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

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Date: **JAN 04 2012** Office: VERMONT 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 wireless telecommunications firm with two employees. Statements subsequently made by the petitioner's president suggest that the petitioner is a retail cellular telephone store. 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, the petitioner asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

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 the petitioner'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 diploma from Tribuhan University in Nepal showing that it awarded the beneficiary a bachelor's degree in business studies and a diploma from the University of Findlay in Findlay, Ohio showing that it awarded the beneficiary an masters degree in business administration.

Counsel also submitted a letter, dated April 17, 2009, from the petitioner's president. In it, the petitioner's president provided a description of the duties of the proffered position, which reads, verbatim:

Analyze and evaluate all business related data and utilize this information to measure the business performance of our activities, highlighting trends (both positive and negative), recommending areas requiring additional attention and developing early warning systems. The beneficiary will assist in the development of business policies and conduct financial and business-related studies while reviewing all key figures of each project on a cyclical basis, bench marking them and apprising our company while recommending the necessary actions to be taken. Additionally, the beneficiary will forecast the long term impacts of business trends, monitor and report on the accuracy of our forecasting systems regarding payments and returns and analyze and report on those trends within the industry which may have an impact on our organization. Additionally, the beneficiary will oversee the development and execution of the company's strategic alliance, partnership and new market strategies. The beneficiary will have the responsibilities for crafting and executing our business development and expansions strategies that support the company's business and revenue objectives. He will evaluate, define and secure partnership opportunities that will broaden product line and service offering resulting in increased revenue opportunities for the company. Moreover, he will identify clients, markets and territories for growth and service opportunities that are in alignment with our business goals, direct overall client relationships, from initial engagement through contract negotiation and develop a network of strategic alliances with existing clients and participate in the strategic development of new business while analyzing our clients' unique needs and business models to negotiate deal structures and close integrated opportunities. Furthermore, he will contribute to overall business development strategies and methodologies including development initiatives, recruiting, coaching, supervising and evaluating personnel.

Moreover, the beneficiary will be charged with the preparation of financial and business related analysis and research in such areas as financial and expense performance, rate of return, depreciation as well as working capital and investment. He will analyze market trends and compile and evaluate reports, graphs, and charts of the data developed, assist in the development of business policies and conduct

financial and business-related studies while preparing operating budgets based on actual performance, previous budget figures and estimated revenue and implement various budgetary control systems. Furthermore, the beneficiary will be charged with the development of long-range plans in order to achieve continued growth and profitability and evaluate the company's organization effectiveness, capacity utilization and operating cost containment. Thus, the beneficiary will enable our company to adapt to the various market changes and compare and contrast these to the strategies utilized by our competitors and accordingly adjust our organization's business policies. As we deal in high-value goods, the risks factors involved are quite significant. Therefore, the beneficiary will be charged with the development and implementation of business strategies that will minimize all risk factors involved while simultaneously increasing our company's market presence. He will perform SWOT Analysis, identifying strengths, and weakness as well as opportunities and threats with respect to new clients, as this type of analysis will aid us in the identification of opportunities and minimize potential risks. Since our company is planning to expand by creating branches throughout the United States, we are in need of the beneficiary's expertise at the earliest.

In essence, then, the duties of the proffered position are to analyze the petitioner's business operations and offer advice for expanding the business while minimizing risk.

As to the educational requirement of the proffered position, the petitioner's president stated, "The position of Business analyst . . . warrants, at an absolute minimum, a US Baccalaureate or equivalent degree in Finance, Business, Science or its equivalent"

That a degree in any of those diverse fields may qualify an individual to perform in the proffered position demonstrates conclusively that it does not require a minimum of a bachelor's degree or the equivalent *in a specific specialty* and does not, therefore, qualify as a position in a specialty occupation.

Further, that a degree in business, without further specification, would qualify one for the position, even in the alternative, is also sufficient to demonstrate that it does not qualify as a specialty occupation position. 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. 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, 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 petitioner's president's assertion that the proffered position may be filled by a person with a degree in finance, business, or science is tantamount to an admission that the position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and does not qualify as a specialty occupation position. This is sufficient reason, in itself, to dismiss the appeal and to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of the petition.

Because the evidence did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation position, the service center, on July 13, 2009, issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center also asserted that the [REDACTED] indicates that it provides business analyst services to its licensees.

In response, counsel submitted a letter, dated July 28, 2009, from the petitioner's president; and two letters from officials at other businesses. In his letter of July 28, 2009, the petitioner's president offered the following expanded description of the duties of the proffered position:

1. Business Management

Works directly with management personnel to understand project concept, objectives and approach.

- Takes assigned project from original concept through final implementation.
- Defines business scope and objectives
- Creates and maintains business development schedules by developing plans and specifications, estimating time requirements, establishing deadlines, monitoring milestone completion, coordinating actions, and resolving conflicts. This includes documenting, prioritizing and tracking requests (changes, enhancements, etc.)
- Conducts business development meetings.
Provides single point of contact for assigned business development plans.

2. Business Analysis and Reporting

- Assists management personnel in developing tactical and strategic product, services and/or programs to support the business unit's

goals (financial, quality, production, customer service, operational efficiency, market share, etc.).

- Works closely with [the petitioner's] personnel and business partners to identify and maximize opportunities to use communication technology to improve product, service and/or business processes.
- Reviews, analyzes, and creates detailed documentation of business systems and user needs, including workflow, program functions, and steps required to develop or modify business needs.
- Consults with [the petitioner's] personnel to determine business, functional and technical requirements for specified applications.
- Coordinates the development of all approved versions of business and functional specifications for specified applications.
- Develops effective reporting tools for the business unit.
- Analyzes the business unit's activities and trends and compares analyses against the service standards and best practices. Presents findings and works with the management and other personnel to identify and implement strategies that will address tactical and strategic goals.
- Prepares routine reports (financial, quality, production, customer service, operational efficiency, market share, etc.).
-- Analyzes trends and recommends adjustments to address and/or capitalize on trends

3. Leadership and Development

- Collaborates with all professionals within [the petitioner] to achieve strategic, tactical and business development goals.
- Provides leadership needed to instill a team-oriented, customer-driven, results-driven team. Coaches and develops employees.

Again, this description of the duties of the proffered position may be summarized as analyzing the petitioner's business operations and offering advice.

The petitioner's president offered this additional description of the duties of the proffered position in the same letter:

[T]he beneficiary will coordinate entire marketing activities, meet revenue targets and realization, identify and develop customers within the lines of services (communication/products lines), and push new services to market. The beneficiary will research economic trends in hardware and software market in the context of our business and capabilities. Research communication industry, economy and other market conditions in the United States to determine potential sales of our products and services (25%). Analyze the process of methods of marketing. Develop research

methods and gather data on competitors, pricing, and prevailing conditions. Examine and analyze statistical data to forecast future marketing trends. Make short and long term marketing decisions. Analyze research results and provide recommendation to management. Initiate and conduct contact with customer representatives to recognize and develop needs and to identify sales opportunities. Take customer requirements fully into account when making proposals and/or carrying out work. Demonstrate effective communication with external clients/customers and internal associates on a regular basis. Adapt to the changing/evolving needs of the client's organization. Understand the technological advancements and how they can be used to address clients' needs and the business requirements (25%).

In addition, the beneficiary will be responsible for the company's entire management. In this regard, the beneficiary will analyze and propose ways to improve our organizations' structure, efficiency, or profits. The beneficiary will be required to define the nature and extent of the problem. During this phase, the beneficiary analyzes relevant data such as annual revenues, employment, or expenditures and interview[s] manager. The beneficiary then develops solutions to the problem. While preparing the recommendations, this individual takes into account the nature of the company, the relationship we have with others in the industry, and our internal organization and culture (15%).

The beneficiary will also be required to perform the following tasks (10%):

- Prepare manuals and train workers in the use of new forms, reports, procedures or equipment, according to organizational policy[.]
- Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes[.]
- Review forms and reports, and confer with management and users about format, distribution, and purpose, and to identify problems and improvements.
- Plan study of work problems and procedures, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis.

Furthermore, the beneficiary will be charged with the development of long-range plans in order to achieve continued growth and profitability and evaluate the company's organizational effectiveness, capacity utilization and operating cost containment. He will use knowledge of Finance and Business in engineering the software for our clients. Thus the beneficiary will enable our company to adapt to the various market changes and compare and contrast these to the strategies utilized by our competitors and accordingly adjust our organization's business policies. As we deal in high-value goods, the risks factors involved are quite significant. Therefore, the beneficiary will be charged with the development and implementation of business

strategies that will minimize all risk factors involved while simultaneously increasing our company's market presence. He will perform SWOT analysis, identifying strengths, and weakness as well as opportunities and threats with respect to new clients, as this type of analysis will aid us in the identification of opportunities and minimize potential risks (25%).

Many of the duties described do not seem applicable to the petitioner's business. For instance, the petitioner's president stated, "[The beneficiary] will use knowledge of Finance and Business in engineering the software for our clients." There is no other indication in the record that the beneficiary will be engaged in software engineering, or that the petitioner has any presence in that industry. Further, given that the petitioner appears to be a retail business, the applicability of an analysis of strengths, weaknesses, opportunities, and threats represented by new clients, who might also be described as walk-in retail customers, is unclear, as is the applicability of much of the remainder of the petitioner's president's description of the duties to a cell phone retailer with two employees.

The petitioner's president also described the following additional duties:

The beneficiary will perform business process analysis, the requirements specification and the outline design. He also need interpersonal skills for interviewing and for leading workshops to find out what the clients really want and need. He also has to 'sell' [sic] the solution whilst negotiating and comprising on the three crucial elements of speed, cost, and quality.

The petitioner's president also stated, "I have been playing the role of Business Analyst position and running the company in the capacity of president." The petitioner's president did not reveal his level of education or any particular subject he has studied.

The petitioner's president stated that service centers have approved "countless petitions" for beneficiaries to perform "the same duties as Business Analyst." He identified three such cases that he asserted were approved, implying that their approval indicates that the instant visa petition should also be approved.

Other than asserting that the petitions cited were for business analysts, the petitioner's president did not establish that the facts of those cases are substantially the same as the facts in the instant case. In any event, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. The AAO is not bound to follow decisions of a service center.

Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

The AAO will now consider the two letters from other businesses. One of those letters is from a senior consultant at Nationwide Communication Inc. of New York, New York. That letter states, “. . . the job duties associated with the position of Business Analyst . . . is [sic] clearly of a professional nature and only an individual with at least the equivalent of a bachelor’s degree in [the] Business Administration area would be qualified to perform the same.”

The other letter is from the operations manager [REDACTED] of Norwood, Massachusetts and states, “. . . the job duties of Business Analyst are clearly advanced and exceptional in nature, and only an individual with at least the equivalent of a bachelor’s degree in Business Administration would be qualified.”

In his own letter, dated August 6, 2009, counsel noted that the petitioner’s president has been performing the duties of the proffered position. He further stated that the petitioner’s president has a bachelor’s degree. Counsel did not, however, provide any evidence in support of that assertion, reveal his basis for making it, or specify any particular subject in which the petitioner’s president allegedly holds a bachelor’s degree.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. See *Matter of Obaighbena*, 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). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Counsel further asserted that the U.S. Department of Labor’s (DOL) Occupational Information Network (*O*Net Online*) and its *Occupational Outlook Handbook (Handbook)* all support the proposition that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor’s degree or the equivalent in a specific specialty.

The director denied the petition on August 27, 2009, finding, as was noted above, that the petitioner had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, the petitioner’s owner submitted a brief. The petitioner’s president reiterated that he has been performing the duties of business analyst for the petitioner but, again, did not demonstrate, nor even allege, that he has a minimum of a bachelor’s degree or the equivalent, let alone such a degree in a specific specialty related to the proffered position. He further stated that the proffered position requires a minimum of a bachelor’s degree in either business administration or commerce.

The petitioner's president stated, [REDACTED] of the petitioner's size requires either a full-time business analyst or an analyst on a permanent basis," but provided no additional evidence in support of that assertion. He further stated that attached materials from hotjob.com and monster.com, two popular job search websites, support this position, but provided no such materials.

The AAO will first address whether the proffered position qualifies as a specialty occupation position pursuant to the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), by virtue of business analyst positions categorically requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

The AAO acknowledges that the petitioner ascribes a very broad range of duties to the proffered position. However, the AAO finds that the petitioner has not explained or documented how actual performance of any of the generalized functions which are described as duties, within the petitioner's actual business operations, would entail the theoretical and practical application of at least a bachelor's degree level of knowledge in any specific specialty.

In this regard, the AAO finds that the nature and level of education required to actually perform the generalized functions as described for the proffered position are not self-evident and are not demonstrated by any documentary evidence in the record of proceeding. The AAO also hereby adopts and incorporates by reference the above finding into all of its discussions of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO recognizes the *Handbook*, cited by the petitioner, 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 management analyst positions as follows:

As business becomes more complex, firms are continually faced with new challenges. They increasingly rely on *management analysts* to help them remain competitive amidst these changes. Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits.

For example, a small but rapidly growing company might employ a consultant who is an expert in just-in-time inventory management to help improve its inventory-control system. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have provided new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace. (For information on computer

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.

specialists working in consulting, see the following statements elsewhere in the *Handbook*: computer software engineers and computer programmers; computer systems analysts; and computer scientists.)

Management analysts might be single practitioners or part of large international organizations employing thousands of other consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. In government, management analysts tend to specialize by type of agency. The work of management analysts and consultants varies with each client or employer and from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

The various descriptions of the duties of the proffered position accord with the duties described in the *Handbook* as the duties of a management analyst. The AAO finds that the proffered position is a management analyst position as described in the *Handbook*. The AAO notes, however, that the *Handbook* does not support the assertion that all, or even most, small businesses permanently employ a management analyst. Rather, the *Handbook* implies that most businesses, and especially most small businesses, rely on contracted management analysts, if they use management analysts' services at all.

The *Handbook* describes the educational requirements of management analyst positions as follows:

Educational requirements for entry-level jobs in this field vary between private industry and government. Many employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult. Other firms hire workers with a bachelor's degree as research analysts or associates and promote them to consultants after several years. Some government agencies require experience, graduate education, or both, but many also hire people with a bachelor's degree and little work experience for entry-level management analyst positions.

Few universities or colleges offer formal programs in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, or engineering.

Nothing in that section of the *Handbook* indicates that all, or even most, management analyst positions require a minimum of a bachelor's degree. Further, even for those positions requiring such

a degree, the *Handbook* makes clear that degrees in a wide variety of fields may suffice. This demonstrates that management analyst positions do not categorically require a minimum of a bachelor's degree or the equivalent in a specific specialty and do not categorically qualify as specialty occupation positions.

The petitioner's citation of *O*Net Online* is unconvincing. First, counsel cited data pertinent to financial analysts. Financial analysts offer investment advice to companies and individuals. That position is manifestly different from the instant position, which involves analyzing and advising management on the operation of a business, which marks it as a management analyst position.

*O*Net Online* addresses management analyst positions under the Department of Labor's Standard Occupational Classification code of 13-1111.00. It does not state that management analyst positions require a bachelor's degree. Rather, it assigns management analyst positions a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not indicate that four-year bachelor's degrees required by some Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position's being a specialty occupation.

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* does not report that the petitioner's industry, or any other, requires business analysts or management 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 business analysts or management analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry.

The two letters from other businesses are the only evidence in the record pertinent to this alternative criterion. Those letters state that the businesses that provided them are in the petitioner's industry,

but without ever specifically stating that they are small cellular telephone retailers. The AAO will assume, *arguendo*, that those businesses are, in fact, in the petitioner's industry.

Both of those letters state that a business analyst position with their company and similar companies requires a minimum of a bachelor's degree or the equivalent in business administration. As was explained in detail above, however, a requirement of a degree in business administration does not qualify a position as a specialty occupation position. Those letters do not support the position that the proffered position qualifies as a specialty occupation position.

Further, even if both of those letters were from officials of similar businesses in the petitioner's industry and both stated that parallel business analyst or management analyst positions in that industry require a minimum of a bachelor's degree or the equivalent in a specific specialty, the AAO would not be persuaded. While the authors' observations are relevant, they have little evidentiary weight. The letters do not establish knowledge of the actual requirements of the proffered position as it would be performed in the context of the petitioner's actual business operations. Further the authors do not establish the extent of their familiarity, if any, with positions that are parallel to the proffered position among business organizations similar to this petitioner, which is the standard for comparison under this particular criterion.

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).

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 business analyst or management analyst positions in the petitioner's 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 various descriptions of the duties of the proffered position are the only evidence that might have differentiated the proffered position from other business analyst or management analyst positions in the petitioner's industry. Nothing about those various descriptions, however, sets the proffered position apart from other business analyst or management analyst positions. Analyzing business operations and offering advice for improvement and expansion are the very crux of all business analyst or management 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.

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the position.

The only evidence in the record relevant to the petitioner's previous recruitment and hiring practices pertinent to the proffered position is the petitioner's president's assertion, without corroborating evidence, that he has performed the duties of the position. Further, contrary to counsel's statement, the petitioner's president did not assert, let alone demonstrate, that he has a bachelor's degree, let alone a minimum of a bachelor's degree or the equivalent in any specific specialty closely related to the proffered position.

Further, the petitioner's president and counsel have stated that the educational qualifications of the proffered position may be satisfied by an otherwise undifferentiated bachelor's degree in business administration, which negates the possibility that the petitioner would require a minimum of a bachelor's degree or the equivalent in a specific specialty in recruiting or hiring for the proffered position.

The petitioner has not 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, however, the duties of the proffered position, as portrayed in the several descriptions provided by the petitioner's president, do not indicate that they are so much more specialized and complex than non-degree-requiring business analyst or management analyst positions that performance of those duties would require the application of knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

Further, as was noted above, the petitioner's president indicated that the duties of the proffered position can be performed by a person with a degree in business administration, which demonstrates that their nature is not so specialized and complex that they are associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated 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. 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).

The AAO finds that the director was correct in his determination that the record before him 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 denied on this basis.

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

The beneficiary has two degrees in business administration. The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would 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). Because a requirement of an otherwise undifferentiated degree in business administration does not qualify a position as a specialty occupation, the beneficiary, who has only degrees in business administration, would be unlikely to qualify for any specialty occupation position.

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not further analyze the issue of the beneficiary's qualifications.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.