vice President (EVP) of Food Spot Corp., dated August 29, 2007, in which the EVP states that, prior to selling substantially all of its business assets approximately five years earlier, this firm was in the business of operating gas stations and convenience stores in south Florida; that it had employed a Business Analyst who "served to research, analyze, and report to management the effectiveness and profitability of management and business strategies, and to develop revisions and monitor techniques and systems for review by management"; and that the "requirements for this responsibility were a Bachelor's degree in Business Administration, and a major in Management, or equivalent work experience." The AAO finds this letter is not probative of the proffered Business Analyst job being a specialty occupation position. Neither the letter nor any other evidence of record establishes that the Food Spot Corp.'s Business Analyst performed work substantially similar to what would be required of the beneficiary or that that Food Spot Corp.'s requirement for a business administration degree with a major in management is representative of an industry-wide practice.

The above evidentiary discussions should be deemed incorporated into the AAO's application of the of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the record, which follows below.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

Here incorporating its earlier discussions about the lack of substantive evidence about what performance of this position would entail in terms of actual work and related applications of specialized knowledge, the AAO finds that the petitioner has failed to provide evidence that establishes that its proffered Business Analyst is one with a normal minimum requirement of at least a bachelor's degree, or the equivalent, in a specific specialty. The generalized and generic information to which the petitioner limited its descriptions of the proffered position and its duties does not convey either the substantive nature of the work that would engage the beneficiary or the nature and educational level of both practical and theoretical applications of highly specialized knowledge in a specific specialty that such work may require.

[redacted]s opining that the proffered position requires at least a Bachelor's Degree, or the equivalent, in Business Management and that the proffered position is a specialty occupation is not probative, in light of the material deficiencies that the AAO has identified in his evaluation. As earlier discussed, the letter from the EVP of Food Spot Corp. also has little evidentiary value, and the *Handbook* does not support classifying the proffered position as a specialty occupation.

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 closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong assigns specialty occupation status to a proffered position whose asserted requirement for at least a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In 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)).

As already discussed, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty. The letter from the EVP of Food Spot Corp. is not significant, as it establishes neither substantial similarity between the proffered position and the Food Spot Corp.'s Business Analyst position nor Food Spot Corp.'s degree requirement as a practice common to the industry.

The record's job-vacancy advertisements are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both (1) parallel to the proffered position and (2) located in organizations similar to the petitioner. On their face, the submitted advertisements are not relevant to the criterion under discussion, as their content either indicates that they are for positions outside the petitioner's industry or fails to identify the industry to which they relate. Additionally, as the record is so lacking in substantive information about the proffered position, the petitioner fails to establish the similarity between the advertised positions and the one that it is proffering. Further, there is no independent evidence of how representative these job advertisements are of the particular employers' recruiting histories for the type of job advertised. Furthermore, as the petitioner presents no independent evidence establishing how representative the advertisements are of industry recruiting and hiring practices, the advertisements do not establish a common practice for any of the industries to which they relate.

The petitioner also failed to 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." As evident in this decision's earlier comments about the deficiencies of the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as meriting specialty occupation status by virtue of uniqueness or level of complexity.

As the record establishes that this is the first time that the petitioner seeks to employ someone in the proffered position, the petitioner does not attempt to satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which focuses upon a petitioner's prior hiring activities with regard to the position proffered in the petition.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in this decision's earlier comments about the deficiencies in the information about the proffered duties, the proposed duties and their performance requirements have not been described with sufficient specificity to establish an association with a particular educational level in any specific specialty. Also, as previously noted, [redacted] opinion on this issue does not merit any weight, as it is a conclusory assertion presented without a sufficient factual foundation and supporting analysis.

For the reasons discussed above, the AAO finds that the petitioner has not established that the proffered position qualifies as specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO finds and here states an additional basis for denial not addressed by the director. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to serve in a position requiring at least a bachelor's degree, or the equivalent, in business management or any other business specialty, because the evidence of record does not establish that the beneficiary holds other than the equivalent of a U.S. bachelor's degree in business administration, without a specific major or academic concentration. As the BIA indicates in the precedent decision *Matter of Ling,* 14 I. & N. Dec. 35 (Reg. Comm. 1968), proof of possession of a bachelor's degree in business administration is not sufficient to establish a person's qualification for a particular occupation in the wide field of business administration unless it is accompanied by evidence demonstrating that the particular coursework leading to his or her degree is a realistic prerequisite for that occupation. By way of example, the BIA states: "[I]t is evident that while a person may have a degree in business administration, such degree may qualify for him for some but not all of the occupations included in the broad field of business administration. For example, a person with a degree in business

administration, major in accounting, would not qualify as a public relations man or personnel manager and vice versa. . . ." 14 I. & N. Dec. 35, 37.

In the present matter, the record's documentary evidence of the beneficiary's education is limited to a Bachelor's of Commerce diploma from the University of Karachi, a Master's of Commerce diploma from the same institution, and a related Transcript for Master's Examination. Neither these nor any other documents indicate that the beneficiary attained anything other than a generalized degree in Commerce or that his degree is equivalent to any U.S. degree other than a generalized degree in Business Administration. The record of proceeding contains no course transcripts or other documentation from the University of Karachi demonstrating that the beneficiary majored in any business specialty within the broad field of business administration, or that the beneficiary attained an academic concentration in the Business Management courses that [redacted] listed or in any other business specialty courses. Further, the Evaluation Report that the petitioner obtained from the Foundation for International Services, Inc. concludes that the beneficiary "has the equivalent of a bachelor's degree in business administration [not business management] from a regionally accredited college or university in the United States," and it also does not indicate in what business specialty, if any, the beneficiary majored or attained an academic concentration.

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, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.