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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: Office: CALIFORNIA SERVICE CENTER FILE:

JUL 06 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,

Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition the petitioner stated that it is a medical billing service. To employ the beneficiary in what it designates as a market research analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel provided a letter, dated November 20, 2007, from the petitioner's president; and printouts of vacancy announcements from popular job search websites

In his November 20, 2007 letter, the petitioner's president stated, "Requirement for this position is a Bachelor's Degree or equivalent and relevant work experience in the field." He did not state that the proffered position requires a bachelor's degree *in any specific specialty*.

The petitioner's president further stated, "It should be noted that the Beneficiary was previously granted by the Service an H-1B status for the same position." In support of that assertion, counsel submitted a previous approval notice. It states that the beneficiary previously worked for a different company pursuant to H-1B status.

The AAO observes that, even though the beneficiary's previous job title may have been the same as the job title of the proffered position, the previous position is unlikely to have been identical to the position proffered in the instant case. In any event, a prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

The petitioner's president also provided the following description of the duties of the proffered position and the percentages of the beneficiary's time he would spend on the various duties.

- 20% Research and evaluate lists for identifying prospective market segments; conduct feasibility studies of alternative programs; recommend appropriate strategies to increase business.
- 15% Conduct extensive research and assess the public relations environment of different companies. On the basis of such research, will establish public relations goals and objectives, and select appropriate channels of communication, action and programs. Publicize the goals of our company and report back to management about the opinions held by our clients and the general public. Direct and coordinate the activities of her professionals to effectively pursue the goals of the Petitioner.
- 5% Make recommendations on how to best maintain public relations in order to promote good will, enhance credibility and create an even more favorable public image for our company and for our clients.
- 15% Establish design formats for gathering data including questionnaires and surveys and carefully analyzing the market's potential and collecting data on clients' preferences as well as analyzing and gathering opinions regarding our present services; prepare current marketing and distribution strategies based

on his analysis and prepare reports to refine and augment our present approaches; analyze our present position and evaluate current trends.

- 15% Gather data on competitor services and marketing strategies in an effort to uncover new marketing niches for the Petitioner and for our clients and establish factors to augment revenue; examine and analyze statistical data to forecast future market trends and conditions and determine how they affect our business; prepare reports of findings.
- 15% Develop long term marketing and business strategies on behalf of the Petitioner and prepare forecasts and projections for emerging business cycle.
- 15% Promote communication and cooperation among employees, leading to enhanced motivation and improvement in the work climate as well as interact with management, manage the advertising and public relations process and will play a pivotal role in preserving and enhancing the company's client base, quality of service and overall reputation.

Counsel submitted some vacancy announcements with the visa petition and additional vacancy announcements in response to a subsequent RFE, described below. The AAO will list all of the vacancy announcements together.

Two of the vacancy announcements submitted were placed by the petitioner and pertain to the proffered position. One says that the positions requires a bachelor's degree, but does not state any specific specialty the degree should be in. The other announcement of the proffered position states that the minimum education required is "Tech School." The AAO finds that these announcements conflict with the petitioner's specialty-occupation claim.

The remaining vacancy announcements were placed by other firms. One was placed by [REDACTED] for a market research analyst to work in Wayne, Pennsylvania. It states that the position requires a bachelor's degree, but not that the degree should be in any specific specialty.

Another vacancy announcement was placed by an unidentified company for a market research analyst to work in Norwood, Massachusetts. It states that the minimum education required is a bachelor's degree in either marketing or economics.

Another announcement was placed by [REDACTED] for a senior market/survey research analyst to work in Arlington, Virginia. It states that [REDACTED] is a biotech/research and development/science firm. It states that the position requires a bachelor's degree in a social science.

Another announcement was placed by [REDACTED] which appears to be a real estate holding company, for a market research analyst to work for in Los Angeles, California. That announcement states that the position requires a bachelor's degree or the equivalent in economics, marketing, behavioral sciences, or communications.

Another vacancy announcement is for a market research analyst to work for an unidentified motor vehicle parts manufacturer in Mattoon, Illinois. It states that the position requires a bachelor's degree in marketing, communications, or a related field.

Another vacancy announcement is for a market research analyst to work for [REDACTED] in New York, New York. It states that the position requires a four-year degree in economics, finance, or a related field.

Another announcement is for a market research analyst to work for [REDACTED] a market research firm, in Quincy, Massachusetts. It states that the position requires a bachelor's degree, preferably in market research, business, economics, or the social sciences.

Another announcement was placed by [REDACTED] in Los Angeles, California for a market research analyst. It states that the position requires a minimum of a bachelor's degree in marketing or economics.

Another announcement was placed by [REDACTED] a prescription benefit management service in Scottsdale, Arizona. It states that the position requires a bachelor's degree, and that a degree in market research, marketing, business, or communications is preferred.

Another announcement is for an analyst/senior analyst – quantitative market research to work for [REDACTED] in Deerfield, Illinois. It states that the position requires a bachelor's degree in "statistics, operations research, management science, industrial engineering, economics, math, etc."

Another announcement is for a market research analyst to work for an unidentified company in Ocala, Florida. It states that the position requires a bachelor's degree in marketing or a related field.

Another announcement is for a data and market analyst to work for [REDACTED], an architectural and design services firm, in Cincinnati, Ohio. It states that the position requires a university-level education, preferably in geographic information systems, marketing, market research, or economics. It also states, "Career Level," "Student," which suggests that the minimum educational requirement does not include completion of a bachelor's degree.

Another announcement was placed by [REDACTED] a consumer packaging company, for a marketing analyst to work in Chicago, Illinois. It states that the position requires a bachelor's degree in business, marketing, or communications.

Another announcement is for a marketing analyst to work for [REDACTED] Novi, Michigan. It states that the position requires a bachelor's degree in marketing, business, or economics.

Another announcement is for a market/research analyst, associate to work for [REDACTED] a technology firm in Fairfax, Virginia. It states that the position requires a bachelor's degree in marketing, business administration, or economics.

Another announcement was placed by the [REDACTED] for a market research analyst to work in Nashville, Tennessee. It states that the position requires a bachelor's degree, and that a degree in marketing, statistics, or economics is preferred.

The final announcement is for a market sales/research analyst to work for [REDACTED] concern in Cedar Grove, New Jersey. It states that the position requires a bachelor's degree or the equivalent in economics.

The AAO finds, with obvious adverse impact against all of the petitioner's assertions that the proffered position is a specialty-occupation position, that the wide range of acceptable credentials referenced in the other employers' vacancy announcements submitted by the petitioner are affirmative evidence that market research analyst positions do not constitute an occupational class that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty, and, thus, emphasize the need for the petitioner to present substantive evidence sufficient to establish that its particular position would require at least a bachelor's degree level of education in a specific specialty while other market research analyst positions may not.

Because the evidence provided did not demonstrate that the visa petition is approvable, the service center, on January 9, 2009, issued an RFE in this matter. The service center requested additional evidence to demonstrate that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. The service center specifically requested, *inter alia*, (1) a more detailed description of the duties of the proffered position, (2) an explanation of why those duties require a person with a college degree in a particular field, and (3) evidence to establish that the petitioner has a past practice of hiring only people with a bachelor's degree in a specific specialty to perform in the proffered position.

In response, counsel submitted (1) a letter, dated February 9, 2009, from the petitioner's president; (2) an evaluation of the proffered position that the petitioner obtained from a full-time faculty member and program director at [REDACTED] in West Palm Beach, Florida (hereinafter referred to as the evaluation for the petitioner); and (3) some of the vacancy announcements previously described.

The petitioner's president's February 9, 2009 letter contains the following more detailed statement of the duties of the proffered position:

- 20% Research and evaluate lists for identifying prospective market segments; conduct feasibility studies of alternative programs; recommend appropriate strategies to increase business beyond the traditional "word of mouth" referral system. Coordinate database of new and existing client, come up with new ideas to maximize billing revenues for clients, increase the roster of company

clients, customer feedback and industry trends during the national economy's recession. Examine and analyze statistical data using computer modeling techniques to forecast future marketing trends, price elasticity studies, and other volumetric studies. Maintain expertise in marketing and marketing research of new developments through contacts with institutions, professional organizations and publications, "word of mouth referrals." Summarize and communicate research data product information to a diverse group of internal clients to facilitate the effective development of [the petitioner's] operational and strategic business decisions.

- 15% Conduct extensive research and assess the public relations environment of different companies. On the basis of such research, will establish public relations goals and objectives, and select appropriate channels of communication, action and programs. Publicize the goals of our company and report back to management about the opinions held by our clients and the general public. Direct and coordinate the activities of her professionals to effectively pursue the goals of the Petitioner.
- 5% Generate reports utilizing [REDACTED] and analyze the statistics regarding visitors to [the petitioner's] web site. Manage [the petitioner's] online presence and coordinate development of existing and future websites; develop social networking and ecommerce components of the web. Prepare and deliver statistical reports on clients, markets and competitors. Make recommendations on how to best maintain public relations in order to promote good will, enhance credibility and create an even more favorable public image for our company.
- 15% Create tools and processes for measuring customer satisfaction, feedback and suggestions, analyze and summarize data to effectively communication [sic] information to internal clients. Collect and analyze data to evaluate existing and potential product/service markets. Establish design formats for gathering data including questionnaires and surveys and carefully analyzing the market's potential and collecting data on clients' preferences as well as analyzing and gathering opinions regarding our present services; prepare current marketing and distribution strategies based on his analysis and prepare reports to refine and augment our present approaches; analyze our present position and evaluate current trends.
- 15% Gather data on competitor services and marketing strategies in an effort to uncover new marketing niches for the Petitioner and for our clients and establish factors to augment revenue; examine and analyze statistical data to forecast future market trends and conditions and determine how they affect our business; prepare reports of findings.

- 15% Develop long term marketing and business strategies on behalf of the Petitioner and prepare forecasts and projections for emerging business cycle. Execute primary research and reports insights for new and established clients. Identify issues and proactively pursue solutions. Assists in development of research plans. Explore methodology options and closely work with president of the company.
- 15% Promote communication and cooperation among employees, leading to enhanced motivation and improvement in the work climate as well as interact with management, manage the advertising and public relations process and will play a pivotal role in preserving and enhancing the company's client base, quality of service and overall reputation.

That letter also states, "Only an individual with a minimum of a Bachelor's degree in Marketing, Economics, Market Research or Communication Research or related field will be able to handle our clients' development and financial analysis, and contribute to the company's growth."

The aforementioned evaluation for the petitioner states that the proffered position requires a bachelor's degree in marketing, communication, or a related subject. It also states that the beneficiary's educational background qualifies him for the proffered position. The professor who provided that evaluation has a bachelor's degree in psychology, a master's degree in education, and a doctorate in adult education. The record contains no indication that she has any education or experience directly related to marketing, market research, communication research, or communication, or that she has studied or is familiar with the petitioner's operations.

The director denied the visa petition on March 26, 2009, finding, as was noted above, that the petitioner has not demonstrated that it would employ the beneficiary in a specialty occupation. On appeal, counsel submitted another letter from the petitioner's president and a brief.

The additional letter from the petitioner's president is dated May 26, 2009. It states that, in addition to providing medical billing services, the petitioner provides its clients "business solutions to assist with creating increases in revenue." It states that the petitioner only recruits college degree holders for its various jobs, including data entry, which is performed in the Philippines. It states that the petitioner decided to employ a market research analyst to assist in a projected expansion. It further states that [REDACTED] an electronic health records system, is the primary software the petitioner uses for patient information; and that the beneficiary would be responsible for manipulating data in that system to produce his reports.

The petitioner's president concluded that the duties of the proffered position "require at least a Bachelor's degree in Marketing, Economics, Market Research, or Communications Research or a related field."

In his November 27, 2007 letter, the petitioner's president asserted the proffered position requires a bachelor's degree, but did not assert that the degree must be in any specific field. In his February 9,

2009 and May 26, 2009 letters, the petitioner's president asserted that the proffered position requires a bachelor's degree in marketing, economics, market research, or communication research or a related field. In either event, the petitioner's president has not indicated that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. This is because the range of disparate but acceptable academic specialties referenced by the president - "marketing, economics, market research, or communication research or a related field" - is not indicative of a particular body of highly specialized knowledge that would have to be theoretically and practically applied in order to perform the proffered position, as must necessarily be the case with a specialty occupation as defined at section 214(i)(1) of the Act and at 8 C.F.R. § 214.2(h)(4)(ii).

That the petitioner's president statements concede, in effect, that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, is sufficient reason, in itself, to find that the proffered position is not a position in a specialty occupation and to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue.

In the appeal brief, counsel asserted that the evidence submitted is sufficient to demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty and is, therefore, a position in a specialty occupation.

Preliminary to its application of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding, the AAO notes, for the reasons discussed below, that it will not consider the petitioner's assertion that it has expanded its business beyond medical billing.

In the visa petition as filed, the petitioner stated that it is a medical billing service. The original claim was that the beneficiary would render his market research analysis to the petitioner, allowing the business to improve in various ways. Subsequently, however, the petitioner sought to expand that claim. The petitioner has more recently claimed that it provides business solutions to its clients to assist them in increasing their revenue. The AAO finds that this is a material expansion of the basis upon which the petition was filed, and therefore will not be considered.

After submission of the visa petition, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The AAO will now proceed with its analysis of the evidence of record under the first criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The *Handbook* discusses market research analyst positions in the section entitled Market and Survey Researchers. It describes the duties of those positions 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.

The AAO finds that the descriptions of the duties of the proffered position provided by the petitioner's president are consistent with the duties of a market research analyst position as described in the *Handbook*. The AAO finds, therefore, that the proffered position is a position for a market research analyst.

The *Handbook* describes the educational requirements of market and survey positions, including market research analyst positions, as follows:

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

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

¹ 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.

While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable toward obtaining a full-time position in the field, because much of the work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

That a bachelor's degree is the minimum requirement for many such positions implies that it is not the minimum requirement for others. Further, even as to those positions that require a bachelor's degree, the *Handbook* does not indicate that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. Thus, the *Handbook* does not support the position that market research analyst positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty and qualify as specialty occupation positions. The AAO also notes that there is no authoritative evidence in the record of proceeding that refutes the *Handbook's* information.

The AAO has reviewed and taken into account all of the duties that the petitioner has ascribed to the proffered position. While the duties as described in the record indicate a multitude of generic functions that the beneficiary would perform, the AAO finds that in themselves, and standing as they do without documentary evidence of any particular level of educational attainment that such duties may require, they do not convey that the proffered position is one that would normally require at least a bachelor's degree, or the equivalent, in a specific specialty.

As the petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, it has not established that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will consider 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.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was noted above, the *Handbook* provides no support for the proposition that a minimum of a bachelor's degree or the equivalent in a specific specialty is a minimum educational requirement for market research analysts in the petitioner's industry or in any other.

The record contains no evidence pertinent to professional organizations of market research analysts that require a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition for entry. Also, counsel provided no letters or affidavits from others in the petitioner's industry stating that firms such as the petitioner only recruit and hire individuals with a minimum of a bachelor's degree or the equivalent in a specific specialty when seeking to fill market research analyst positions.

The vacancy announcements provided are the only evidence in the record pertinent to the recruitment and hiring practices of other firms. However, as indicated in this decision's earlier comments about them, they are not probative evidence that a bachelor's degree in a specific specialty is common to the petitioner's industry in positions that are both parallel to the proffered position and located in organizations similar to the petitioner.

Other than the vacancy announcements placed by the petitioner itself, none of the announcements submitted have been shown to have been placed by organizations in the petitioner's industry, which is medical billing. Further, only two of the 17 announcements require a minimum of a bachelor's degree or the equivalent in a specific specialty. Those are the announcements placed by the unidentified company in Ocala, Florida and the announcement placed by [REDACTED]

The remainder either list no specialty at all or are open to applicants with bachelor's degrees in more or less wide arrays of subjects, including marketing or economics; any of the social sciences; economics, marketing, behavioral sciences, or communications; marketing or communications; etc. A position that requires a degree in any of a wide array of subjects does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and does not qualify as a specialty occupation position.

Further, even if each of those 17 announcements were for positions in the petitioner's industry, and even if all 17 required a minimum of a bachelor's degree or the equivalent in a specific specialty, they would not demonstrate that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, as 17 vacancy announcements are insufficient to demonstrate an industry-wide requirement.

In sum, the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the second alternative prong of C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other market research analyst positions may not require a minimum of a bachelor's degree or the equivalent in a specific specialty,

the particular position proffered is so complex or unique that it can be performed only by an individual with such a degree.

The evaluation submitted was apparently provided to satisfy this alternative criterion. For various reasons, the AAO accords no probative weight to it.

First, despite her self-endorsement, neither the professor's letter nor any other evidence of record substantiates that she is qualified as an expert on recruiting and hiring practices in market research analysis. There is no extrinsic evidence of expertise in the area, such as scholarly research conducted by the professor on the specific area upon which she is opining; books, articles, or treatises authored by her in the area of claimed expertise; or recognition by professional organizations as an authority on market research analysts. As the professor has not established her credentials as an expert on market research analyst hiring standards, her opinion in this area merits no special weight and is not persuasive.

Second, the record does not indicate that the professor has adequate knowledge of the particular position at issue here. The professor describes the duties in the same exclusively general and generic terms provided in the petitioner's president's description of the proffered position, which reveal little about the actual work that the beneficiary would perform within the context of this particular petitioner's business; and the professor does not demonstrate knowledge of the petitioner's particular business operations. She does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does she state that she has reviewed any projects or work products related to the proffered position.

Third, this evaluator's opinions are conclusory: she does not cite studies, treatises, surveys, or any other authoritative basis for them, and the evaluator does not relate her conclusions to specific, concrete aspects of this petitioner's business operations so as to demonstrate a sound factual basis for her conclusions about the educational requirements for the particular position here at issue.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Further, even if the professor's evaluation were accorded probative weight, it would not support the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. This is because the professor stated that the position requires a bachelor's degree in marketing, communication, or a related subject. Marketing, communication, and related subjects do not delineate a specific academic specialty.

Next, the AAO finds that, while the petitioner ascribes a multitude of duties to the proffered position, it is not apparent that these duties as described are more complex or unique than those of market research analyst positions performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

For the reasons discussed above, the AAO finds that petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will now consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.

In his letter of February 9, 2009, the petitioner's president stated that it had previously outsourced its market research analyst requirements. Although that explains the petitioner never having employed a market research analyst before, it does not suggest that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

In his May 26, 2009 letter submitted on appeal, the petitioner's president stated that the petitioner only hires college graduates, even for its data entry positions. That does not, of course, indicate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The record contains, as was noted above, two vacancy announcements the petitioner placed recruiting for the proffered position. One of those announcements states that the proffered position requires a bachelor's degree, but not that the degree should be in any particular academic area. The other states that the minimum education required by the proffered position is "Tech School." This the AAO considers material evidence that the petitioner's recruitment efforts for the proffered position included persons with less than a bachelor's degree in a specific specialty.

Further, the record of proceeding does not establish the requisite history of recruiting and employing for *this particular position* only persons with at least a bachelor's degree, or the equivalent, in a particular specialty.

Additionally, the petitioner should note that to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-

specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

For the reasons discussed above, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

As already observed, the duties of the proffered position as described by the petitioner's president are the duties of a market research analyst, an occupational class that the *Handbook* indicates does not categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the duties described by the petitioner as comprising the work of the proffered position appear to be generic to market research analyst positions, and there is no evidence distinguishing them from those of market research analyst positions performed by persons without at least a bachelor's degree in a specific specialty. Researching and evaluating lists for identifying prospective market segments, coordinating a database of new and existing clients, and publicizing the petitioner's goals and reporting back to management, for instance, contain no indication that they are inherently associated with at least a minimum of a bachelor's degree or the equivalent in a specific specialty. The same holds true for the other duties as described by the petitioner.

Further, the petitioner has not documented any objective standard by which the duties ascribed to the proffered position should be judged as so specialized and complex as to satisfy this criterion.

As the petitioner has not demonstrated that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has not been satisfied.

For the reasons discussed above, the AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition will be denied.

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

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