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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**

D2

DATE: APR 29 2011

Office: [REDACTED]

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[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,

Perry Rhew
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, [REDACTED] Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides consulting and marketing services to plastic and cosmetic surgeons.¹ It seeks to extend the employment of the beneficiary as a marketing strategist for an additional three years.² Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, finding that the position was not a specialty occupation.

On appeal, counsel for the petitioner contends that the director's findings were erroneous. Specifically, counsel asserts that the director incorrectly concluded that the proffered position was not a specialty occupation, and relies on the beneficiary's prior approval for the same employment as evidence of his eligibility. Counsel submits a brief and additional evidence in support of his contentions.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [1] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture,

¹ It should be noted that, according to [REDACTED] State corporate records, the petitioner's corporate status in [REDACTED] has been suspended. Although the reason for this suspension is unclear, it raises the issue of the company's continued existence as a legal entity in the United States.

² The full title of the position as it appears on the Form I-129 is "Marketing Strategist – Web Design."

engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [2] 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 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. 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In an October 6, 2008 cover letter, counsel explained that the petitioner wished to extend the employment of the beneficiary as its market strategist. He claimed that the beneficiary's duties included "developing graphic and placement strategies to increase web visibility [the petitioner's clients]," and that the position "is not a web designer position but a position that involves the analysis and development of a marketing program." Counsel further contended that performance of the duties of the position required the attainment of a bachelor's degree or equivalent in the area of marketing or advertising. These assertions were restated as follows in a letter of support from the petitioner dated October 2, 2008:

The position involves the analysis of a client's existing web marketing efforts and those of the client's competitors in the market area. The Marketing Strategist suggests improvements on the current efforts through development of a focus, copy, graphics, key points, key words and other marketing factors. The Marketing [Strategist] works with web site designers and other members of the design and marketing team. The minimum requirement for this position is a bachelor degree or equivalent.

In a December 15, 2008 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position was a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its hiring practices, and its organizational chart.

In response, the petitioner responded to the director's queries and submitted a substantial amount of documentary evidence as requested by the director. In a letter dated January 20, 2009, the petitioner indicated that its sole focus was on "cosmetic image marketing enhanced with Internet search engine optimization (SEO) technologies." The petitioner further explained by way of example, in which it noted that an Internet search of the phrase "cosmetic surgery" yields approximately 13 million websites. The petitioner stated that its job was to assist clients create a website that would fall within the first few pages of search engine results.

The petitioner also described the duties of the proffered position in additional detail as set forth below:

Marketing Strategist-Web Design develops the strategy for Web promotion by reviewing the content, layout and graphics for a client; and then developing the underlying content for the websites. Emphasis is on acceptance by the search engines to positively position the Website on major search engines with the US and [REDACTED]

The position duties include:

1. Review the initial navigation of the website to insure that they will have the effective flow of information.
2. Develop updated recommendations for navigation, content, layout and underlying programming for all [petitioner] designed websites[.]
3. Review the graphics to insure that they enhance the site visually as well as effectively for positive Search Engine Optimization (SEO).
4. Oversee the implementation of all underlying programming for each [petitioner] designed website.
5. Review the effectiveness of the traffic and position for every site developed by [the petitioner] through SEO.
6. Develop and implement reporting systems to allow the clients to see the results of the work performed by [the petitioner].
7. Review [the petitioner's] client's competitors programming to obtain additional knowledge and to help our clients to stay ahead of local competitors.
8. Oversee the submission of all [petitioner] websites to the search engines.
9. Continually stay abreast of the search engines methods of assessing websites through searching the Internet for articles, papers and tips.
10. Assist in sales calls and presentations to [REDACTED] speaking clientele.
11. Generate [REDACTED] communications, when applicable for [petitioner] promotion or demonstration of the [petitioner's] work.

The petitioner also provided a list of its active clients, including copies of the websites which it constructed for each client. The petitioner also submitted copies of SEO reports and Google Analytics which, the petitioner claimed, assisted the beneficiary in assessing the success of each client's marketing campaign. Finally, an organizational chart demonstrating the beneficiary's role in the petitioner's organizational hierarchy was submitted.

On March 6, 2009, the director denied the petition, determining that the petitioner had failed to establish that the proffered position was a specialty occupation. The director found that the proffered position was most akin to the occupation of a market research analyst, and set forth two bases for the denial: (1) the duties of the proffered position were not those of a market research analyst; and (2) the industry in which the beneficiary would be employed did not typically require the services of a market research analyst.

On appeal, counsel contends that the director's findings were erroneous. Counsel relies on the fact that the beneficiary was previously approved for H-1B employment with the petition for the current position, and contends that there has been no change to her employment. Counsel presents arguments and evidence in

support of the contention that the proffered position is both that of a market research analyst and an account manager, and concludes that the petitioner has met its burden of proof.

Counsel's assertions are not persuasive. The AAO observes that the critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The AAO will first address counsel's contention that the proffered position is akin to that of a market research analyst. Turning to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a source the AAO routinely consults for information regarding the duties and educational requirements of particular occupations, the AAO notes that the occupation of market research analyst is described as follows:

Market and survey researchers gather information about what people think. 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.

Market opinion research has contributed greatly to a higher standard of living as most products and services consumers purchase are available with the aid of market research. By making recommendations to their client or employer, market research analysts provide companies with vital information to help them make decisions on the promotion, distribution, and design of products or services. For example, child proof closures on medicine bottles exist because research helped define the most workable design; and the growing variety of ready to cook meals, such as microwaveable soups and prepackaged meat products, exist because of increasing public demand for fast and convenient meals. The information also may be used to determine whether the company should add new lines of merchandise, open new branches, or otherwise diversify the company's operations. Market research analysts also help develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways based on their knowledge of the consumer being targeted.

The AAO notes that, in accordance with the contentions of the petitioner, the proffered position represents a unique type of marketing position in which the beneficiary provides web-based marketing services to the petitioner's clients using SEO technology. While the occupational description of market research analyst may not constitute a completely accurate overview of the proffered position, the AAO recognizes that several of the key duties of this profession, such as gathering statistical data on competitors and examining methods of marketing and distribution, are included in the duties of the beneficiary. However, market research analysts are generally tasked with identifying consumer demand for a particular product or service as opposed to

providing advertising and marketing consulting services to clients. Therefore, the AAO concurs in part with counsel's contention on appeal in which he asserts that, while the proffered position requires the performance of marketing tasks such as gathering information on competitors, it also encompasses tasks related to advertising and public relations.

Notwithstanding this finding, the AAO will address the director's discussion of this occupational category. While the AAO concurs with the director's ultimate conclusion that the proffered position is not a specialty occupation, the AAO disagrees with the director's statement on page 3 of the decision where she concludes that "it is clear from the information provided in the OOH that the position as a Market Research Analyst qualifies as a specialty occupation."

Even if the proffered position were deemed a market research analyst for purposes of this analysis, this occupation category is not a specialty occupation. The *Handbook's* section pertaining to the educational requirements for market and survey researchers states:

While a bachelor's degree is often sufficient for entry-level market and survey research jobs, higher degrees are usually required for advancement and more technical positions. Strong quantitative skills and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data also are 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 is usually required for more technical positions.

The *Handbook* does not state that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While it indicates that a bachelor's degree is the most significant source of postsecondary education for persons employed in market and survey research jobs, no specific specialty is identified as the area in which the degree must be obtained. Therefore, even if the proffered position were deemed to be that of a market research analyst, based on duties including gathering information on competitors, the proffered position would not be considered a specialty occupation.³

The AAO now turns to counsel's assertion on appeal which claims that the proffered position is also akin to an account manager in the field of advertising and public relations. The AAO first notes that, while counsel cites to the *Handbook's* section discussing advertising and public relations services, the section upon which he refers is actually excerpted from the Department of Labor's *Career Guide to Industries (CGI)*, not the *Handbook*. Nevertheless, the AAO notes that the *CGI* states in relevant part as follows:

³ The director's erroneous finding with regard to the occupation of market research analyst is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility. The AAO maintains plenary power to review each appeal on a *de novo* basis, which has long been recognized by the federal courts. See *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Goods and services. Firms in the advertising and public relations services industry prepare advertisements for other companies and organizations and design campaigns to promote the interests and image of their clients. This industry also includes media representatives—firms that sell advertising space for publications, radio, television, and the Internet; display advertisers—businesses engaged in creating and designing public display ads for use in shopping malls, on billboards, or in similar media; and direct mail advertisers. A firm that purchases advertising time (or space) from media outlets, thereafter reselling it to advertising agencies or individual companies directly, is considered a media buying agency. Divisions of companies that produce and place their own advertising are not considered part of this industry.

Industry organization. In 2008, there were about 50,100 advertising and public relations services establishments in the United States. About 38 percent write copy and prepare artwork, graphics, and other creative work, and then place the resulting ads on television, radio, or the Internet or in periodicals, newspapers, or other advertising media. Within the industry, only these full-service establishments are known as *advertising agencies*. About 18 percent were public relations firms. Many of the largest agencies are international, with a substantial proportion of their revenue coming from abroad.

Most advertising firms specialize in a specific market niche. Some companies produce and solicit outdoor advertising, such as billboards and electric displays. Others place ads in buses, subways, taxis, airports, and bus terminals. A small number of firms produce aerial advertising, while others distribute circulars, handbills, and free samples.

Many agencies have created units to better serve their clients' electronic advertising needs on the Internet. Online advertisements link users to a company's or product's Website, where information such as new product announcements, contests, and product catalogs appear, and from which purchases may be made.

Some firms are not involved in the creation of ads at all; instead, they sell advertising time or space on radio and television stations or in publications. Because these firms do not produce advertising, their staffs are mostly account executives.

* * *

Recent developments. In an effort to attract and maintain clients, advertising and public relations services agencies are diversifying their services, offering advertising as well as public relations, sales, marketing, and interactive media services. Additionally, many agencies are increasingly focusing their effort and financial resources to Internet advertising, reflecting, in large part, the growing number of Internet users. Advertising and public relations services firms have found that highly creative work is particularly suitable for their services, resulting in a better product and increasing their clients' profitability.

The AAO concurs that the advertising and public relations industry encompasses many of the services the petitioner claims to provide, and specifically notes the *CGI's* statement under recent developments, which indicates that Internet advertising is an area with growing demand.

Regarding occupations in the industry, the *CGI* states, in relevant part:

Management and professional and related occupations. Within advertising and public relations, the account management department links the agency and the client—it represents the agency to the client, as well as the client to the agency. Account management brings business to the agency and ultimately is responsible for the quality of the advertisement or public relations campaign. Account management workers carefully monitor the activities of the other areas to ensure that everything runs smoothly. Account managers, or *advertising and promotions managers*, and their assistants analyze competitive activity and consumer trends, report client billing, forecast agency income, and combine the talents of the creative, media, and research areas. The creative director oversees the *copy writer* and *art director* and their respective staffs. The media director oversees planning groups that select the communication media—for example, radio, television, newspapers, magazines, Internet, or outdoor signs—to be used to promote the organization, issue, product, or service.

* * *

Working with an idea that account management obtains from the client, the creative department brings the idea to life. For example, an ad agency's staff works together to transform a blank piece of paper into an advertisement. As the idea takes shape, *copy writers* and their assistants write the words of ads—both the written part of print ads, as well as the scripts of radio and television spots. *Art directors* and their assistants develop the visual concepts and designs of advertisements. They prepare pasteups and layouts for print ads and television storyboards, cartoon-style summaries of how an advertisement will appear. They also oversee the filming of television commercials and photo sessions. *Graphic designers* use a variety of print, electronic, and film media to create designs that meet clients' commercial needs. Using computer software, these graphic designers develop the overall layout and design of print ads for magazines, newspapers, journals, corporate reports, and other publications. They also may produce promotional displays and marketing brochures for products and services, design distinctive company logos for products and businesses, and develop signs and environmental graphics—aesthetically pleasing signs that deliver a message, such as a sunset to advertise a beach resort. An increasing number of graphic designers develop material to appear on the Internet.

Workers in the research department try to understand the desires, motivations, and ideals of consumers, in order to produce and place the most effective advertising or public relations campaign in the most effective media. Research executives compile data, monitor the progress of internal and external research, develop research tools, and interpret and provide explanations of data gathered. Research executives often specialize in specific research areas and perform supervisory duties. *Market research analysts* are concerned with the potential

sales of a product or service. They analyze statistical data on past sales to predict future sales, and provide a company's management with information needed to make decisions on the promotion, distribution, design, and pricing of products or services.

Sales and related occupations. Media planners gather information on the public's viewing and reading habits and evaluate editorial content and programming to determine the potential use of media such as newspapers, magazines, radio, television, or the Internet. The media staff calculates the numbers and types of people reached by different media and how often these people are reached. Media buyers track the media space and times available for purchase, negotiate and purchase time and space for ads, and make sure ads appear exactly as scheduled. Additionally, they calculate rates, usage, and budgets. *Advertising sales agents* sell air time on radio and television, and page space in print media. They generally work in firms representing radio stations, television stations, and publications. *Demonstrators* promote sales of a product to consumers, while *product promoters* try to induce retail stores to sell particular products and market them effectively. Product demonstration is an effective technique used by both to introduce new products or promote sales of old products, because it allows face-to-face interaction with potential customers.

Counsel asserts that the proffered position in this matter is akin to that of an account manager under this section. Quoting the *CGI* in his brief, counsel states that “account managers, or *advertising and promotions managers*,” are positions similar to the proffered position since these managers “and their assistants analyze the competitive activity and consumer trends, report client billing, forecast agency income, and combine the talents of creative, media, and research areas.” The AAO concurs in part with this assertion, noting that the proffered position does in fact encompass many of these tasks. However, the AAO disagrees with counsel’s conclusion that the proffered position is therefore a specialty occupation.

Counsel relies on the *CGI*’s section pertaining to training and advancement in this industry, and specifically cites to the section below.

Assistant account executive positions—the entry-level account management occupation in most firms—requires a bachelor's degree in marketing or advertising, although some firms require a master's degree in business administration.

Counsel does not, however, cite to the first and second paragraphs under this heading, which states:

Most entry-level professional and managerial positions in advertising and public relations services require a bachelor's degree, preferably with broad liberal arts exposure.

Beginners in advertising usually enter the industry in the account management or media department. Occasionally, entry-level positions are available in the market research or creative departments of an agency, but these positions usually require some experience. Completing an advertising-related internship while in school provides an advantage when applying for an entry-level position; in fact, internships are becoming a necessary step to obtaining permanent employment. In addition to an internship, courses in marketing,

psychology, accounting, statistics, and creative design can help prepare potential entrants for careers in this field.

There are two issues regarding counsel's claims. First, counsel does not contend that the proffered position is that of an assistant account executive, but rather an account manager or advertising and promotions manager. Regardless, according to the *CGI*, there is no requirement that a degree in a specific specialty is required for entry into the occupation. While the position of assistant account executive may require a bachelor's degree in marketing or advertising or in some cases a master's degree in business administration, the petitioner has not equated the proffered position with that of an account executive. Moreover, the AAO notes that such a requirement, i.e., the duties of the proffered position can be performed by a person with a degree in any one of those disciplines, implies that the proffered position is not, in fact, a specialty occupation. The field of advertising and public relations is a very broad category that covers numerous and various disciplines. 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).

Most importantly, however, the AAO is not convinced that "account manager" is the appropriate title for the proffered position. Upon review, the AAO finds that, while the proffered position encompasses duties of both a market research analyst as well as an account manager in advertising and public relations, the proffered position is most akin to that of a management consultant as described in the *CGI's* section pertaining to management, scientific, and technical consulting services.

The *CGI* describes the occupational categories in this industry, in relevant part, as follows:

Firms that offer management, scientific, and technical consulting services influence how businesses, governments, and institutions make decisions. Often working behind the scenes, these firms offer technical expertise, information, contacts, and tools that clients cannot provide themselves. They then work with their clients to provide a service or solve a problem.

Goods and services. Usually, one of the resources that consulting firms provide to clients is expertise—in the form of knowledge, experience, special skills, or creativity; another resource is time or personnel that the client cannot spare. Clients include large and small companies in the private sector; Federal, State, and local government agencies; institutions, such as hospitals, universities, unions, and nonprofit organizations; and foreign governments or businesses.

The management, scientific, and technical consulting services industry is diverse. Almost anyone with expertise in a given area can enter consulting. Management consulting firms advise on almost every aspect of corporate operations: marketing; finance; corporate strategy and organization; manufacturing processes; information systems and data processing; electronic commerce (e-commerce) or business; human resources, including benefits and compensation; and many others. Scientific and technical consulting firms provide technical

advice relating to almost all nonmanagement organizational activities, including compliance with environmental and workplace safety and health regulations, the application of technology, and the application of sciences such as biology, chemistry, and physics.

Industry organization. Larger consulting firms usually provide expertise in a variety of areas, whereas smaller consulting firms generally specialize in one area of consulting. *Administrative management and general management consulting services* firms, for example, offer advice on an organization's day-to-day operations, such as budgeting, asset management, strategic and financial planning, records management, and tax strategy. A manufacturing firm building a new factory might seek the help of management consultants to determine in which geographic location it would incur the lowest startup costs. A family opening a new restaurant might hire a management consulting firm to help develop a business plan and provide tax advice. Management consulting firms also might advise clients in the implementation and use of the latest office technology or computer programs that could increase office productivity. (For information on consulting firms that are engaged primarily in developing computer systems and computer software, see the statements on computer systems design and related services, and software publishers, elsewhere in the *Career Guide*.) Some clients might turn to management consulting firms to manage the financial aspects of their business. Management consultants also may provide insight into why a division of the company is not profitable or may recommend an investment strategy that meets the client's needs. (For information on firms that engage in buying and selling financial assets, see the statement on securities, commodities, and other investments, elsewhere in the *Career Guide*.)

* * *

Marketing consulting services firms provide assistance to firms in areas ranging from product development to customer service. They may advise on marketing new products, pricing new and existing products (to maximize sales and profit), forecasting sales, planning and implementing a marketing strategy, and improving customer service to help the firm's overall image. A pharmaceutical firm, for example, might seek advice as to whether it should remove a drug from the market, or a retail clothing chain might seek advice regarding the most effective way to market and sell its clothes—in a direct-mail or online catalog or over the telephone. Clients also might seek the help of a marketing consultant to set up business franchises or license their products.

* * *

Recent developments. Management, scientific, and technical consulting has grown rapidly over the past several decades, with businesses increasingly using consulting services. Hiring consultants is advantageous because these experts are experienced, are well trained, and keep abreast of the latest technologies, government regulations, and management and production techniques. In addition, consultants are cost effective, because they can be hired temporarily and can perform their duties objectively, free of the influence of company politics.

Under the *CGI's* section pertaining to occupations in the industry, it discusses the occupation of management consultants, or management analysts, as follows:

Management analysts, also called *management consultants*, make up the largest occupation in the management consulting industry. Their work is quite varied, depending on the nature of the project and the client's needs. In general, management consultants study and analyze business-related problems, synthesizing information from many sources, and recommend solutions. The solutions can include overhauling a client's computer systems, offering early retirement incentives to middle managers, recommending a switch in health plans, improving just-in-time inventory systems, hiring public relations firms, or selling troublesome parts of businesses. Because of the varied nature of these jobs, firms hire workers with diverse backgrounds, such as backgrounds in engineering, finance, actuarial science, chemistry, or business. Many firms require consultants to have an MBA, whereas others hire workers who have no more than a bachelor's degree. Many workers have experience in other industries prior to entering management consulting work.

As discussed above, the duties of the proffered position, which is that of a marketing strategist in a cosmetic surgery marketing consulting firm, include a number of specific tasks not discussed in the *Handbook's* directory of occupational titles. Specifically, the beneficiary is responsible for providing a specialized consulting service to the petitioner's clients, which entails increasing visibility of the websites of the petitioner's clients on the World Wide Web in response to a consumer's Internet search. As discussed in detail both prior to adjudication and again on appeal, this position requires expertise in the area of search engine optimization in order to assist clients in achieving their desired results.

A review of both the *CGI* and the *Handbook* indicates that their sections discussing management consultants most closely adheres to the described duties of the proffered position. For example, the *CGI* states that "[f]irms that offer management, scientific, and technical consulting services influence how businesses, governments, and institutions make decisions. Often working behind the scenes, these firms offer technical expertise, information, contacts, and tools that clients cannot provide themselves. They then work with their clients to provide a service or solve a problem." The petitioner is providing a specific service to its clients, i.e., expertise and consulting services in the field of search engine optimization. This service, and the duties of the beneficiary in providing this service, is akin to the afore-mentioned description of the occupational industry.

The *CGI* further states that the work of management consultants varies depending on the nature of the project and the client's needs. Specifically, the *CGI* states that "management consultants study and analyze business-related problems, synthesizing information from many sources, and recommend solutions." Again this general overview of the occupation of a management consultant describes the duties of the proffered position, since it is the job of the beneficiary to analyze the client's current Internet marketing plan and recommend and implement appropriate solutions in an attempt to maximize the client's visibility on the World Wide Web. Again, while the proffered position does include analyzing competitor data, which is a duty associated with the occupations of market research analyst and advertising/public relations account managers, the crux of the

beneficiary's duties involves consulting in the specialized field of search engine optimization. Therefore, the AAO concludes that the occupation of a management consultant is most akin to the proffered position.

The *Handbook's* section devoted exclusively to the position of management analysts/management consultants states as follows with regard to the educational requirements of this occupation:

Entry requirements for management analysts vary. For some entry-level positions, a bachelor's degree is sufficient. For others, a master's degree or specialized expertise 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.

The *Handbook* clearly indicates that educational requirements vary for the position of a management consultant/management analyst. While it appears that a bachelor's degree is often the minimum requirement for entry into the field, the *Handbook* does not indicate that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the position. Upon review of the duties of the proffered position, the AAO cannot conclude that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty.

Moreover, as the AAO discussed previously in this decision, a generic four-year degree does not qualify a job as a specialty occupation. When a job, like that of a management analyst, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify 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 highly 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. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal

minimum requirement for entry into the position of a marketing strategist as described in the record of proceeding. Accordingly, the petitioner has not established 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 alternatively requires a petitioner to establish that 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. Factors often considered by USCIS when determining the industry standard include: 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)).

In this matter, the petitioner has submitted no evidence that responds to this criterion. While the petitioner submitted numerous copies of client web sites and analytical data from Google demonstrating its work on their behalf, this evidence does not establish that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. Under this criterion, the petitioner may submit evidence to establish that similar organizations providing marketing/consulting services in the cosmetic surgery industry routinely require a bachelor's degree or higher in a specific specialty for the position of marketing strategist. This the petitioner has not done.

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner acknowledges that the area of SEO and Internet marketing is relatively new, and claims that in order to not miss out on this expanding field, the petitioner's owner, [REDACTED] was its first SEO analyst. It further indicates that, once the duties of the position coupled with ownership of the company became too much to effectively handle, [REDACTED] instituted a search for another qualified individual, which resulted in the beneficiary's employment in the proffered position. No additional information regarding hiring history was submitted.

The record contains no evidence pertaining to the educational background of [REDACTED]. More importantly, however, there is no evidence that [REDACTED] as the petitioner's owner, actually occupied the position of marketing strategist, since the petitioner claims that he merely performed SEO duties in addition to managing the company. Other than the prior employment of the beneficiary in the proffered position, the record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties of the position described encompass routine consulting duties which also include some marketing and advertising tasks. While the petitioner emphasizes the beneficiary's expertise in the area of SEO, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Neither a particular body of highly specialized knowledge, nor a particular educational level of such knowledge, that would be required to perform the duties of the proffered position is evident in the duties as described in the record of proceeding. The petitioner has not established that the proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The petitioner noted that USCIS previously approved a petition filed by the petitioner on behalf of the beneficiary in the same position as proffered in this matter. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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