

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



D2

Date: DEC 01 2011

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary:

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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  
Chief, Administrative Appeals Office

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

The petitioner describes itself as a company with five employees that provides educational services.<sup>1</sup> It seeks to employ the beneficiary as a financial analyst on a part-time basis and 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 director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The issue before the AAO is whether the petitioner's 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*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 [(2)] which 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.

---

<sup>1</sup> It is noted for the record that counsel's letter dated April 18, 2009 states that [REDACTED] is the petitioner rather than [REDACTED] as indicated on the Form I-129 and supporting documentation. It is further noted that a G-28 was not included with the Form I-290B. Even if a properly executed G-28 had been submitted, the New York State Bar Association indicates that counsel's bar registration status is delinquent. Thus, counsel's entry of appearance as attorney for the petitioner may not and will not be recognized in this matter.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed 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 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 382, 387 (5th Cir. 2000) (hereinafter *Defensor*). 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.

In the petition signed on April 18, 2009, the petitioner claimed to have five employees and a

gross annual income of \$243,531.17. The petitioner indicated that it wished to employ the beneficiary as a financial analyst for 30 hours per week.<sup>2</sup>

In the petitioner's support letter dated April 19, 2009, the petitioner states that the beneficiary will work as a financial analyst. As stated by the petitioner, the proffered position's duties would require the beneficiary to:

- Examine, analyze and seek new ways to improve efficiency and increase profit by reviewing proposed operational and financial plans;
- Plan and outline expected programs, including proposed monetary increases and new initiatives, estimated costs and expenses, and capital expenditures needed to finance these programs;
- Examine the budget estimates or proposals for completeness, accuracy, and conformance with established company policy;
- Conduct cost-benefit analysis to review financial requests, assess program trade-off and explore alternative funding methods;
- Examine past and current budgets and research economic and financial developments that affect the organization's spending;
- Evaluate proposals for [the petitioner's] priorities and financial resources;
- Consolidate the individual departmental budgets into operating and capital budget summaries, which include summaries that support or argue against funding requests;
- Periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified and detect deviation between approved budget and actual performance and report on deviation to avoid or alleviate deficits by program cuts or reallocation of excess funds;
- Work closely with accounting department on long-term projection of future budget needs; and
- Formulate guidelines and policies governing formulation and maintenance of the budget as well as measure the petitioner's performance.

The petitioner further indicates the following duties:

- Provide analytical support to proposed changes in cost/profit standards;
- Provide financial analysis and recommendations;

---

<sup>2</sup> With regard to the petitioner's claimed part-time offer of employment, the Form I-129, the Labor Condition Application, and the petitioner's support letter all indicate that the beneficiary will be compensated at the rate of \$26 per hour for 30 hours per week, which equates to \$37,440 per year. It must be noted, however, that the Form I-129 H-1B Data Collection Supplement indicates that the beneficiary's rate of pay is \$54,080 per year, which is the rate of pay for 40 hours per week of work at \$26 per hour. In addition, the petitioner's letter dated July 20, 2009 indicates that the petitioner requires a full-time, not a part-time, financial analyst. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

- Evaluate financial and investment opportunities in different production methods and uses;
- Develop and devise [the petitioner's] expansion plan, and analyze the financial need to support [the petitioner's] expansion plan;
- Analyze, guide, and support [the petitioner's] acquisitions of new technology;
- Develop long and short term financial strategies for [the petitioner]; [and]
- Understand [the petitioner's] business model and goals in the areas of finance, human resource and operation, in order to optimize efficiency and profit, while fulfilling the goals of [the petitioner].

(Approximately 70% of time will be spent on these duties)

- Manage banking relationships, finance arrangements for research and development;
- Review financial transactions and monitor budgeting to ensure efficient and profitable operations, and to ensure expenditures stay within budget limitations;
- Provide cost containment strategies to meet financial targets;
- Analyze financial information to forecast business, industry, and economic conditions and trends for making financial decisions and make proper recommendations to the top management regarding the financial condition and future of [the petitioner];
- Track potential risks and opportunities and make education recommendations on investment decisions; [and]
- Work with key affiliates to understand their uses and needs and integrate them into [the petitioner's] decision making scheme.

(Approximately 10% of the time will be spent on these duties)

- Research and evaluate the investment opportunities and current enrollment figures to recommend investment timing and the target capacity;
- Evaluate and analyze [the petitioner's] cash/liquid asset management, and determine, evaluate and recommend [the petitioner's] loan to asset, profit margin and cost ratio;
- Evaluate and recommend adjustment and modification of loan and equity financing portfolio;
- Identify and diagnose quality control and deficiency issues and provide options for resolutions;
- Maintain operating records and databases involving inventory and performance for after school programs;
- Monitor new launch quantities and projected impact on field inventory of students; [and]
- Maintain accurate business records to ensure that proper controls are in place and procedures are followed in the recording of transactions.

(Approximately 20% of time will be spent on these duties)

The support letter does not state that the proffered position requires at least a bachelor's degree in specific specialty or its equivalent. However, the letter indicates that the beneficiary earned a Bachelor of Science in Mathematics from the University of California Irvine in June 2005.

On June 26, 2009, the director issued an RFE requesting the petitioner to submit, inter alia, (1) a more detailed job description, including specific job duties, percentage of time spent on each duty, level of responsibility, hours per week of work and the minimum education, training and experience necessary; (2) a line-and-block organizational chart showing the petitioner's hierarchy and staffing level; (3) evidence that the proffered position is a common position required by similar sized offices with similar annual incomes; (4) evidence to establish a degree requirement is common to the industry in parallel positions among similar organizations such as job listings or advertisements; (4) documentation to show that an industry-related professional association has made a bachelor's degree in a specific specialty a requirement for entry into the field; (5) letters or affidavits from firms or individuals in the industry that attest that such firms routinely employ and recruit only degreed individuals in a specific specialty; (6) copies of the petitioner's present and past job vacancy announcements; and (7) the beneficiary's original college/university transcripts.

On July 27, 2009, in response to the director's RFE, the petitioner submitted, in part, (1) the same job description from the petitioner's support letter dated April 19, 2009; (2) a line-and-block organizational chart; and (3) the beneficiary's original transcripts from the University of California Irvine and Bellevue Community College.

The director denied the petition on November 30, 2009.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

On appeal, the petitioner claims that the proffered position meets the first criterion of 8 C.F.R. 214.2(h)(4)(iii)(A), as a position for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the occupation in the United States. The petitioner further claims that the *Dictionary of Occupational Titles* (hereinafter the *DOT*) list financial analyst as SVP 8 and includes the following:

TITLE(s): ECONOMIST (profess. & kin.) alternate titles: economic analyst

Plans, designs, and conducts research to aid in interpretation of economic relationships and in solution of problems arising from production and distribution of goods and services: Studies economic and statistical data in area of specialization, such as finance, labor, or agriculture. Devises methods and procedures for collecting and processing data, utilizing knowledge of available sources of data and various econometric and sampling techniques. Compiles data relating to research area, such as employment, productivity, and wages and hours. Reviews and analyzes economic data in order to prepare reports detailing results of investigation, and to stay abreast of economic changes. Organizes data into report format and arranges for preparation of graphic illustrations of research findings. Formulates recommendations, policies, or plans to aid in market interpretation or solution of economic problems, such as recommending changes in methods of agricultural financing, domestic, and international monetary policies, or policies that regulate investment and transfer of capital. May supervise and assign work to staff. May testify at regulatory or legislative hearings to present recommendations. May specialize in specific economic area or commodity and be designated Agricultural Economist (profess. & kin.); Commodity-Industry Analyst (profess. & kin.); Financial Economist (profess. & kin.); Industrial Economist (profess. & kin.); International-Trade Economist (profess. & kin.); Labor Economist (profess. & kin.); Price Economist (profess. & kin.); Tax Economist (profess. & kin.).

GOE: 11.03.05 STRENGTH: S GED: R5 M5 L5 SVP: 8 DLU: 81

The petitioner additionally indicates that some of the duties of the proffered position were previously carried out by Certified Public Accountants, which it also claims require at a minimum a bachelor's degree as the *DOT* indicates that it is an SVP 8.

The AAO finds that the *DOT* does not support the assertion that assignment of an SVP rating of 8 is indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system.<sup>3</sup> The section reads:

## II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or

<sup>3</sup> The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

Furthermore, the AAO recognizes the *Handbook* as an authoritative source on the duties and

educational requirements of the wide variety of occupations that it addresses.<sup>4</sup>

The duties, as described, do not reflect the employment of financial analysts whose work is discussed in the 2010-2011 edition of the *Handbook* under the occupation of financial analysts, as follows:

*Financial analysts* provide guidance to businesses and individuals making investment decisions. Financial analysts assess the performance of stocks, bonds, commodities, and other types of investments. Also called *securities analysts* and *investment analysts*, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

Financial analysts can be divided into two categories: *buy side analysts* and *sell side analysts*. Analysts on the buy side work for companies that have a great deal of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments. Buy side financial analysts devise investment strategies. Conversely, sell side analysts help securities dealers, such as banks and other firms, sell stocks, bonds, and other investments. The business media hire financial advisors that are supposed to be impartial, and occupy a role somewhere in the middle.

Financial analysts generally focus on trends impacting a specific industry, region, or type of product. For example, an analyst will focus on a subject area such as the utilities industry, an area such as Latin America, or the options market. Firms with larger research departments assign analysts even narrower subject areas. They must understand how new regulations, policies, and political and economic trends may impact the investments they are watching. Risk analysts evaluate the risk in portfolio decisions, project potential losses, and determine how to limit potential losses and volatility using diversification, currency futures, derivatives, short selling, and other investment decisions.

\* \* \*

---

<sup>4</sup> 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.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, create portfolios, and develop forecasts. Analysts also use the data they find to measure the financial risks associated with making a particular investment decision. On the basis of their results, they recommend whether to buy, hold, or sell particular investments.

See Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2010-11 Ed., "Financial Analysts," <http://www.bls.gov/oco/ocos301.htm> (accessed Nov. 28, 2011).

Instead, the AAO finds most of the duties of the proffered position, which are largely focused on the petitioner's budget and financial operations, to principally reflect the work performed by budget analysts. As indicated by the *Handbook*:

*Budget analysts* help organizations allocate their financial resources. They develop, analyze, and execute budgets, as well as estimate future financial needs for private businesses, nonprofit organizations, and government agencies. In private sector firms, a budget analyst's main responsibility is to examine the budget and seek new ways to improve efficiency and increase profits...

In addition to managing an organization's budget, analysts are often involved in program performance evaluation, policy analysis, and the drafting of budget-related legislation...

...Analysts then examine these budget estimates and proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives... They also examine past budgets and research economic and financial developments that affect the organization's income and expenditures.

\* \* \*

Throughout the year, analysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual spending, budget analysts may write a report explaining the variations and recommending revised procedures. To avoid or alleviate deficits, budget analysts may recommend program cuts or a reallocation of excess funds. They also inform program managers and others within the organization of the status and availability of funds in different accounts.

See Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2010-11 Ed., "Budget Analysts," <http://www.bls.gov/oco/ocos003.htm> (accessed Nov. 28, 2011).

The AAO now turns to the *Handbook's* discussion of the educational requirements for budget analysts to determine whether the proffered position would impose a specific degree requirement

on the beneficiary in order to perform its duties. While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for budget analyst jobs, it does not indicate that the degrees held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation. *See id.* This is evident in the Significant Points section that introduces the *Handbook's* chapter "Budget Analysts," which states: "A bachelor's degree generally is the minimum educational requirement, but some employers prefer or require a master's degree." *Id.*

That the *Handbook* does not indicate that budget analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "Budget Analysts," which does not specify a particular major or academic concentration:

A bachelor's degree usually is the minimum educational requirement for budget analyst jobs, but some organizations prefer or require a master's degree....

Employers generally require budget analysts to have at least a bachelor's degree, but some prefer or require a master's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level budget analyst position. State and local governments have varying requirements, but usually require a bachelor's degree in one of many areas, including accounting, finance, business, public administration, economics, statistics, political science, or sociology. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful, regardless of the prospective budget analyst's major field of study. Some States may require a master's degree. Occasionally, budget-related or finance-related work experience can be substituted for formal education.

*Id.* Because the *Handbook* indicates that entry into the budget analyst occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

In addition, as previously asserted by the petitioner, some of the duties of the proffered position were previously completed by Certified Public Accountants and accounting positions also require at a minimum a bachelor's degree. Thus, the petitioner claims that a bachelor's degree is required to carry out the job duties of the proffered position.

In this instance, even if the proffered position was an accountant position, which it is not, it is noted that the *Handbook* only states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." *See* Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2010-11 Ed., "Accountants and Auditors," <http://www.bls.gov/oco/ocos001.htm> (accessed Nov. 28, 2011). The *Handbook* does not state that such a degree is a normal minimum entry requirement for all accountant and auditor positions. Moreover, the AAO notes that the *O\*Net* Summary Report for 13-2011.01 -

Accountants only states that most but not all of these occupations require a four-year bachelor's degree. The quote does not reference any specific specialty for the degree. Further, the provided *O\*Net* survey indicates that 12 percent of respondents do not even have a bachelor's degree, much less a bachelor's degree in a specific specialty. As such, even if the proffered position were determined to be an accountant position, it cannot be concluded based on the *Handbook* or *O\*Net* that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in accounting or a related field.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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.

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. The petitioner in this case does not even specify the specialty in which the degree would allegedly be required. 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, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 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 or its equivalent. As explained above, 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).

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. In response to the director's RFE, the petitioner indicates the following:

There are no available data for given size and industry. However, position requirements as posted in job search engines show that [a] degree requirement is common in the industry. Kaplan is a similar organization and in the same educational industry requiring financial analyst[s] to have a minimum of [a] bachelor[ 's] degree.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted a copy of an advertisement as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the secondary educational services industry. The advertisement provided, however, establishes at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a specific specialty. In addition, even if the job posting indicated that a bachelor's or higher degree in a specific specialty or its equivalent was required, the petitioner fails to establish that the submitted advertisement is relevant in that the posted job announcement is not for a parallel position in a similar organization in the same industry. For instance, while the advertisement is for a position in the educational industry, it is for a company that was established in 1938 with over 3,000 classroom locations worldwide and, therefore, it cannot be found to be a parallel position in a similar organization. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>5</sup>

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is

---

<sup>5</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just one job advertisement with regard to determining the common educational requirements for entry into parallel positions in similar educational services companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisement was randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcement supported the finding that the position of financial analyst for a five-person educational services company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that just one posting which appears to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

so complex or unique that it can be performed only by an individual with a degree." To begin with and as discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty or its equivalent. Furthermore, the *Handbook* reveals that the proffered duties are performed by budget analysts, an occupation which does not require a bachelor's degree in a specific specialty.

Furthermore, the petitioner indicated that the proffered position is a new position. The beneficiary is the only person that has held the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>6</sup>

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The *Handbook* describes the duties of the proffered position as analogous to that of a budget analyst, a position that does not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has therefore failed to establish that it has satisfied any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). As such, the petitioner has not established that the proffered position qualifies as a specialty occupation, and the appeal must be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

---

<sup>6</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed 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 artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

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