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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

FEB 07 2012

Date: 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.

The AAO observes that the petitioner was represented by an attorney when it filed the Form I-129 visa petition in this matter. The record, however, contains a Form G-28 executed by the petitioner's owner on July 10, 2009, agreeing to be represented by a different attorney. All representations will be considered, but the decision in this matter will be furnished only to the petitioner and its current counsel of record.

On the Form I-129 visa petition the petitioner did not indicate what type of business it is. Other evidence in the record, however, suggests that it is a real estate broker and property manager. To employ the beneficiary in what it designates as a business analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner had 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 proceedings, 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, the petitioner’s previous counsel submitted a letter, dated March 27, 2009, from the petitioner’s owner. In that letter, the petitioner’s owner provided the following description of the duties of the proffered position:

- Tracking and creating reports on real estate sales by using business processes and software;
- Providing context and opportunity identification to guide business development efforts;
- Analyzing real estate markets/sales records and developing and maintaining profiles on competitors/clients;
- Assessing business opportunities and develop [sic] strategies to attract potential clients;
- Preparing materials for presentations for management reviews;
- Evaluating financial risks, preparing financial forecasts, financing scenarios and other documents concerning cash flow management of the company and prepare reports and recommendations to management;
- Identifying external factors that could influence company’s sales activities.

The petitioner’s owner further stated:

The position of Business Analyst requires theoretical and practical application of highly specialized knowledge and attainment of a Bachelor’s Degree in Business Administration, Management or [a] related field. The course of study leading to this degree included coursework in Business Systems, Quantitative Business Analysis, Strategic Management, Business Communication and Computer Tools for Business. The position requires at least a Bachelor’s degree in a field related to the specialty occupation.

The petitioner’s owner did not otherwise explain how he reached the conclusion that the proffered position or its duties require a minimum of a bachelor’s degree or the equivalent in a specific specialty.

On April 18, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the position of business analyst is required by similarly-sized companies in the petitioner's industry, or evidence that the petitioner has a history of hiring business analysts with a minimum of a bachelor's degree or the equivalent in a specific specialty to perform the duties of the proffered position.

In response, previous counsel submitted another letter from the petitioner's owner. In it, the petitioner's owner stated that the petitioner had previously employed a business analyst, with a bachelor's degree in finance, who proved to be unsatisfactory. He provided no evidence to corroborate his assertion that the petitioner previously employed a business analyst with a degree in finance.

The petitioner's owner also stated:

In general, real estate management companies must focus its resources in market analysis and preparing forecast in order to move forward, remain competitive, and to offer detailed analysis and sound investment advice to future clients during this difficult time – [The beneficiary's] role as our Business Analyst is critical for this purpose.

[Verbatim from the original.]

The petitioner's owner did not specify the type of detailed analysis and investment advice the petitioner, a real estate broker and property management company, offers its clients. The petitioner's owner also cited the beneficiary's statistical, analytical, financial, and accounting skills, as well as his previous experience with the petitioning company and his fluency in Mandarin and Malay, as skills the petitioner needs in its business. The petitioner's president did not indicate which of those skills requires a minimum of a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner's previous counsel also provided copies of vacancy announcements with the response to the RFE. Those vacancy announcements are addressed below.

On June 12, 2009 the director found, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. In that decision, the director analyzed the proffered position as a real estate asset manager position as described in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* chapter entitled, Property, Real Estate, and Community Association Managers.

On appeal, the petitioner's present counsel provided additional vacancy announcements and a letter, dated August 7, 2009, from the petitioner's owner. That letter includes an expanded version of the duties of the proffered position, but no explanation of why performance of those duties, or any one of them, requires a minimum of a bachelor's degree or the equivalent in a specific specialty. In it, the petitioner's owner stated that the proffered position is akin to a financial analyst position.

In that letter, the petitioner's owner also stated that in 2005 the petitioner hired a contractor to perform the duties of the proffered position but that his or her performance was unsatisfactory and that the petitioner's owner had been performing the duties of the proffered position since then. Whether the contractor is the same person whom the petitioner's owner previously stated the petitioner hired to perform the duties of the proffered position is unknown to the AAO. If not the same person, the petitioner's owner did not reveal whether the contractor had a bachelor's degree in a specific specialty related to the proffered position. The petitioner's owner also did not reveal whether he, himself, has such a degree.

In a brief submitted with the appeal, counsel asserted that the evidence demonstrates that the proffered position is a position for a business analyst, that the petitioner has a legitimate need to fill the proffered position, and that the proffered position qualifies as a specialty occupation.

The AAO will now discuss the application of the various criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by establishing (1) the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The AAO notes that the petitioner stated, on the LCA, that the proffered position is a business analyst position, under the *Dictionary of Occupational Titles* Occupational Code 050. That occupational group encompasses occupations in economics, including economist; market research analyst; and director, employment research and planning (government service). Of those, the closest fit to the duties of the proffered position is market research analyst. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The *Handbook* describes the duties of market research analyst positions, in the chapter entitled Market and Survey Researchers, as follows:

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

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

The *Handbook* describes the duties of financial analyst positions as follows:

Financial analysts provide guidance to businesses and individuals making investment decisions. Financial analysts assess the performance of stocks, bonds, commodities, and other types of investments. Also called *securities analysts* and *investment analysts*, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

The record contains no indication that, in the proffered position, the beneficiary would design surveys. Most of the duties of the proffered position, as described in the petitioner's owner's March 27, 2009 letter, would involve analysis of financial information and its applicability to investments, in this case in real estate. The balance of the duties of the proffered position involve financial analysis pertinent to the petitioner's own business. The AAO agrees with the assertion of the petitioner's owner, in his August 7, 2009 letter, that the proffered position is a financial analyst position as described by the *Handbook*.

As to the educational requirements of financial analyst positions, the *Handbook* states, "A bachelor's or graduate degree is required for financial analysts. Most companies require a bachelor's degree in a related field, such as finance, business, accounting, statistics, or economics."

Although that passage indicates that a minimum of a bachelor's degree is mandatory for a financial analyst position, it does not indicate that the requisite degree must be in a specific specialty. The *Handbook* does not indicate, therefore, that financial analyst positions are categorically specialty occupation positions. The record contains no other evidence of a categorical educational requirement for financial analyst positions in general. Further, the *Handbook* does not delineate any subgroup of the Financial Analyst occupational classification for which at least a bachelor's degree in a related specific specialty is a normal requirement for entry. Accordingly, even if properly designated as a Financial Analyst position, its inclusion within that occupational classification is not in itself sufficient to establish the proffered position as one for which entry would require at least a bachelor's degree, or the equivalent, in a specific specialty, so as to enable the beneficiary to perform in the position. Therefore, 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, 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 observed above, the *Handbook* provides no support for the position that the petitioner's industry, or any other, normally requires financial analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of financial analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the real estate sales and management industry.

The vacancy announcements provided are printouts of content from popular job search websites and are the only evidence provided pertinent to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

One of the vacancy announcements was placed by an unidentified real estate developer in Congers, New York for a Real Estate Financial Analyst. The announcement 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 an unidentified Annapolis, Maryland real estate asset management firm for a real estate analyst. 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 an unidentified Irving, Texas hotel development company for a Real Estate (Hotel Specific) Development Analyst. It states that the position requires a master's degree, but not that the degree must be in any specific specialty.

Another announcement was placed by [REDACTED], an employment service in Santa Rosa, California. The actual employer is unidentified, as is its industry. It was seeking a financial analyst with experience in commercial real estate to do cost accounting analysis. It states that prior underwriting experience and a four-year degree are **preferred**, but not that a degree is a minimum requirement or that the degree should be in any specific specialty.

Another announcement was placed by an unidentified Warrenville, Illinois "real estate firm" for a Real Estate Analyst Assistant. The announcement states that the position requires a bachelor's degree in business management or finance.

Another announcement was placed by an unidentified firm in an unidentified location for a “Real Estate – Analyst & Accounting” position in “Commercial real estate development, acquisition analysis, [and] commercial real estate finance.” It states that the position requires a bachelor’s degree, but not that the degree must be in any specific specialty.

Another announcement was placed by an unidentified private investment company in an unidentified location for an Equity, Bond, & Real Estate Investment Analyst. It states that the position requires a “Bachelor’s degree with a business emphasis (finance, economics, accounting, mathematics/statistics).”

Another announcement was placed by an unidentified company in Fairfield, Connecticut for a Real Estate Analyst/Marketing Associate. It states that the position requires a bachelor’s degree, but not that the degree must be in any specific specialty.

Another announcement was placed by [REDACTED] in Waltham, Massachusetts. That announcement states that [REDACTED] distributes electricity and natural gas in New England and New York. Although the job title of the position announced is “Analyst,” the announcement further states, “primary duties will include researching regulations and requirements pertaining to case filings.” That announcement states that the position requires a bachelor’s degree or equivalent work experience, but not that the degree must be in any specific specialty.

Another announcement was placed by an unidentified “major real estate owner/property management firm in New York, New York for a Financial Analyst – Commercial Real Estate – Commercial Leasing.” The announcement states that the position requires a bachelor’s degree, but not that it must be in any specific specialty.

Another announcement was placed by [REDACTED], and indicates that Lake Nona is a 7,000-acre planned community being developed in Orlando. The announcement states that it is seeking a Real Estate Financial Analyst and that the position requires a “Bachelors degree in Real Estate and/or Finance or equivalent work experience.”

To the limited extent to which the duties of the proffered position are developed in the record of proceeding, the descriptions of the positions advertised in the vacancy announcements do not establish that these positions are parallel or that they would require the application of the same type and educational level of specialized knowledge. None of the advertisements has been demonstrated to be for a position parallel to the proffered position in the petitioner’s industry. Most do not require a minimum of a bachelor’s degree or the equivalent in a specific specialty. Further, even if all 11 positions were demonstrated to be for parallel positions in the petitioner’s industry with firms similar to the petitioner’s and unequivocally required a minimum of a bachelor’s degree or the equivalent in a specific specialty, the submission of the 11 announcements is insufficient to demonstrate an industry-wide requirement. The number of vacancy announcements is statistically insufficient, and

the record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.²

Accordingly, the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty 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 clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next 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 financial analyst positions in the real estate sales and management industry may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The description provided of the duties of the proffered position is so abstractly stated, however, that it contains no indication of complexity or uniqueness that would distinguish those duties from the duties of financial analyst positions that do not require a degree. Creating reports, guiding business development efforts, analyzing markets and sales record, etc., appear to be within the purview of a typical financial analyst position, rather than being so much more complex or unique that they necessarily require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that the *Handbook* indicates that some financial analyst positions do not require a specialized degree. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the second clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

² Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of director of religious activities and education for a two-person religious organization required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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

The petitioner's owner stated, in his May 27, 2009 letter, that the petitioner previously employed a business analyst with a degree in finance, but provided no evidence to corroborate that assertion. In his August 7, 2009 letter, the petitioner's owner stated that a contractor previously performed the duties of the proffered position, but not whether that contractor had a college or university degree. Finally, the petitioner's owner stated that he had performed the duties of the proffered position himself, but did provide evidence that he has a college or university degree or even allege that he does. The record contains no other evidence pertinent to anyone who may previously have filled the proffered position or performed its duties.³ The petitioner has not, therefore demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address 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.

As was noted above, to the extent the descriptions of the duties of the proffered position are sufficiently concrete as to be susceptible to analysis, they appear to be the generic duties of financial analyst positions, some of which the *Handbook* indicates do not require a minimum of a bachelor's degree or the equivalent in a specific specialty. For instance, nothing about preparing materials for presentations for management reviews, evaluating financial risks, preparing financial forecasts, or identifying external factors that could affect sales, or the other duties of the proffered position, has been demonstrated to be so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be dismissed and the visa petition will be denied on this basis.

³ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The AAO notes, further, that the petitioner stated that the proffered position requires a minimum of a bachelor's degree or the equivalent in business administration, management, or a related field. "Business administration, management, or a related field" does not delineate a specific specialty. In fact, even if the proffered position required a degree in business administration, without allowing for any alternative degrees, that would not establish the proffered position as a specialty occupation position, as it is only a requirement of a degree with a generalized title, rather than a requirement of a degree in a specific specialty. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). 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 petitioner has not only failed to demonstrate that the proffered position is a position in a specialty occupation, it has failed even to effectively allege that the proffered position qualifies as a specialty occupation. This, too, is sufficient reason to find that the proffered position does not qualify as a specialty occupation position and, consequently, to dismiss the appeal and to deny the visa petition.

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 evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue that was not addressed in the decision of denial.

As was noted above, the LCA submitted to support the visa petition is approved for a business analyst position in the *Dictionary of Occupational Titles* Occupational Code 050, which occupational group includes occupations in economics, including economist; market research analyst; and director, employment research and planning. It does not include financial analyst positions, which are in Occupational Group 160.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

[Italics added]

The description of the duties, as was noted above, indicates that the proffered position is a financial analyst position. The LCA is filed for a position within Occupational Code 050, which does not include financial analyst positions. Therefore, the LCA does not correspond to the visa petition and may not be used to support it. The appeal will be dismissed and the visa petition denied for this additional reason.

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.