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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



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

B2

FILE: [REDACTED] Office: [REDACTED] Date: APR 01 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael T. Kelly
Perry Rhew
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 record contains a Form G-28 Notice of Entry of Appearance recognizing a [REDACTED] attorney as the petitioner's counsel of record. The record contains no indication that counsel participated in filing the instant appeal. Nevertheless, today's decision will be furnished both to the petitioner and the petitioner's counsel of record.

On the Form I-129 visa petition the petitioner stated that it is a telecommunication and software solution provider with two employees and that it was established on November 17, 2008. To employ the beneficiary in what it designates as a marketing analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The petitioner submitted the instant visa petition on January 2, 2009, 46 days after it was established.

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, the petitioner submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's brief and attached exhibits in support of the appeal.

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. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

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 a particular position 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted a letter, dated December 30, 2008, from the petitioner’s president. The petitioner’s president stated:

[The petitioner] is engaged in the business of [redacted] and [redacted] company posed to increase infrastructure in the field of developing [redacted] and [redacted] solution for customer special application, systems, chipset, saving resources consumption, memory and bandwidth, and reduce their system cost, thus create value for them.

[Verbatim from the original.]

Taken together with the statement in the visa petition that the petitioner’s type of business is [redacted] that passage appears to indicate that the petitioner develops programs for [redacted] firms, although that has not been made perfectly clear.

That letter contains the following description of the duties of the proffered position:

- Examine and analyze research data to forecast future trends in the [redacted] industry.
- Collect, compile, classify and analyze data on customer preferences.
- Analyze the design, promotion, price and distribution of our service lines in order to ensure increased sales and profitability.
- Identify and define market opportunities in order to focus, create and implement appropriate strategies and response;
- Generate, refine and evaluate marketing actions and strategies;
- Collect data on customer preferences, study various factors such as region, company income and level of needs and market products accordingly in that area;
- Monitor our market performance and study marketing strategies, and conduct profitability studies to support development and investment opportunities with a view towards modifying and improving tactics to increase sales and overall market share.

The petitioner's president did not state whether the performance of those duties requires any college degree or whether, if it does, the degree must be a minimum of a bachelor's degree or the equivalent in any specific specialty. Further, he did not state whether, if it requires such a degree, what specific specialty that degree must be in.

On March 1, 2009, the service center issued a RFE in this matter. The service center noted that the petitioner was established during 2008 and had two employees. The service center requested, *inter alia*, evidence that the petitioner has sufficient specialty-occupation-level marketing analyst duties to occupy the majority of the beneficiary's time. The service center also requested that the beneficiary reveal how many other marketing analysts it employs, or employed in the past, and whether those other marketing analysts have/had bachelor's degrees in any specific specialty. Finally, the service center requested evidence that similar businesses in the petitioner's industry require the services of a professional in-house market analyst.

In response, the petitioner's president submitted a letter, dated April 9, 2009. In that letter, the petitioner's president admitted that the petitioner had never previously employed a marketing analyst. The petitioner's president also stated:

It is also being brought to your attention, that the petitioner's focus clientele includes various major fortune 1000 corporations/organizations in the United States of America. It is in fact customary for firms of any comparable size to employ a Marketing Analyst to possess a bachelor's degree in marketing or economics or business[-]related degree.

The petitioner's president did not make clear whether he was asserting that companies of the petitioner's size routinely employ a marketing analyst with a bachelor's degree in business or marketing, or whether he was asserting that about Fortune 1000 companies.

Further, the petitioner's president appeared to imply that any degree in marketing, economics, or a business-related subject would qualify someone to hold the proffered position. The significance of that implicit assertion is addressed below.

Although the petitioner's president acknowledged that nonprecedent cases are not binding on the AAO, he nevertheless asserted that they are persuasive in the absence of relevant precedent cases. The petitioner's president asserted that such cases have "consistently held that the usual requirement for employment as a marketing research analyst is a **baccalaureate** or higher degree in marketing." [Emphasis in the original.]

The petitioner's president stated that it was providing an opinion rendered by [REDACTED] which the petitioner's president suggested is relevant to same material issue in this matter. That document was not provided.

The petitioner's president provided a new description of the duties of the proffered position, stated as follows:

- (1) Collection, Compilation, Classification and Analysis of data on customer preferences (approx 15 hrs)
- (2) Research, analyze, design and develop Marketing systems that require use of advanced sophisticated, specialized and quantitative methodologies.(20 hrs/week)
- (3) Review our distributional channels and design better distributional channels. (approx 5 hrs)

The petitioner's president further asserted:

The minimum educational requirements, in this industry, which a candidate applying for this position must possess in order to be able to perform his assigned duties would be a Bachelor[']s Degree in Business Administration Degree [sic] with a concentration in Marketing.

The petitioner's president cited the U.S. Department of Labor's *Dictionary of Occupational Titles* and the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* in support of that assertion. The petitioner's president also asserted that the petitioner is in the process of establishing and expanding operations and that strategic marketing is therefore required.

The petitioner submitted vacancy announcements printed from various job search websites.

One of those vacancy announcements is for a [REDACTED] That announcement indicates that [REDACTED] has operations in 130 countries and that the position requires a bachelor's degree with emphasis on marketing, business, or management

Another vacancy announcement was placed by [REDACTED] It notes that [REDACTED], a communications company, has 24.7 million cable customers, 14.1 million high-speed Internet customers, and 5.2 million voice customers. It states that the position requires a four-year college degree, but not that the degree must be in any specific specialty.

Another announcement is for a [REDACTED] a [REDACTED] company in [REDACTED] That announcement does not reveal the size of [REDACTED] It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty

Another is for a [REDACTED] The size of that firm is unknown to the AAO. That announcement states that the position requires a "Bachelor's Degree in relevant field or combination of work experience and education that would likely provide the required knowledge and abilities."

Another announcement was placed by [REDACTED] position in [REDACTED] That announcement does not indicate [REDACTED] size. As to

education, the announcement states, "Education: Required-Bachelor's Degree in Business Marketing, Communications or relevant work experience. Preferred-Bachelor's Degree."

Another announcement was also placed by [REDACTED] and is for a [REDACTED] [REDACTED]. Again, it does not specify [REDACTED] size. It states that the position requires a "BA in marketing, Business Administration or Communications, related discipline or equivalent."

Another vacancy announcement was placed by an unidentified [REDACTED] firm for a [REDACTED] [REDACTED] to work in [REDACTED]. That announcement indicates that the firm has "1 - 100" employees, but its size is otherwise unknown to the AAO. The announcement further indicates that the position requires a "Bachelor's degree (BA) or equivalent, Business concentration or Master's preferred."

Another vacancy announcement was placed by an unidentified telecommunications firm for an [REDACTED] to work in [REDACTED]. The announcement states that the firm has "1,000 to 10,000 Employees," and that the position requires a bachelor's degree. It does not state that the degree must be in any specific specialty.

Another announcement is for a [REDACTED] to work for [REDACTED] in either [REDACTED]. The size of that firm is unknown to the AAO. The announcement states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another vacancy announcement is for a [REDACTED] [REDACTED]. Although its size is not stated in that announcement, the AAO notes that [REDACTED] is a relatively large company. That announcement states that the position requires a bachelor's degree in marketing or a business-related field.

Another announcement is for a [REDACTED] to work for [REDACTED] in [REDACTED]. The size of that firm is unknown to the AAO. That announcement states that a bachelor's degree is strongly preferred, but not that the degree should be in any specific specialty.

Two announcements are for a [REDACTED] and a [REDACTED] to work for [REDACTED] in [REDACTED]. Although that announcement does not state [REDACTED] size, the AAO notes that it is a relatively large company. Those announcements state that the positions require a minimum of a bachelor's degree, but not that the degree should be in any specific specialty.

Another announcement is for a [REDACTED] to work for [REDACTED] a [REDACTED] firm, in [REDACTED]. The size of that firm is unknown to the AAO. Those announcements state that the position requires a bachelor's degree in business administration, economics, or engineering.

The petitioner also submitted the employment contract between it and the beneficiary. That contract is for a term of 12 months. The AAO notes that the period of employment requested in this case is three years.

The director denied the visa petition on May 12, 2009 finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. In that decision, the director noted that the petitioner had relied on the rating of [REDACTED] accorded to marketing analyst positions by the *Dictionary of Occupational Titles* as evidence that marketing analyst positions require a minimum of a bachelor's degree or the equivalent in a specific specialty. The director noted – correctly, the AAO finds – that a rating of [REDACTED] does not necessarily mean that a given position requires a bachelor's degree, and even more certainly does not demonstrate that it requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

On appeal, the petitioner submitted a brief and additional evidence. The additional evidence submitted consists chiefly of letters verifying the beneficiary's previous employment. The AAO notes that evidence pertinent to the beneficiary's previous employment is of no direct relevance to whether the position proffered in this case qualifies as a position in a specialty occupation.

On appeal, the petitioner's president submitted a letter dated June 7, 2009. In it, he stated:

Generally employers in the telecommunication and software industry normally employ individuals with a bachelor's degree in Arts-marketing, economics or statistics.

[The petitioner] is also one of them follows the same trend but with only different is that with a bachelor's degree in Marketing, our marketing analyst will be with Professional skills in computer programming/languages because of the facts that during his job performance his computer back ground (IT background/skill) will be the added advantage for deciding marketing policy and taking strategic decisions.

[Verbatim from the original.]

Although the petitioner's president's meaning is not entirely clear, he appears to be saying that while other employers in its industry typically require a bachelor's degree in marketing, economics, or statistics, the petitioner requires a degree in marketing and computer programming skills, and the beneficiary has that education and those skills.

The petitioner's president also stated:

[W]e request you to consider the companies nature of business and field. i.e. telecommunication and software industry (Information Technology) and you will feel the requirement of the degree and appropriate employee with such unique combination of marketing and technical proficiency. Its only the product in which the

company is dealing change the entire requirement scenario. It would be right for the company dealing in consumer durable may not require that highly qualified man but specialty or technical product do requires.

[Verbatim from the original.]

Again, the president's meaning is not entirely clear, but he appears to mean that although other businesses might not require that their marketing managers have a degree in marketing, businesses in the petitioner's industry necessarily do.

The petitioner's president further stated:

We agree with your good self that each position is given an [redacted] ranking, and according to that marketing analyst is having [redacted] only which is not even to four years of education, its true for the person with only marketing degree and not that many years of experience but in our beneficiary case he has very strong education qualification such as Master's of Science, Bachelor's of Science, Marketing and Sales Management and Computer certification in [redacted] and along with that more than [redacted] years of [redacted]

[Verbatim from the original.]

Although his meaning is, yet again, not entirely clear, the petitioner's president appears to be saying that although not all marketing analyst positions require a minimum of a bachelor's degree or the equivalent in a specific specialty, the beneficiary has more education than just a marketing degree. The AAO again notes that the requirements of the position, not the qualifications of the beneficiary, determine whether the proffered position qualifies as a specialty occupation.

The petitioner's president provided additional detail pertinent to the three duties described in his April 9, 2009 letter. Even with that specification, however, the duties described consist of gathering and analyzing data and developing marketing strategies based on that analysis.

The petitioner has never made clear precisely what degree, if any, it claims is necessary in order to perform the duties of the proffered position. In his December 30, 2008 letter, the petitioner's president voiced no such requirement. In his April 9, 2009 letter the petitioner's president may have asserted that the proffered position requires a bachelor's degree in marketing, economics, or business-related degree, or he may have meant that Fortune 1000 companies require marketing analysts with such degrees. On appeal, the petitioner's president stated that employers in the petitioner's industry require market analysts to have a bachelor's degree in marketing, economics, or statistics, but also appeared to assert that the proffered position itself requires a bachelor's degree that must be in marketing.

The AAO notes that a position that requires either a bachelor's degree in marketing or economics or a bachelor's degree in a business-related field would not qualify as a specialty occupation because that wide range of fields is not indicative of the position's requiring, and theoretically and practically applying, at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty as is required by section 214(i)(1) of the Act.¹ The petitioner never, in the letter submitted with the visa petition, in the letter submitted in response to the RFE, or in the appeal brief, alleged clearly that that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. As such, the petitioner never correctly even alleged that the proffered position qualifies as a specialty occupation.

Further, as was noted above, the petitioner is obliged to demonstrate that the proffered position qualifies as a position in a specialty occupation pursuant to one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner's president previously cited the *Dictionary of Occupational Titles* for the proposition that the proffered position qualifies as a specialty occupation, though it appears to have withdrawn that argument on appeal. The *Dictionary of Occupational Titles* classifies market research analysts in [REDACTED]. It further explains that most occupations in this zone require a four-year bachelor's degree, but some do not. It does not indicate that occupations in that zone require a bachelor's degree in a specific specialty. The *Dictionary of Occupational Titles* is of little relevance to whether the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, which is the material issue under consideration.

The petitioner's president also cited the *Handbook* as support for the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty and

¹ Even the requirement of a bachelor's degree in business administration, with no allowance for any alternative degrees, would be inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained earlier in this decision, consonant with section 214(i)(1) of the Act, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

qualifies as a specialty occupation. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the section entitled Market and Survey Researchers, the *Handbook* describes the duties of market research analysts as follows:

Market research analysts help companies understand what types of products people want, determine who will buy them and at what price. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales.

Market research analysts devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences. While a majority of surveys are conducted through the Internet and telephone, other methods may include focus group discussions, mail responses, or setting up booths in public places, such as shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

The AAO finds that the duties described by the petitioner's president correspond closely to the duties of a market research analyst position.

As to the education required for market research analyst positions, the *Handbook* states:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology 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.

That passage indicates that a bachelor's degree is necessary in order to obtain a market research analyst position, and it suggests a wide range of subjects in which a person seeking a market research analyst position should take classes. It does not state that a position as a market research analyst requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

Neither the *Handbook* nor any other evidence supports the petitioner's position that market research analyst positions categorically require a degree in any specific specialty. The petitioner has not, therefore, demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Some of the vacancy announcements provided appear to be for jobs that are not similar to the proffered position. Although the vacancy announcements submitted were placed by [REDACTED] firms, which the petitioner also claims to be, most appear to market and service [REDACTED] rather than developing software for other [REDACTED] firms. They are all, therefore, in a different industry that the petitioner is.

Further, the petitioner, which had two employees when it submitted the instant visa petition, has not demonstrated that any of the employers who placed those vacancy announcements are of the same approximate size as the petitioner. Some are clearly much larger.

Some of the positions advertised do not require bachelor's degrees, and some require bachelor's degrees, but not in any specific specialty.

None of the vacancy announcements provided has been demonstrated to have been placed by an organization similar to the petitioner for a position parallel to the proffered position and to require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, even if all 14 of those announcements were for parallel positions with similar organizations in the petitioner's industry, and even if each of the vacancies thus announced required a minimum of a bachelor's degree or the equivalent in a specific specialty, they would still not demonstrate an industry-wide requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty, because 14 job postings are statistically insufficient to establish an industry-wide standard. Thus, while relevant to this proceeding, neither the vacancy announcements nor any other evidence in the record demonstrates that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, as the record of proceeding contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, there is no evidence upon which to apply the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The descriptions provided assert that the beneficiary would gather and analyze data and develop marketing strategies based on that analysis. Depending on the nature and complexity of that data and analysis, such duties may require a minimum of a bachelor's degree or the equivalent in a specific specialty. The evidence does not demonstrate, however, that the nature of the petitioner's

business, which is developing software, requires market research analysis that would be so complex as to require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Neither the descriptions of the duties of the proffered position nor any other evidence in the record demonstrates that the proffered position or its duties are so complex, unique, or specialized that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or the equivalent or that performance of the duties is usually associated with a minimum of a bachelor's degree in a specific specialty or the equivalent. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) or the criteria of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

For the reasons discussed above, the petitioner has not demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be dismissed and the petition will be denied on this basis.

The record suggests an additional issue that was not addressed in the decision of denial. The petitioner submitted evidence of three degrees held by the beneficiary. One is a bachelor's degree in chemistry. Another is a master's degree in organic chemistry. The third degree is evidenced by a diploma from a foreign institution, not otherwise specified, in marketing and sales management. That third degree appears to be the one upon which the petitioner relies in asserting that the beneficiary is qualified to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) indicates that a foreign degree may be relied upon for that purpose if it is determined to be equivalent to a United States baccalaureate or higher degree from an accredited college or university. The record in the instant case contains no evidence that the marketing and sales management degree relied upon is equivalent to a U.S. bachelor's degree.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) indicates that education other than a U.S. or foreign degree may be relied upon if it is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and has conferred expertise that has been recognized through progressively responsible positions directly related to the relevant specialty. In order for USCIS to consider that education, training, and/or experience pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) requires one or more of the following types of evidence:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;³
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The record contains no such evidence.

However, a beneficiary's credentials to perform a particular job are relevant to the instant visa category only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Therefore, the AAO will not address the beneficiary's qualifications further. The AAO observes, however, that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate that the beneficiary has a minimum of a U.S. bachelor's degree, or the equivalent, in that specific specialty.

A 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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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. The appeal will be dismissed and the petition denied.

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

³ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.