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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



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DATE: JUN 02 2011 Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



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
for Chief, Administrative Appeals Office

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

The petitioner is a freight forwarding company that seeks to employ the beneficiary as a market research analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, finding that the position was not a specialty occupation.

On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional documentation is submitted.

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

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

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

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

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

An occupation which requires [1] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [2] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards,

but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In a February 18, 2009 letter, the petitioner explained that its company is a group of North American offices affiliated with an internationally-known freight forwarding and logistics company originating in Taiwan with offices in various continents. It claimed that its Chicago-based office currently employed twelve persons and had a gross annual income in excess of \$1.6 million. The petitioner stated that it requires the services of a market research analyst specializing in the transportation and logistics field "to continue using statistical analyses of our business models (each individual service) that will make us more profitable going forward." The petitioner further stated:

As our Market Research Analyst, [the beneficiary] will have the following types of duties:

1. Devise and design research strategies, utilizing market theories, for the analysis of market data with the goals of determining present unprofitable practices and predicting potentially higher profit-yielding markets for our transportation/logistics and related services, international and domestic.
2. Research conditions in local, regional and national/international markets, demographics, and sectors, to determine potential sales of our services in the field of logistics services.
3. Analyze economic/statistical data (e.g. present and past sales data) to forecast future market and marketing trends in the transportation and logistics sector.
4. Compile and identify customer demands based upon the interpretation of statistical evidence gathered through surveys and market research.
5. Analyze information and determine entry into potential international service markets and sectors, or exit from existing unprofitable service markets.
6. Gather information on the techniques used by competition in local, regional and international markets.
7. Create competitive bundled pricing strategies for our wide range of logistics and related services.
8. Assist us in implementing the most profitable business practices for our various services, including international and customs.

The petitioner further contended that performance of the duties of the position required the attainment of a bachelor's degree in marketing, economics, or a related field such as business administration with a course in marketing, economics, or related discipline.

In an April 23, 2009 RFE, the director requested additional information pertaining to the petitioner's organization and the current status of the beneficiary. In a second RFE issued on June 10, 2009, the director requested additional evidence demonstrating that the proffered position is a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its hiring practices, and its organizational chart.

The petitioner responded to both RFEs. In its second response dated June 18, 2009, the petitioner provided the following updated description of the duties of the proffered position:

Job Description:

1. Gather information about the market conditions of the freight forwarding business as to the frequencies of usages, methods of forwarding, such as by air or ground by clients. 5%
2. Then, devise and design research strategies, utilizing marketing theories, for the analysis of market data with the goals of improving present practices, determining profitable/unprofitable practices and predicting potentially higher profit-yielding markets for our transportation/logistics and related services, international and domestic. 5%
3. Research conditions in local, regional, and national/international markets, demographics, and sectors, to determine the potential sales of our services in the field of logistics services. 5%
4. Analyze economic/statistical data (e.g. present and past sales data) to forecast future market and marketing trends in the transportation and logistics sector. 5%
5. Compile and identify customer demands based upon the interpretation of statistical evidence gathered through surveys and market research. 5%
6. Analyze information and determine entry into potential international service markets and sectors, or exit from existing unprofitable service markets. For instances [sic], freight services to certain areas or restrictions imposed by certain countries. 5%
7. Gather information on the techniques, methods, prices, advertisings used by competition in local, regional and international markets. 5%
8. After gathering information about competitors, create competitive bundled pricing strategies for our wide range of logistics and related services. 5%
9. Make recommendations to the management. Provide company's management with the information needed to make decisions on the promotion, distribution, advertising, design and pricing. 5%
10. Assist us in implementing the most profitable business practices for our various services, including international and customs. 5%
11. Examine, analyze, and utilize statistical data to forecast future logistics trends. 5%
12. Gather information on the techniques used by our competition to provide the basis for management decisions. Report to the management the items that are sold by the competitors with success, and recommend to add or delete items to the management. 5%
13. Analyze information and determine entry into potential markets or survey geographical or demographical sales. Market where more emphasis are needed. 5%
14. Conduct qualitative and quantitative research and analysis as to the Company's services and products offered. Write reports after analysis. 5%
15. Compile and analyze qualitative pricing data related to the company's own [p]roducts/services against competitor's products/services. 5%

16. Build competitive assessments to assess client and or competitors [p]ositioning in the logistic service field. 5%

The petitioner also provided copies of job postings for what it claimed were parallel positions in similar organizations in support of the contention that the petitioner's degree requirement was common in the industry, as well as an organizational chart demonstrating the petitioner's internal structure.

On August 3, 2009, the director denied the petition, determining that the petitioner had failed to establish that the proffered position was a specialty occupation. The director found that the proffered position was most akin to the occupation of a marketing manager, and set forth two bases for the denial: (1) the duties of the proffered position were not those of a market research analyst; and (2) the industry in which the beneficiary would be employed did not typically require the services of a market research analyst.

On appeal, counsel contends that the director's findings were erroneous, and submits a brief addressing each of the director's bases for denial. Counsel also submits additional evidence in support of the appeal.

In reviewing the record, the AAO observes that the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

The petitioner claims that the proffered position is that of a market research analyst. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of market research analysts. As stated by the *Handbook*, the occupation of market research analyst is described as follows:

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

Market research analysts devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences. While a majority of surveys are conducted through the Internet and telephone, other methods may include focus group discussions, mail

responses, or setting up booths in public places, such as shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

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

The director found that, based on the description of the occupation of market research analyst, such analysts compile and analyze market data, but do not act upon that data. Noting that the beneficiary's duties within the structure of the petitioner's company require such actions, the director concluded that, in essence, the proffered position was more akin to that of a marketing manager. The AAO agrees with this finding, and will discuss this issue in further detail below.

It should first be noted, however, that even if the proffered position were deemed that of a market research analyst, market research analyst positions do not comprise an occupational group which categorically includes only positions that normally require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Thus, the proffered position's inclusion within the market research analyst occupation would not be sufficient in itself to establish the position as a specialty occupation by application of the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In this regard, the *Handbook's* section pertaining to the educational requirements for market and survey researchers states:

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

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

The *Handbook* does not indicate that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While the *Handbook* indicates that a bachelor's degree is the most significant source of postsecondary education for persons employed in market and survey research jobs, no specific specialty is identified as the area in which the degree must be obtained. Therefore,

even if the proffered position were deemed to be that of a market research analyst, based on duties including gathering information on competitors, the proffered position would not be considered a specialty occupation.¹

That being said, upon review of the totality of the duties described in the record of proceeding, the AAO finds that, while the proffered position encompasses some of the duties of a market research analyst, the proffered position is most akin to that of a marketing manager as described in the *Handbook's* section pertaining to advertising, marketing, promotions, public relations, and sales managers.

The *Handbook* describes the occupational category of marketing manager as follows:

Marketing managers. Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

As discussed above, the duties of the proffered position, which is identified as that of a market research analyst in a freight forwarding company, are most akin to the occupation of marketing manager. For example, while the petitioner claims that the beneficiary will spend some of his time analyzing statistical data gained via surveys, it does not claim that the beneficiary will actually gather that information, which is generally considered a task associated with the position of a market research analyst. Rather, the main purpose of the beneficiary's research is to maximize potential markets and increase profits for the petitioner. While market research analysts typically gather statistical data for firms or companies and present their findings to those companies, the beneficiary is tasked with duties such as forecasting market trends, developing pricing strategies, and working with company managers to provide direct input into business and budget plans for the petitioner.

The *Handbook* states as follows with regard to the educational requirements of this occupation:

¹ The AAO notes that the director based the denial in part on the conclusion that the petitioner's business operations lacked the organizational complexity to support the employment of a market research analyst. Since the petitioner's organizational complexity is not a decisive factor in this particular proceeding, the AAO withdraws this basis for denying the petition. The AAO also withdraws as a basis for denial the director's finding regarding the type of industry in which the beneficiary would be employed, as the *Handbook* states that market research analysts "are employed throughout the economy." Nevertheless, as discussed above, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the director's decision to deny the petition shall not be disturbed.

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs, but many employers prefer college graduates with experience in related occupations.

Education and training. For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

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

Counsel asserts on appeal that contrary to the director's findings, the *Handbook* does in fact require a degree for performance of the duties of the proffered position. Moreover, counsel asserts that the director should consider the 3:1 ratio of experience to education when evaluating whether a position is considered a specialty occupation. The AAO, however, finds these assertions unpersuasive. When a job, like that of a marketing manager, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. 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.

The petitioner has therefore failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of a market research analyst/marketing manager as described in the record of proceeding. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. Factors often considered by USCIS

when determining the industry standard include: whether the *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)).

In this matter, the petitioner submits multiple advertisements published in different media by [REDACTED] Co., a freight forwarding company located in Bensenville, Illinois, which pertain to one vacancy within its company for the position of market research analyst. While the advertisements indicate that the candidate for the proffered position must have either a master's degree in marketing or business administration, this one job announcement is not sufficient to establish that the degree requirement imposed by the petitioner is common in parallel positions among similar companies in the industry. This posting reveals no additional details regarding the nature of this company, its size, and its staffing levels. Therefore, while [REDACTED] appears to be engaged in the same industry as the petitioner, it cannot be deemed an organization similar to that of the petitioner. Moreover, the description of the position of market research analyst is extremely brief and thus insufficient, since it fails to provide details regarding the exact nature of the requirements of the position. This job posting, therefore, does not establish that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. Additionally, by themselves and unsupported as they are by documentation establishing how representative they are of the industry's recruiting and hiring requirements with regard to the type of position proffered here, these advertisements are not sufficient to establish the petitioner's asserted degree requirement as common to the petitioner's industry for positions parallel to the one proffered here.

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

Nor is there sufficient evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner claims that it normally requires a degree for the proffered position. In support of this contention, the petitioner claimed in

² Again, as indicated in this decision's earlier discussion regarding the requirements of a specialty occupation as defined at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), the term "degree" as a specialty-occupation requirement means not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

its response to the RFE dated June 18, 2009 that, according to its organizational chart, it divides three regional areas for marketing research purposes. It further claims that three of its employees in this area (whom the petitioner identifies by name) all possess at least a bachelor's degree in business administration or integrated marketing/communications. The petitioner submitted copies of the diplomas for each of these individuals, and they are included in the organizational chart that the petitioner submitted into the record of proceeding.

The AAO first notes that, the job titles of at least two of these three employees discussed above differ from that of the proffered position of market research analyst/marketing manager. For example, one is identified as the director of analytics, and another as a senior marketing analyst.

Next, the AAO finds that the petitioner's snapshot-like assertion regarding its current employees does not address whatever educational thresholds were used to recruit candidates for the named positions. Moreover, the AAO further finds that the evidence of record does not establish earlier recruiting and hiring practices for previous holders of the proffered position, as would be required to demonstrate a practice of recruiting and hiring only persons with at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the duties of the proffered position.

The AAO also notes that the evidence of record does not establish that the petitioner's asserted educational requirement is necessitated by the actual performance requirements of the proffered position. 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 self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. As noted above, however, the petitioner states that an individual with a general bachelor's degree in business administration can perform the duties of the proffered position. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO finds that the proposed duties are described in a generalized and generic fashion that do not convey any specialization and complexity beyond routine marketing duties, for which a need for knowledge associated with the attainment of a baccalaureate or higher degree is not evident. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying documentation sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO notes that the duties as described in the record of proceeding are broad and numerous and appear to span a variety of marketing functions. However, the AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a

particular educational level in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.