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



U.S. Citizenship
and Immigration
Services

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Date: JAN 09 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:



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 [REDACTED]. 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, 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 remain denied.

The petitioner is engaged in the wholesale and distribution of food products and was established in 1995. The petitioner states that it employed eight personnel and had an approximate gross annual income of [REDACTED] and an approximate net annual [REDACTED] when the petition was filed. It seeks to extend the employment of the beneficiary as a marketing 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 had not offered sufficient evidence establishing the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129, Petition for Nonimmigrant Worker, and supporting documentation; (2) the director's request for evidence (RFE) and the petitioner's response to the RFE; (3) the director's denial letter; and (4) Form I-290B, Notice of Appeal or Motion, with counsel's supplemental brief and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The primary issue for consideration is whether the petitioner's proffered 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.

The petitioner states that it is seeking the beneficiary’s services as a marketing analyst in a full-time position with an annual salary of \$33,000. The petitioner described the duties of the proffered position as follows:

- Research market conditions in local and regional areas to determine potential

- sales of existing and potentially available products;
- Collect and analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand;
- Analyze profit and loss statements to measure effectiveness of marketing and communications strategies as well as efficiency of business operations;
- Prepare reports of findings and make recommendations to improve efficiency and effectiveness of marketing and general operation;
- Measure and assess customer and employee satisfaction;
- Forecast and track marketing/sales trends and analyze collected data;
- Provide management with information and proposals concerning the promotion, distribution, design, and pricing of product offering;
- Gather data on competitors and analyze their products, pricing, sales and methods of marketing and distribution;
- Develop strategic business opportunities and partnerships to support new or existing business opportunities to better meet customers' needs;
- Analyze, develop and oversee budget for marketing activities.

The Labor Condition Application (LCA) in support of the petition identified the position as a marketing analyst with the Standard Occupation [REDACTED] and the occupation title as market research analyst. The petitioner indicated on the LCA that the prevailing wage for a Level 1 marketing analyst in Chicago, Illinois in [REDACTED] and the proffered wage for the beneficiary [REDACTED]. The LCA was certified on September 14, 2009 for a validity period from October 1, 2009 until September 30, 2012.

The record shows that the beneficiary possesses a master's of business administration from the University of Illinois.

On November 4, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation. The director also requested evidence of the beneficiary's work product from the previous H-1B validity period, the petitioner's organizational chart, the petitioner's 2007 and 2008 Federal Tax Returns, and the petitioner's W-2 and W-3 Wage and Tax Statements for 2008. The director also requested a copy of the beneficiary's 2008 individual tax return.

In response, counsel for the petitioner expanded upon the previous job description as follows:

- Research market conditions in local and regional areas to determine potential sales of existing and potentially available products to over 50 restaurants and grocery stores in the greater Chicagoland area. As a first step, the beneficiary surveys consumer behavior, the purchasing power of the target market, and competitors and competitive markets.
- Collect and analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand. This secondary data is collected through methods such as discussions with suppliers, research on trends, and interactions with consumers, and is

analyzed alongside the primary data listed above.

- Analyze profit and loss statements to measure effectiveness of marketing and communications strategies as well as efficiency of business operations. Such analysis requires breaking down the statements into its components and evaluating the impact of the various marketing, purchasing, and pricing initiatives undertaken by the company. This analysis is then applied toward preparing reports of findings and making recommendations to the president to improve efficiency and effectiveness of marketing and general operation. Through the resulting discussion with the president, alternative solutions can also be proposed.
- Measure and assess customer and employee satisfaction. Conduct formal and informal discussions with customers, suppliers, and employees to determine satisfaction with the company and if necessary obtain and evaluate suggestions on how to improve it. This includes setting up demos at customer stores to promote products and evaluate customer reviews to adjust not only the demo process but the selling points to consumers as well.
- Forecast and track marketing/sales trends and analyze collected data to predict future sales. Recommend product mix, and advise president accordingly, justifying conclusions and recommendations.
- Provide management with information and proposals concerning the promotion, distribution, design, and pricing of product offerings as indicated above.
- Gather data on competitors and analyze their products, pricing, sales and methods of marketing and distribution. Compare offerings and analyze to modify company's own product mix, pricing, and marketing/distribution.
- Develop strategic business opportunities and partnerships to support new or existing business opportunities to better meet customers' needs, such as expansion into frozen/ready to eat market and placement of products in non-Asian groceries
- Analyze, develop and oversee budget for marketing activities.

In a December 11, 2009 letter in response to the director's RFE, the president of the petitioner noted that the petitioner employed only eight personnel and the beneficiary was the only individual advising him on marketing. The president also noted that he preferred information discussions to share comments and ideas to arrive at solutions quickly rather than reviewing documentation. The president referenced the beneficiary's past initiative in contacting manufacturers to source products, tracking statistics of the price and volume of products sold to predict customer trends, gathering information regarding seasonal trends, and researching new product lines. The petitioner also included: spreadsheets showing the profit margin on certain goods; handwritten notes on advertisements and item lists identified as information on customer contacts; item lists, quotes and packing information from various sources; item information from other grocers; the petitioner's product catalog; and advertisements depicting some of the petitioner's products. The petitioner also included its organizational chart showing the president of the company, the proffered position and an operations assistant both reporting to the president, and two delivery personnel reporting to the operations assistant.

The director denied the petition on January 4, 2010.

On appeal, counsel for the petitioner asserts that a market research analyst is categorically a specialty occupation according to the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel focuses on the "or its equivalent" language in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and appears to assert that this language broadens the type of degrees that may be used to satisfy this requirement. Counsel contends that the duties of the proffered position as described incorporate the duties of a market research analyst, not a marketing manager. Counsel avers that whether a position is a professional position or not is unrelated to the size of the company. Counsel provides a job posting for a market research analyst from another food wholesaler/distributor which requires a bachelor's degree in business administration or marketing or a related field and knowledge of Japanese for the successful applicant. Counsel asserts that the director ignored the breakdown of duties of the proffered position as generic and that a consideration of the duties demonstrates that the duties are complex or unique. Counsel states:

The petitioner has [REDACTED] as customers and over [REDACTED] customers (restaurants and grocery stores) total. To supply these customers, the petitioner works with [REDACTED] vendors, including [REDACTED] local Chicagoland vendors, [REDACTED] national suppliers, and [REDACTED] international suppliers. The petitioner provides its customers over [REDACTED] different kinds of products, including produce, frozen foods, container-packed foods and dried foods. Finally in the Chicagoland area, there are [REDACTED] grocery wholesalers, with 10 companies that act as food service providers for the Thai restaurant segment.

Counsel contends that although the petitioner lacks organizational complexity, the number of different factors that the beneficiary must consider when performing his job duties establishes that the position itself is complex. Counsel notes that the petitioner previously employed the beneficiary in the proffered position in H-1B classification. Counsel claims that an evaluation of the duties of the proffered position, the beneficiary's work product in the position, and the *Handbook's* chapter on market research analysts, should result in a determination that the petitioner has established by a preponderance of the evidence that the nature of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To make its determination whether the employment described 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 U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; 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 notes that the petitioner claims it has eight employees¹ including the beneficiary. The petitioner does not provide a description of the duties of its president or operations assistant. Accordingly, it is not possible to discern whether the petitioner has sufficient work for the beneficiary to perform duties requiring at least a bachelor’s degree or its equivalent in a specific specialty on a full-time basis. Moreover, contrary to counsel’s assertion, the AAO notes that it is reasonable to assume that the size of an employer’s business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner’s business, as the size impacts upon the duties of a particular position. In this matter, it is simply unclear what the beneficiary will be doing on a day-to-day basis. The petitioner’s lack of personnel raises questions regarding the beneficiary’s actual duties and whether his duties will be devoted primarily to performing the duties of a marketing analyst. The beneficiary’s work product prepared during the previous approval period is scant and does not include evidence of specialty occupation level methodology or analysis of a marketing analyst. Even if there was sufficient evidence to demonstrate that the proffered position falls under the chapter on market and survey researchers² in the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, 2010-2011 edition, the *Handbook* does not indicate that entry into positions in that occupation normally requires at least a bachelor’s degree, or the equivalent, in a specific specialty. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed December 2011).

While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many market and survey research jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to market research, as would be required for the occupational category to be recognized as a specialty occupation. See *id.* This is evident in the range of qualifying degrees indicated in the Significant Points section that introduces the *Handbook*’s chapter “Market and Survey Researchers,” which states: “Market and survey researchers can enter the occupation with a bachelor’s degree, but those with a master’s or Ph.D. in marketing or a social science should enjoy the best opportunities.” *Id.*

That the *Handbook* does not indicate that market research analyst positions normally require at least a bachelor’s degree in a specific specialty is also evident in the following discussion in the

¹ The petitioner’s organizational chart only lists five employees but the petitioner indicates in its December 14, 2009 response that it employs three part-time workers. The petitioner does not identify the duties or job titles of the three part-time workers.

² The most recent version of the *O*NET*, (found at www.onetonline.org and last accessed December 2011) designates market research analysts with the SOC Code 13-1161-00 and groups the occupation with marketing specialists. The *O*NET* continues to indicate that a market research analyst occupation is a Job Zone 4 occupation. The *O*NET*’s SOC Codes correspond to the *Handbook*’s designation of occupational titles.

“Training, Other Qualifications, and Advancement” section of its chapter “Market and Survey Researchers,” which does not specify a particular major or academic concentration:

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.

Id. Because the *Handbook* indicates that entry into the market research analyst occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO acknowledges counsel’s reference to “or the equivalent” language, however this language does not broaden the spectrum of degrees allowed for an occupation to still qualify as a specialty occupation; rather the language simply recognizes that extensive and specific work experience may sometimes be equivalent to a bachelor’s degree in a specific specialty. 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. There must be a close correlation between the required specialized studies and the position; thus, the requirement of a degree with a generalized title or the indication that a number of degrees may qualify an individual to perform the duties, without more, eliminates the position from consideration as a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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)).

The petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty. In support of its assertion that the degree requirement is common to the petitioner’s industry in parallel positions among similar organizations, the petitioner submitted an advertisement for a market research analyst from another food wholesaler/distributor which requires a bachelor’s degree in business administration or marketing or a related field and knowledge of Japanese for the successful applicant. This advertisement serves only to support the *Handbook’s* indication that a general purpose degree is sufficient to qualify for entry into the occupation, not that a particular and precise course of study is necessary to enable an individual to perform the duties of the occupation. The petitioner has not established that similar companies in the same industry routinely require at least a bachelor’s degree in a specific specialty or its equivalent for parallel positions.

The petitioner has also not satisfied 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.” As observed above, the petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Specifically, the petitioner failed to demonstrate how the market research analyst duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor’s or higher degree in a specific specialty or its equivalent is required to perform them. Counsel’s reference to the petitioner’s number of products, vendors, and customers does not assist in establishing that the beneficiary’s actual required work is itself complex or unique. Again, the petitioner has not detailed duties that require sophisticated methodology or analysis such that the duties could not be performed without a bachelor’s degree in a specific discipline. The evidence of record does not establish that this position is significantly different from other marketing positions and as such does not refute the *Handbook’s* information to the effect that there is a spectrum of degrees acceptable for market research analyst positions, including degrees not in a specific specialty. Consequently, as the petitioner fails to demonstrate how the proffered position of market research analyst is so complex or unique relative to other marketing positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Although the petitioner previously received approval for the beneficiary to work in H-1B status, 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’r 1988). If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. 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). 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). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision 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).

Moreover, 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. Here, the petitioner has failed to establish that the proffered position requires the theoretical and practical application of knowledge that is associated with the attainment of a bachelor's degree in a specific discipline. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The petitioner here has not provided sufficient detailed information regarding the actual duties of the proffered position to establish that the duties are so specialized and complex. Again, there is nothing in the record that elevates the proffered position to a position that demonstrates the actual duties are more specialized and complex than market-research-analyst positions that are not usually associated with a degree in a specific specialty. 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 instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. Moreover, the AAO observes that according to the beneficiary's Internal Revenue Service (IRS) Form W-2, the beneficiary in this matter was [REDACTED] by the petitioner in 2008; however, the beneficiary's IRS Form 1040 for the 2008 year shows that he earned [REDACTED] in wages, salaries, and tips the same year. As stated above, it does not appear that the petitioner had sufficient H-1B specialty occupation work to occupy the beneficiary full-time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, it is noted that the LCA provided in support of the instant petition lists a Level I prevailing wage level for a marketing research analyst in Chicago, Illinois. This indicates that the LCA, which is certified for an entry-level position, is at odds with the petitioner's claim that

the proffered position includes specialty occupation level duties. Given that the LCA submitted in support of the petition is for a Level I wage, it must be concluded that either (1) the position is a low-level, entry position relative to other marketing analysts and, thus, based on the findings of the *Handbook*, the proffered position is not a specialty occupation; or (2) the LCA does not correspond to the petition. In other words, even if it were determined that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, such that it would qualify as a specialty occupation, the petition could still not be approved due to the petitioner's failure to submit an LCA that corresponds to a higher level position.

Upon review of the totality of the information in the record of proceeding, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition will be denied and the appeal dismissed for the above stated reason. 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 remains denied.