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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: Office: VERMONT SERVICE CENTER FILE:

DEC 27 2011

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:



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 director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be an information technology consulting firm with 20 employees. It seeks to employ the beneficiary as a business analyst 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 concluding that (1) the itinerary submitted is not sufficient, (2) a valid Department of Labor (DOL) Form ETA 9035E, Labor Condition Application (LCA) for the H-1B Nonimmigrant Visa Program does not cover the location(s) where the services are to be performed by the beneficiary, and (3) the petitioner has not established that the proposed position qualifies for classification as a specialty occupation as it failed to submit sufficient evidence establishing eligibility for the benefit sought.

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

Before the AAO discusses the primary issue, i.e., specialty occupation eligibility, the AAO will discuss the itinerary requirement and location(s) listed in the LCA, that is whether the petitioner submitted a sufficient itinerary with the dates and locations of the services to be performed and whether the LCA submitted corresponds to those location(s).

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition. However, the regulation limits this requirement to petitions involving employment at multiple locations.

Additionally, the DOL regulations governing the LCA state that "[e]ach LCA shall state...[t]he places of intended employment." 20 C.F.R. § 655.730(c)(4). "Place of intended employment" is defined as "the worksite or physical location where the work actually is performed by the H-1B... nonimmigrant." 20 C.F.R. § 655.715. Moreover, the instructions for Section G of Form ETA 9035 require that the employer list the place of intended employment "with as much geographic specificity as possible" and notes that the employer may identify up to three physical locations,

including street address, city, county, state, and zip code, where work will be performed. Petitioners who know that an employee will be working at additional worksites at the time of filing must include all worksites on Form ETA 9035. Failure to do this will result in a finding that the employer did not file an LCA that supports the H-1B petition.<sup>1</sup>

In this case, while the petitioner indicates that it is located at [REDACTED] the Form I-129 lists the work location as [REDACTED] and the LCA indicates that the beneficiary would work in Hollis, NY. However, in response to the director's RFE, the petitioner stated that the beneficiary would be working on a project, and the submitted [REDACTED] for that project show that the project would be worked at the petitioner's location, that is [REDACTED]. Further, in response to the director's RFE, the petitioner confirmed that the proffered position in the instant petition is the same position on the ETA Form 9089 Application for Permanent Employment Certification (ETA Form 9089) filed by the petitioner for the beneficiary. The ETA Form 9089

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<sup>1</sup> It is further noted that to ascertain the intent of a petitioner, United States Citizenship and Immigration Services (USCIS) must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. If a petitioner's intent changes with regard to a material term and condition of employment or the beneficiary's eligibility, an amended or new petition must be filed. To allow a petition to be amended in any other way would be contrary to the regulations. Taken to the extreme, a petitioner could then simply claim to offer what is essentially speculative employment when filing the petition only to "change its intent" after the fact, either before or after the H-1B petition has been adjudicated. The agency made clear long ago that speculative employment is not permitted in the H-1B program. A 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

indicates that the position is located at [REDACTED]. In addition, the beneficiary's current employment with the petitioner on an H-1B visa is also at the petitioner's address. In the instant petition, the petitioner requested continuation of previously approved employment without change with the same employer. Therefore, it appears more likely than not that the beneficiary will be employed at more than one location during the requested employment period, triggering the itinerary requirement.

Therefore, pursuant to the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B), the petitioner must submit an itinerary with dates and locations. Accordingly, as the petitioner failed to provide the requested itinerary, the appeal must be dismissed and the petition denied for this reason.

With regard to the LCA basis for denial, the petitioner also failed to demonstrate that the beneficiary will work at [REDACTED] as the petition and LCA indicate. On August 28, 2009, the director issued an RFE requesting that the petitioner further identify the name of the business at this location with additional evidence. The director specifically indicated in his RFE that the information is necessary to determine whether the actual duties to be performed are duties associated with the specialty occupation sought. In response to the RFE, the petitioner did not provide any evidence to identify the name of the business at this location. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The director also requested in the RFE a detailed explanation clarifying the positions for the beneficiary both on the instant petition and on the ETA Form 9089. In response, counsel for the petitioner confirmed that the positions on the instant petition and on the ETA Form 9089 are the same position. However, the ETA Form 9089 contains inconsistent information regarding the work location of the same position. While the LCA and the instant petition indicate that the beneficiary would work at [REDACTED], the ETA Form 9089 states that the primary worksite would be [REDACTED]. 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).

On appeal, counsel for the petitioner asserts that the beneficiary will work at the Hollis office, NY which is around 10 miles from Seaford, NY and is easily accessible by train or car from Seaford. This is another location of the petitioner. However, counsel did not submit any documentary evidence in support of his assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not contain any evidence showing that the petitioner is also doing business at another location. The petitioner's website also does not indicate any other locations. See [http://www.\[REDACTED\]](http://www.[REDACTED]) (accessed December 20, 2011). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in

these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. As the petitioner failed to submit evidence to establish the work location for the beneficiary indicated on the LCA, the petitioner failed to state the true and actual place of intended employment on the LCA as required by 20 C.F.R. § 655.730(c)(4) and 20 C.F.R. § 655.715. The AAO finds that the petitioner did not file a valid LCA that corresponds to the proposed work location and further supports the H-1B petition, and therefore, the petition must be denied for this reason alone.

Now the AAO will discuss the primary issue on appeal, i.e., whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment 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 one 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, 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 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 384, 387 (5<sup>th</sup> 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.

In this matter, the petitioner seeks the beneficiary’s services as a business analyst. The petitioner’s support letter dated May 29, 2009 and submitted with the initial filing indicates the proffered position would require the beneficiary to perform the following duties:

Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program. Plan study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis.

Gather and organize information on problems or procedures. Analyze data gathered and develop solutions or alternative methods of proceeding. Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes. Analyze monthly department budgeting and accounting reports to maintain expenditure controls. Compile and analyze accounting records and other data to determine the financial resources required to implement a program. Examine budget estimate for completeness, accuracy, and conformance with procedures, and regulations. Seek new ways to improve efficiency and increase profits.

The support letter goes on to state that the *Occupational Outlook Handbook (Handbook)* under "Computer Scientists/Programmer Analyst and System Analysts, Business Analyst" clearly states that college graduates are always sought for the position of programmer analyst/business analyst; and that many employers seek graduates with a bachelor's degree in computer science, information science, computer information systems etc. The letter also states that the beneficiary is qualified for the proffered position, because he is presently working for the petitioner on an H-1B visa and has more than 20 years of experience in marketing and business management. The petitioner submitted an educational credentials and experience evaluation from International Credential Evaluation Services which evaluates the beneficiary's experience as the equivalent of a bachelor of business administration degree from an accredited college or university in the United States.

The submitted LCA was certified for a "Business Analyst" to work at the petitioner's office in Hollis, New York at an annual salary of \$48,300.

On August 28, 2009, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation.

In response to the director's RFE, counsel submitted a letter dated October 5, 2009 from the petitioner stating that the project the beneficiary would work on is currently in the design stage and a senior architect is designing the project. The petitioner needs the beneficiary's professional services to speed up the project. The petitioner provided the following details regarding the role of the business analyst in the project development:

In the position of a Business Analyst(SAS), [the beneficiary] will prepare business related analyses and forecasts, and will analyze trends in banking, manufacturing, sales, finance, general business conditions and other related areas, He will utilize PC and/or desktop-based systems and software. He will compile and prepare reports, graphs, and charts of data developed. He will also assist in the development of business policies, conduct special business related studies, and cooperate with other departments in the preparation of the analysis.

He will identify, qualify and secure business opportunities, collect and collate marketing information about customers, and develop new markets. He will analyst and identify need for business associates, and develop contact plans, manage

accounts, sell consulting services, and plan technical strategies.

He will ensure capture, utilization, storage and dissemination of IT domain knowledge, plan and implement domain competency road map and business plan, identify offerings, and explore markets. He will support sales team, and coordinate with corporate planning and development for market research. He will plan for growth, prepare budget, and ensure execution of performance management activities. He will also guide and mentor project executions team, and prepare collaterals and sales support materials.

Additionally, counsel submitted the methodology and details for the project the petitioner claimed that the beneficiary would work on.

The director determined that as the record did not contain documentation that established the specific duties the beneficiary would perform under contract for the petitioner, a subcontractor, client or third-party client, USCIS cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the director concluded that the petitioner did not establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner contends that the beneficiary is already working with them on an H-1B (specialty occupation) visa and that he will be fully involved in their internal project for which the petitioner already submitted the project methodology and details in response to the director's RFE. The petitioner also provides detailed information about the project in the letter dated December 4, 2009.

To make its determination whether the proffered position, as described in the initial petition and in the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO turns first 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 *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)).

As noted above, the petitioner quoted the *Handbook* under "Computer Scientists/Programmer Analysts and System Analysts, Business Analyst" in its support letter dated May 29, 2009 to support

its assertion that a business analyst is a specialty occupation. As previously discussed, the petitioner claimed in response to the director's RFE that the position on the ETA Form 9089 is the same position as the one on the instant petition. The ETA Form 9089 shows that the petitioner obtained the prevailing wage of a Level II management analyst (SOC/O\*NET code: 13-1111.00) for the position of business analyst for the petitioner. The petitioner did not cite its quotation from the *Handbook*. In fact, the *Handbook*, 2010-11 Ed., provides information on all these occupations in separate chapters, such as Computer Scientists, available at <http://www.bls.gov/oco/ocos304.htm>, Computer Software Engineers and Computer Programmers, available at <http://www.bls.gov/oco/ocos303.htm>, Computer Systems Analysts, available at <http://www.bls.gov/oco/ocos287.htm>, and Management Analysts, available at <http://www.bls.gov/oco/ocos019.htm>.

The *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos019.htm> (last accessed December 20, 2011) describes "Management Analysts" as follows (emphasis added):

As business becomes more complex, firms are continually faced with new challenges. They increasingly rely on management analysts to help them remain competitive amidst these changes. *Management analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits.*

For example, a small but rapidly growing company might employ a consultant who is an expert in just-in-time inventory management to help improve its inventory-control system. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. *In recent years, information technology and electronic commerce have provided new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace.*

Management analysts might be single practitioners or part of large international organizations employing thousands of other consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. In government, management analysts tend to specialize by type of agency. The work of management analysts and consultants varies with each client or employer and from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, *analysts and consultants collect, review, and analyze information in order to make recommendations to managers.*

Both public and private organizations use consultants for a variety of reasons. *Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what*

*problems may be encountered if they pursue a particular opportunity. To retain a consultant, a company first solicits proposals from a number of consulting firms specializing in the area in which it needs assistance. These proposals include the estimated cost and scope of the project, staffing requirements, references from previous clients, and a completion deadline. The company then selects the proposal that best suits its needs. Some firms, however, employ internal management consulting groups rather than hiring outside consultants.*

*After obtaining an assignment or contract, management analysts first define the nature and extent of the problem that they have been asked to solve. During this phase, they analyze relevant data—which may include annual revenues, employment, or expenditures—and interview managers and employees while observing their operations. The analysts or consultants then develop solutions to the problem. While preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models, such as one that shows how inventory levels affect costs and product delivery times.*

*Once they have decided on a course of action, consultants report their findings and recommendations to the client. Their suggestions usually are submitted in writing, but oral presentations regarding findings are also common. For some projects, management analysts are retained to help implement their suggestions.*

As previously discussed, although the petitioner provided some non-management analyzing duties for the proffered position of business analyst, the proposed duties are basically covered by the duties described in the section of Management Analysts in the *Handbook*. The AAO notes that the duties set forth by the petitioner for the proffered position most closely resemble that of the position described in the section of Management Analysts in the *Handbook*.

With respect to education and training requirements for “Management Analysts”, the *Handbook* states as follows:

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

*Id.* (emphasis added).

The petitioner has set forth the duties for the proffered position based on the description of duties for management analysts described in the *Handbook*. The description of the duties of the proffered position shows that the proffered position is petitioned as a business analyst position and the beneficiary will perform the duties as a business analyst for the petitioner. In this regard, the AAO has considered all of the assertions of counsel in support of the requirements of the position, but finds that they are not supported by the *Handbook* or other documentation in the record.

In short, the descriptions provided in the *Handbook* do not clearly show that Management Analysts are positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement. While the *Handbook* states that for some entry-level positions, a bachelor's degree is sufficient, it does not indicate that a baccalaureate or higher degree in a specific specialty or its equivalent is required for entry into the occupation of management analyst.

Although the *Handbook* also states that many employers in private industry generally seek individuals with a master's degree in business administration or a related discipline, it does not state that a baccalaureate or higher degree in a business administration or its equivalent is normally the minimum entry requirement. In the instant matter, the petitioner's claim that the beneficiary is qualified for the proffered position because he has the equivalent of bachelor of business administration degree from an accredited college or university in the United States indicates that the petitioner's claimed minimum educational requirement for the proffered position is a bachelor's degree in business administration. However, it must be noted that a petitioner's claimed entry requirement of at least a bachelor's degree in business administration for a position is inadequate to establish that the position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'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 discussed supra, 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. 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).

In this matter, even if the *Handbook* had stated that a bachelor's or higher degree in business administration is normally the minimum entry requirement, the requirement of such a general degree without more would be tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by management analysts pursuant to descriptions in the *Handbook*, and based on the fact that the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this occupation, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Again, 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).

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, and the petitioner failed to demonstrate that parallel management analyst positions for organizations that are similar to the petitioner require a college degree in a specific specialty for entry into the occupation. Therefore, the petitioner failed to demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

complex or unique that it can be performed only by an individual with a degree.” The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. Neither the petitioner nor its counsel has provided evidence to distinguish the proffered position as unique from or more complex than management analyst positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. The petitioner provided no information about its normal education requirements for the position. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>2</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. Relative complexity is not sufficiently developed by the petitioner and, absent evidence to the contrary, the duties of the proposed position are not so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence 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

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<sup>2</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").

not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit (1) an evaluation of the beneficiary's foreign degree evidencing that it is the equivalent of a U.S. bachelor's degree in a specific specialty or (2) sufficient evidence to establish that the beneficiary has education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in a specialty occupation as well as recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree or the equivalent in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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