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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

D2

Date: **APR 04 2012**

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:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner claims to be a market research, consulting, promotion, and marketing consulting firm with 10 employees and a stated gross annual income of \$1 million. It seeks to employ the beneficiary as a market research analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial decision; and (3) the Form I-290B and brief submitted by counsel. The AAO reviewed the record in its entirety before issuing its decision.

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

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

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

In this matter, the petitioner seeks the beneficiary’s services as a market research analyst. In the petitioner’s supporting letter dated October 8, 2009, the petitioner states that the job duties and responsibilities of this position are as follows:

- (1) Study client corporations’ products, collect market data of sales, supply, pricing, consumer demands, plan, develop media marketing and advertising

campaigns for corporate clients. Research client corporations' product features, corporate identity and intended public images, plan media marketing projects, calculate costs, create media flowcharts and recommend efficient channels for maximum media exposures. Negotiate with media publishers on advertising package plans.

- (2) Analyze market for multimedia advertising, coordinate, execute advertising plans for client corporations and evaluate effectiveness of the advertising and target customer group progress towards the achievement of client corporations' objectives and recognition of media's contribution to the clients' advertising plans.
- (3) Review and edit media advertising materials including proposals, TV scripts; study and evaluate client corporations' ideas, media criteria and intended target audience and develop advertising programs to be broadcast via multimedia including television commercials, commercial promotion films. Monitor media broadcast of the commercial programs and revise or develop improved programs.

In its support letter, the petitioner also indicates that the minimum job requirement for the proffered position is a "Bachelor's degree in Business Administration with one year experience in marketing or a master's degree without experience." The petitioner also states that the complexity of the job duties involves knowledge and skills of marketing, market analysis, business planning and international business management, which are gained through formal college education. The petitioner submitted copies of the beneficiary's bachelor's degree in business administration from California State University, Los Angeles.

The director denied the petition, finding 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 did not submit additional evidence but did provide a brief arguing that the proffered position qualifies as a specialty occupation, because the position most closely resembles the position of Market Research Analyst described in the chapter titled Market and Survey Researchers in the U.S. Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Counsel for the petitioner cites the 2008-09 edition of the *Handbook* to support its assertion.

Specifically, counsel quotes that " '[b]ecause of the important [sic] 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 degree in **business administration**, marketing, statistics, communications, **or other closely related disciplines**'" (emphasis added by counsel) and argues that from the above-cited *Handbook* advisory, it is clear that DOL considers that the occupation of Market Research Analyst, not only requires at minimum a bachelor's degree, but also involves the application of "a body of specialty knowledge of business management, theoretical knowledge of statistical

analysis, mathematics, sampling theory and survey design.” Thus, counsel claims that it satisfies the definition of specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO’s first point with regard to its analysis of the proffered position is that, despite the petitioner’s assumption to the contrary, market and survey researchers do not comprise an occupational group that categorically requires at least a bachelor’s degree, or the equivalent, in a specific specialty for entry into the occupation.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As will now be discussed, the *Handbook* indicates that market and survey researchers do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor’s degree, or the equivalent, in a specific specialty. See Dept. of Labor, Bureau of Labor Statistics (BOL), *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed March 16, 2012).

The “Market and Survey Researchers” chapter at the 2010-2011 edition of the *Handbook* indicates that 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.

The introduction to the “Training, Other Qualifications, and Advancement” section of the *Handbook* states that:

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.

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.

Id. In this context, the fact that a person may be employed in a position designated as that of a market research analyst and may apply market analyzing principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate market analyzing services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in marketing analyzing. This is that the petitioner has failed to do.

Although the *Handbook* indicates that many market and survey research jobs require a bachelor's degree as the minimum educational requirement, it does not state that any or all market and survey researcher jobs require a bachelor's degree as the minimum educational requirement. More importantly, it does not state that a market and survey researcher including a market research analyst requires a bachelor's degree or its equivalent in a specific specialty. While counsel has accurately quoted the *Handbook*, the quotation does not support counsel's conclusion that a market and survey researcher is a specialty occupation under section 214(i)(1)(A) and (B) of the Act. The *Handbook* states that courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful, but it does not state that these courses are required, and further does not require a bachelor's degree in one of these specific specialties as a minimum for entry into the occupation. The *Handbook* also states that market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines. However, the meaning of the plain language of "often earn[s]" cannot be interpreted as stating that market and survey researcher positions require an advanced degree in one of those specific specialties as the minimum educational requirement for entry into the occupation.

Moreover, it must be noted that counsel for the petitioner emphasized business administration as one of the claimed specific specialties the *Handbook* allegedly requires a candidate for a market research analyst position to have to enter that occupation. Contrary to counsel's assertion, to

prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent for entry into the occupation. As discussed supra, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Therefore, the *Handbook* does not support the view that a general market and survey researcher position normally requires at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. Furthermore, the petitioner in this matter claims that the duties of the proffered market research analyst position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, 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. See generally *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.

Here the *Handbook's* description of a market research analyst under the section on Market and Survey Researchers provides in pertinent part that:

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 *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed March 16, 2012). At the same time, the *Handbook* provides the following descriptions of Advertising, Marketing, Promotion, Public Relations, and Sales Managers in pertinent part:

Advertising, marketing, promotions, public relations, and sales managers *coordinate their companies' market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. . . .*

Advertising managers. *Advertising managers direct a firm's or group's advertising and promotional campaign.* They can be found in advertising agencies that put together advertising campaigns for clients, in media firms that sell advertising space or time, and in companies that advertise heavily. They work with sales staff and others *to generate ideas for the campaign*, oversee a creative staff that develops the advertising, and work with the finance department to prepare a budget and cost estimates for the campaign. Often, *these managers serve as liaisons between the firm requiring the advertising and an advertising or promotion agency that actually develops and places the ads.* In larger firms with an extensive advertising department, different advertising managers may oversee in-house accounts and creative and media services departments. The account executive manages account services departments in companies and assesses the need for advertising. In advertising agencies, account executives maintain the accounts of clients whereas the creative services department develops the subject matter and presentation of advertising. The creative director oversees the copy chief, art director, and associated staff. *The media director oversees planning groups that select the communication medium—for example, radio, television, newspapers, magazines, the Internet, or outdoor signs—that will disseminate the advertising.*

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.

Promotions managers. Promotions managers direct promotions programs that combine advertising with purchasing incentives to increase sales. Often, the programs are executed through the use of direct mail, inserts in newspapers, Internet advertisements, in-store displays, product endorsements, or other special events. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, and contests.

The *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos020.htm> (last accessed March 16, 2012) (emphasis added).

The AAO finds that the duties of the proffered position as described by the petitioner are combined duties of a Market and Survey Researcher and an Advertising, Marketing, Promotion, Public Relations, and Sales Manager as described in the *Handbook*.¹ As related in this decision's earlier discussion of the proposed duties in the context of the *Handbook's* information about market research analysts, the record of proceeding fails to establish that the market research analyzing duties to be performed by the beneficiary would require the practical and theoretical application of a highly specialized analyzing knowledge attained by at least a bachelor's degree in a specific specialty, or its equivalent, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation.

As previously discussed, the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As will now be discussed, the *Handbook* indicates that advertising, marketing, promotions, public

¹ It is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file two separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. See generally 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation, such as the provision of certified LCAs for each occupation and the payment of wages commensurate with the hours worked in each occupation. Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

relations, and sales managers do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty, for entry into the occupation. *See the Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos020.htm> (last accessed March 16, 2012).*

The "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" chapter at the 2010-2011 edition of the *Handbook* indicates that 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.

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that:

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.

Id. (emphasis added).

The *Handbook* indicates that employers prefer a bachelor's degree or higher degree in a specific specialty for advertising, marketing, promotions, public relations, and sales manager jobs, but it does not state that these jobs require a bachelor's degree in a specific specialty as the minimum

educational requirement for entry into the occupation. Therefore, the *Handbook* indicates that the advertising, marketing, promotions, public relations, and sales manager jobs do not belong to an occupational classification for which there is a categorical requirement for at least a bachelor's degree in a specific specialty. The duties of the proffered position as described in the record of proceeding do not indicate that the particular position proffered in this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry.

In addition, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business administration" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed supra, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Again, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. As noted above, this assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. Therefore, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal must be dismissed and the petition denied on this basis alone.

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

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms

"routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As reflected in this decision's discussions regarding the *Handbook's* information, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. The record does not contain any documentary evidence to establish 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 that are similar to the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than a market research analyst or advertising, marketing, promotions, public relations, and sales manager position that likely requires the application of marketing principles, but not at a level that requires a degree of highly specialized knowledge in market research and marketing culminating in the attainment of at least a bachelor's degree in marketing or its equivalent. Furthermore, the petitioner requires a general-purpose degree in business administration without a specific specialty. The petitioner's general-purpose degree requirements do not demonstrate that the proffered position is a specialty occupation requiring at least a bachelor's degree or the equivalent in a specific specialty and, in fact, support the opposite conclusion.

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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 in a specific specialty. Here, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. As such, the petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge of market research and marketing at a level usually associated with at least a bachelor's degree, or the equivalent, in market research and marketing. In other words, the proposed duties have not been described with sufficient specificity to show that

they are more specialized and complex than market research analyst or advertising, marketing, promotions, public relations, and sales manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.²

The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further except to note that, even if the petitioner had established that the proffered position required at least a bachelor's or higher degree in a specific specialty, e.g., market research and marketing, the record lacks sufficient evidence to establish that the beneficiary possesses such a specialty degree.³

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

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

² It is noted that the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

³ The AAO notes that a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.*