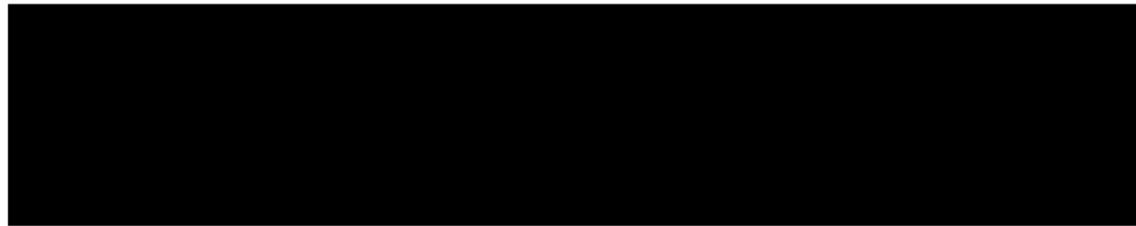


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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: **OCT 03 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, 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 property management firm. To employ the beneficiary in what it designates as a marketing specialist 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 submitted a letter, dated March 24, 2009, from the petitioner's owner, that stated the following about the proffered position:

[The petitioner] specializes in real estate management and consulting. Our services include Asset Management; Property Management; Leasing; and Disposition and Construction.

For Asset Management, we determine client goals, prepare and implement operating plans, analyze market conditions and provide reporting, optimize [sic]

As our Marketing Specialist, [the beneficiary] shall plan, develop and implement marketing plans and strategies. This shall include promotional events, publications, publicity, marketing research and advertising campaigns. He shall also research relevant issues, conduct strategic analysis, and propose and implement solutions and initiatives which will achieve identified objectives and goals.

The Marketing Specialist shall plan and coordinate the preparation of various publications such as catalogs, seasonal and special brochures, flyers and posters. He shall develop and maintain mailing lists for the distribution of various materials; develop policies and procedures for defining and tracking established and potential markets; and coordinate the development and administration of data tracking systems.

[The beneficiary] shall coordinate with clients, investors and tenants to accomplish marketing objectives; negotiate terms and agreements as appropriate to cultivate established and potential markets. He shall keep the company updated on competitors' services, products, amenities and special promotions. The Marketing Specialist shall regularly report the competitors' and market update to management, together with current rates to enable the company to establish effective market pricing. He shall plan and develop marketing research strategies to identify appropriate markets and evaluate the effectiveness of various marketing plans' prepare reports and analysis indicating progress, trends and appropriate recommendations and conclusions.

The AAO observes that a portion of that letter appears to be missing, as reflected in the unfinished sentence in the second paragraph quoted above.

Counsel also provided an evaluation prepared by an evaluation service in Boca Raton, Florida. That evaluation found that the beneficiary's psychology degree earned in the Philippines is equivalent to a U.S. bachelor's degree in psychology, and further found that the beneficiary's education, considered together with the beneficiary's employment experience, is equivalent to a bachelor's degree in business administration. The portion of the evaluation that purported to consider both the beneficiary's education and his work experience states that it was prepared by [REDACTED]

It further states that [REDACTED] is the [REDACTED] at Keiser Career College and has the authority to grant college credit for experience and/or training.

To qualify for consideration under the pertinent USCIS regulations, an evaluation of experience and/or training must be performed by a person whom the record of proceedings establishes as "an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or experience." See 8 C.F.R. § 325.3(h)(4)(iii)(D)(1).

The AAO notes that [REDACTED] did not sign the evaluation. Further, no evidence, such as a corroborating letter from the institution's dean or provost, was provided to corroborate the assertions that she was registrar at Keiser Career College when the letter was authored and to also establish that she fully met the requisite definition at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as "an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or experience." Further still, the evaluation indicates that [REDACTED] education culminated in a bachelor's degree in psychobiology, rather than any field more closely related to business administration. For these reasons, the AAO accords no probative weight to this evaluation on the issue of the educational equivalency of the beneficiary's training and/or experience.

Because the evidence was insufficient to show that the petition is approvable, the service center, on June 2, 2009, issued an RFE in this matter. The service center requested, *inter alia*, additional evidence to show that the proffered position qualifies as a specialty occupation position.

The service center also specifically requested that if, to show that the beneficiary has the equivalent of a U.S. bachelor's degree in a specific specialty related to the proffered position, the petitioner is relying on an evaluation that includes the beneficiary experience and/or training, it provide (1) an evaluation prepared by a college official with the authority to grant college-level credit for training and/or experience in the specialty of market research and analysis, (2) a letter from the registrar of the college confirming that the evaluator has the authority to grant college-level credit on behalf of that institution, (3) copies of the pertinent pages of the college's catalog to demonstrate that the college has a program for granting college-level credit based on training and/or experience, and (4) evidence to demonstrate the total amount of college credit the evaluator is authorized to grant for training and/or experience.

In response, counsel submitted (1) an evaluation, dated July 1, 2009, of the proffered position prepared by a professor of marketing at Pace University; (2) printouts of vacancy announcements taken from popular job search websites; (3) an evaluation, dated June 30, 2009, of the beneficiary's education and employment experience, prepared by an associate professor in the School of Business at Hofstra University; and (4) counsel's own letter of July 1, 2009.

In his July 1, 2009 evaluation, the Pace University professor asserted that, based on his review of the description of the ostensible duties of the proffered position and his background in marketing, business, and management, that proper performance of those duties "requires at least a bachelor's

degree in business administration, marketing, or a closely[-]related field, or the functional equivalent.” The professor also stated, “[I]t is a common industry practice for companies across many different industries to hire an in-house specialist,” but did not state that it is a common practice in the property management industry.

The AAO finds no probative value in this professor’s submission and does not accord any weight to the author’s conclusion with regard to the educational requirements for the proffered position. Neither the professor’s submission nor any other evidence in the record of proceeding establishes that he has expert knowledge regarding the educational requirements for the position here proffered. Further, it has not been established that the author has particularized knowledge of the actual operations and the specific substantive work that would engage the beneficiary in the particular position for which this petition was filed. Rather, it appears that the author based his assessment upon generic and generalized duty descriptions without supportive documentary evidence regarding the substantive work into which those abstractly described would translate in the context of this petitioner’s particular day-to-day operations, and without the author’s own personal study of the proffered position as it would function in the petitioner’s operations. Also, there is no independent evidence that this self-endorsing professor has achieved status as a recognized authority on the issue upon which he is opining. The AAO also observes that the professor provides no studies, treatises, surveys, governmental or industry publications, or other sources to support his conclusions. Further still, this professor has not quantified his experience with the type of position upon which he opines, and he provides no documentation that does this. Accordingly, the AAO accords no probative value to the submission from the Pace University professor.

The AAO will next discuss the evaluation of education and experience from the associate professor in the School of Business at Hofstra University.

In this evaluation of the beneficiary’s education and employment experience, the Hofstra professor stated that the beneficiary, based on his education and his employment experience, considered together, has the equivalent of a U.S. bachelor’s degree in psychology and a U.S. bachelor’s degree in business administration.

In a letter dated August 15, 2006 and submitted with that evaluation, the Director of Undergraduate Business Advisement (DUBA) of the School of Business of Hofstra University stated:

As a matter of general reference, faculty members and administrators can correlate college-level credit through a variety of internship programs, advanced degrees earned and transfer credit from other academic institutions.

The AAO further observes that the RFE requested a letter from the registrar, rather than some lesser official. More importantly, however, that letter does not indicate that the professor has the authority to award credit for ordinary employment experience, but only for experience gained in internship programs. Further still, the RFE requested, if the petitioner intended to rely, even in part, on a college professor’s evaluation of the petitioner’s employment experience to show that the petitioner is qualified for the proffered position, that it provide a portion of the college’s handbook showing

that it has a program for granting college-level credit based on training and/or experience. No portion of Hofstra University's handbook was provided, nor was any other indication that Hofstra University ever grants college credit for employment experience.

Further, the DUBA's letter neither addresses nor satisfies all of the qualifying elements required by USCIS for competency as an evaluator of experience, in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), namely, in the words of the regulation, that the author of the experience evaluation is an official with "authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." Therefore, the Hofstra evaluator's opinion on the educational equivalency of the beneficiary's experience has no probative value. 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).

The AAO will now comment on the vacancy announcements submitted prior to the director's decision. As will be reflected in the review below, not only are these advertisements not probative evidence that the proffered position necessitates at least a bachelor's degree, or the equivalent, in a specific specialty, but also, to the extent that they may reflect the requirements of the proffered position, they are affirmative evidence that the position does not require at least a bachelor's degree, or the equivalent, in a specific specialty.

One of the vacancy announcements provided was placed by Bristol West Insurance Group for a marketing specialist to work in Phoenix, Arizona. It states that the position requires a four-year degree, but not that the requisite degree must be in any specific specialty.

Another vacancy announcement was placed by Russell Investments for a marketing specialist to work in Tacoma, Washington. It states that the position requires a bachelor's degree in marketing, business, communications, or liberal arts. The AAO observes that marketing, business, communications, or liberal arts does not delineate a specific academic specialty.

Another vacancy announcement was placed by the Credit Union of Southern California for a marketing specialist to work in Brea, California. It states that the position requires a bachelor's degree in communications, marketing, or a related field. The AAO observes that communications, marketing, or a related field does not delineate a specific specialty.

Another vacancy announcement was placed by Kiewit Corporation, a construction and engineering organization, for a marketing specialist to work in Littleton, Colorado. That announcement states that the position requires a bachelor's degree in journalism, marketing, English, communications, or a related field. The AAO observes that the acceptable academic majors of journalism, marketing, English, communications, or a related field does not delineate a specific specialty.

Another vacancy announcement was placed by R*Works and KSE Global of the Interpublic Group of Companies for a marketing specialist to work in Naperville, Illinois. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another vacancy announcement was placed by [REDACTED] for a marketing specialist to work in Farmington, Connecticut. It states that the position requires a four-year degree in marketing, business, or a related field or equivalent experience.

The AAO observes that marketing, business, or a related field does not delineate a specific specialty. Further, even if that position required a bachelor's degree in business administration, without any alternative degrees, that would be insufficient to show that the position described is in a specialty occupation. To show that a position qualifies as a specialty occupation, a petitioner must demonstrate that it requires a precise and specific course of study that relates directly and closely to that 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 (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. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration or liberal arts, 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). The ramifications of a degree in business administration not being a degree in a specific specialty will be discussed further below.

Next, the AAO observes that her own letter, counsel reiterated the description of the duties of the proffered position as previously provided and stated:

The Petitioner's minimum requirements for the job is [sic] a Bachelor's degree or equivalent in Marketing, Business Administration, Business Management or Advertising.

"Marketing, business administration, business management or advertising" is not a specific specialty. That the educational requirement of the proffered position can be satisfied with a degree in any of those subjects demonstrates that the proffered position is not a position in a specialty occupation.

Further, as was explained above, USCIS does not regard business administration, without further differentiation into a particular field, as a specific specialty. That the educational requirement may be satisfied by an otherwise unspecified degree in business administration demonstrates that the proffered position does not qualify as a position in a specialty occupation.

Either of those reasons is a sufficient basis upon which to dismiss the instant appeal and deny the visa petition. However, the AAO will continue with its analysis of the specialty occupation issue.

The director denied the visa petition on August 18, 2009 finding, as was noted above, that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel submits an additional evaluation, some additional vacancy announcements, and a brief.

The evaluation was prepared for the petitioner by an adjunct assistant professor of the Columbia Business School. The professor stated:

Based on my review of the job duties required for the instant position, as well as my knowledge of the requirements and rigors of such positions across different business industries, it is evident to me that the position requires as a prerequisite the prior completion of a bachelor's degree in Marketing, Business Administration, or a related field (or the functional equivalent).

The AAO observes, again, that if the educational requirement of the proffered position may be satisfied by an otherwise undifferentiated bachelor's degree in business administration, then the proffered position is not a position in a specialty occupation. Aside from that finding, the AAO finds that neither the content of the adjunct assistant professor's evaluation nor his attached resume establishes a basis for the AAO to rely upon this person's findings and conclusions with regard to the educational requirements of the proffered position. These documents fail to establish that this adjunct assistant professor has studied the petitioner's particular business and the role of the so-called marketing specialist in that business, that he has extensive experience in the petitioner's industry, that he has extensive experience with the type of position here in question, that he has conducted studies regarding the issue upon which he opines, or that his findings, conclusions, and ultimate opinion are supported by surveys, studies, industry publications, or empirical resources of any kind. Again, 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.

As evident in the following comments, the vacancy announcements submitted on appeal also are not probative evidence that the proffered position requires a minimum of a bachelor's degree, or the equivalent, in a specific specialty.

One of the additional vacancy announcements provided was placed by Sotheby's International Realty for a marketing coordinator to work in Brentwood, California. That announcement states that the position requires a bachelor's degree or the equivalent, but not that the requisite degree should be in any specific specialty.

Another announcement, placed by Farmers Insurance Group for a marketing specialist to work in Howell, Michigan, states that the position requires a four-year college degree, but not that the requisite degree should be in any specific specialty.

Another announcement was placed by Simply Hired, an employment placement firm, for a marketing communications specialist to work in Mountain View, California. That announcement states that the position requires a bachelor's degree in either marketing or communications.

An announcement placed by Time Warner Cable for a marketing specialist to work in Kettering, Ohio states that the position requires a bachelor's degree in marketing or a related field.

Another announcement was placed by E-Marketing Associates for a Social Media Marketing Specialist to work in El Monte, California. It states that the position requires a bachelor's degree in integrated marketing communications, marketing, or a related discipline.

Another announcement provided was placed by Bullhorn, Inc. for a senior marketing specialist to work in Boston, Massachusetts. That announcement states, "Bachelor's Degree required, preferably in marketing." The AAO observes that a preference for a degree in a specific specialty is not a minimum requirement of a degree in a specific specialty. That announcement does not indicate that the position announced requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The final vacancy announcement was posted by an unidentified company for a marketing specialist to work in Pittsburgh, Pennsylvania. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

In his appeal brief, counsel again reiterated the description of the duties of the proffered position and asserted that those duties are sufficiently specialized and complex that they require a minimum of a bachelor's degree or the equivalent in marketing or business. In support of that assertion counsel cited the evaluations provided. As indicated in this decision's discussions of those evaluations, the AAO disagrees with counsel's assessment of the evidentiary value of the evaluations and accords no probative value to any of them.

Counsel also cited the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for the propositions that "the job duties of the [proffered] position is [sic] comparable to the marketing manager positions" as described in the *Handbook* and that marketing manager positions in general require a minimum of a bachelor's degree or the equivalent in a specific specialty. In this regard, the AAO notes that counsel is mistaken in her characterization of the *Handbook's* information, for it makes clear that marketing manager positions do not constitute an occupational class for which entry categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The *Handbook's* treatment of Marketing Managers, in the chapter entitled "Advertising, Marketing, Promotions, and Public Relations Managers" states, in pertinent part:

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.

For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A relevant course of study might include classes in marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography.

For public relations management positions, some employers prefer a bachelor's or master's degree in public relations or journalism. The applicant's curriculum should include courses in advertising, business administration, public affairs, public speaking, political science, and creative and technical writing.

Most advertising, marketing, promotions, public relations, and sales management positions are filled through promotions of experienced staff or related professional personnel. For example, many managers are former sales representatives; purchasing agents; buyers; or product, advertising, promotions, or public relations specialists. In small firms, in which the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

A preference for a particular degree, and, as is the case here, such a preference that is only "often" exercised, does not indicate that a position's inclusion in the marketing manager occupation requires attainment of a particular educational level in a particular specialty, and certainly does not establish that inclusion in the occupational classification requires a minimum of a bachelor's degree in a specific specialty.

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 and has not, therefore, demonstrated 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 in the salient industry, 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 marketing manager positions categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty. It also provides no support for the proposition that marketing manager positions with property management firms require such a degree. Further, the record does not contain any evidence that any professional association of marketing managers requires a minimum of a bachelor's degree or the equivalent in a specific specialty as an entry requirement. Further still, counsel provided no letters from firms or individuals in the petitioner's industry indicating that such firms routinely recruit and employ only marketing managers with a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel did provide the 13 vacancy announcements described above. Those vacancy announcements are the only evidence in the record that might be relevant to whether 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.

Of those 13 announcements, five stated that they require a bachelor's degree, but not that the degree should be in any particular field or even a range of subjects. Another five stated that they require a bachelor's degree in a range of subjects, but a range of permissible subjects so wide that those positions cannot be said to require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Another stated that a degree in marketing was preferred, but not required. That position, similarly, does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Only the vacancy announcements placed by Time Warner Cable and E-Marketing Associates indicate that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. The Time Warner announcement was for a position that requires a degree in marketing. The E-Marketing announcement requires a degree in marketing, and prefers a degree in a more specific area of marketing.

Of those 13 vacancy announcements, only two are for positions that require a minimum of a bachelor's degree or the equivalent in a specific specialty. That two of 13 positions announced require a bachelor's degree in a specific specialty provides no support for the proposition that a minimum of a bachelor's degree in a specific specialty or the equivalent is common to parallel positions among similar organizations.

Further, none of the companies that placed those vacancy announcements appears to be in the petitioner's industry.¹ Even if all of those announcements required a bachelor's degree in a specific specialty, they would provide no support for the proposition 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.

Further still, even if all 13 vacancy announcements had been placed by organizations in the petitioner's industry, and even if all 13 had been for positions parallel to the proffered position, and even if all 13 had required a minimum of a bachelor's degree or the equivalent in a specific specialty, they would be insufficient to 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 a total of 13 vacancy announcements is insufficient to establish an industry-wide requirement.

Additionally, the AAO notes that each of the vacancy announcements submitted into the record of proceeding are only one-time "snapshots" of one type of a particular employer's recruiting efforts at a particular time; and they do not evidence that particular employer's full recruiting history, or, for that matter, its actual hiring practices, over time, for the position in question. Further, there is no independent documentation showing that these advertisements are representative of an established course of recruiting and hiring by the companies that issued the submitted vacancy announcements, let alone by firms industry-wide.

For all of the reasons provided, 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 criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other marketing manager 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 evaluations of the proffered position steadfastly assert that the proffered position is sufficiently complex that it can only be performed by an individual with a degree. However, the stated conclusion of those evaluations appears to have an insufficient basis.

First, none of the evaluations provided show that the evaluators have any experience in or knowledge of the property management industry, of any need property management firms might have for marketing managers, or of the duties specific to marketing manager positions at property

¹ One of the advertising companies is a real estate firm, but none are in property management.

management firms. Although the record contains the professors' résumés, those résumés do not indicated any expertise in that area, such as scholarly research conducted by the professors on the specific area upon which they are opining; books, articles, or treatises authored by them in that area; or recognition by professional organizations as an authority on the property management industry's employment practices regarding marketing managers. As the professors have not established their credentials as experts on industry hiring standards, their opinions in this area merit no special weight and are not persuasive.

Second, the record does not indicate that the professors have adequate knowledge of the particular position at issue here. The professors described the duties of the position in exclusively general and generic terms that reveal little about the actual work that the beneficiary would perform within the context of this particular petitioner's business; and the professors do not demonstrate knowledge of the petitioner's particular business operations. They do not relate any personal observations of those operations or of the work that the beneficiary would perform, nor do they state that they have reviewed any projects or work products related to the proffered position.

Further, the professors indicate that they formed their opinions based upon the description of the duties of the proffered position provided by the petitioner's owner. That description also provides only a generalized, generic description of duties that provides no hint of uniqueness and no indication of a degree of complexity that would require a minimum of a bachelor's degree or the equivalent in a specific specialty. Additionally, there is no evidence that the professors have visited the petitioner's business site, observed the petitioner's marketing operation, interviewed the petitioner's employees about their work, or otherwise investigated the knowledge that the beneficiary would be obliged to apply in the proffered position.

Again, 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.

Additionally, nothing in the description of the proffered position or its duties or any documentation in this record of proceeding establishes that the proffered position is more complex or unique than marketing manager positions performed by persons without a bachelor's degree, or the equivalent, in a specific specialty. Accordingly, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence of a previous history of recruiting and hiring to fill the proffered position. Therefore, application of the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not an issue on appeal.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

At the ninth page of the appeal brief, referring to statements made in one of the evaluations provided, counsel asserted:

Clearly, the above demonstrates that the [proffered position] to be performed by [the] beneficiary is more specialized and complex than other marketing jobs and that [the] nature of the specific duties to be performed by [the] beneficiary are [sic] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or a higher degree.

As reflected in this decision's previous comments regarding the deficiencies of the descriptions of the proffered position and the duties comprising it, and regarding the evaluations submitted into the record of proceeding, counsel's assessment is not supported by the record of proceeding. Accordingly, that assessment merits no weight. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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 AAO finds that, to the extent that they are depicted in the record of proceeding, the duties do not appear so specialized and complex as to require highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Rather, the proposed duties as described in the record appear indistinguishable from those of the general range of marketing manager positions for which the *Handbook* indicates no requirement for knowledge usually associated with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

In short, 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.

Beyond the decision of the director, the AAO finds that the petition must also be denied because the record of proceeding does not establish that the beneficiary is qualified to serve in a specialty occupation position that would, as asserted by this petitioner, require a bachelor's degree, or the

equivalent, in a discipline other than psychology – the only type of degree for which the petitioner has presented supporting educational records.

The AAO here incorporates by reference as its basis for this finding its earlier comments regarding the failure to establish that the training and/or experience evaluations upon which the petitioner relies were produced by persons who are authorized officials as defined in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The AAO also finds that the documentation of the beneficiary's work experience, which is generalized and insubstantial with regard to the substantive work that the beneficiary performed and the associated educational requirements, also appear to not provide a sufficient factual foundation for the evaluators' conclusions regarding educational equivalency.

If the evidence submitted had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would then be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

The AAO conducts appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), and it was in the exercise of this function that the AAO identified this additional ground for denying the petition.

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.