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



U.S. Citizenship  
and Immigration  
Services

D2



Date: **JUL 03 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a travel and tourism services firm with 1 employee. It seeks to employ the beneficiary as a full-time market research analyst and 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO 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 job 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 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*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, a proposed 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title

of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In support of the Form I-129, the petitioner submitted the following documents: (1) a copy of a certified Labor Condition Application (LCA); (2) a document entitled "NATURE OF THE POSITION AS SPECIALTY OCCUPATION"; (3) a three-page print-out from a French website, <http://www.bsp-hotels.com>; (4) a copy of a diploma awarding the degree of Master of Business Administration to the beneficiary by the University of Central Florida; and (5) a copy of two pages of the beneficiary's French passport.

No support letter was submitted by the petitioner.

In the document, "NATURE OF POSITION AS SPECIALTY OCCUPATION," it states the following under the heading "Summary of position of Market Research Analyst":

The primary role of the Marketing Research Analyst is to provide in-depth research support and data to company managing by performing research including, but not limited to, online and offline research, information on marketing, strategies, offers, services and products, assessment of strategic direction and marketplace analysis.

In addition, the Market Research Analyst will be responsible for the following:

[P]roviding primary and secondary qualitative and quantitative market research data for analytical support to existing and new marketing and sales strategies.

[A]dvising management on competitive activities and strategies.

[P]erforming market research to support business development, including market assessment and strategic fit.

[I]nterfacing with external partners, vendors or clients, to support both direct and indirect market research efforts.

[D]elivering regular communications and/or briefings in support of strategic efforts.

#### Key Responsibilities of Market Research Analyst

- Producing product and service industry specific marketing and competitive background data reports to inform the New Business team prior to initial pitches.
- Managing New Business competitive research data, assets and decks for

competitive presentations.

- Conducting advanced quantitative and qualitative analyses of trends to enhance, upgrade and deepen retention strategies, and to improve customer channel behavior through marketing drivers.
- Developing, writing, and presenting strategic recommendations and projects that directly address client specific research questions.
- Participating in brainstorming sessions that identify new marketing opportunities.
- Organizing and maintaining research information.
- Staying current on industry trends and technological advancements to maintain company competitive edge in the marketplace.
- Reviewing and proposing new research sources and methodologies to refine processes.
- Managing project tasks, timelines and deliverables.
- Acting as a resource to company on matters of techniques, methodology, procedures and utilization of analytical techniques to improve strategies, media planning and buying.
- Compiling, analyzing and interpreting information from both internal and external sources.

The document also states that the petitioner is a new company established by SARL BSP Reservations, a French travel and tourism company, to expand operations in the U.S. market. The document also states that because there is a "high level of responsibility involved, the exercise of independent judgment required," and the work to be performed is "complex," the petitioner requires a minimum of a "Bachelors degree in Business Administration."

On July 20, 2010, the director issued an RFE requesting the petitioner to submit documentation highlighting the nature, scope, and activity of the petitioner's business in order to establish that the beneficiary will be employed with the duties set forth by the petitioner such as: (1) a detailed description of the proffered position, to include approximate percentages of time for each duty that the beneficiary will perform; (2) copies of written contracts (or work orders) between the petitioner and the beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed that indicates the services being provided by the petitioner and/or the beneficiary; (3) documentation of how many other individuals in the petitioner's establishment are currently, or were, employed in the position or similar positions; and/or (4) brief job descriptions for the majority of positions within the petitioner's employ and approximately how many individuals occupy such positions (to include

job titles, duties and education requirements). The director also requested that the petitioner submit evidence showing that a bachelor's degree in a specific specialty is a standard minimum requirement for the proffered position in the petitioner's company and industry.

On August 24, 2010, in response to the director's RFE, the petitioner stated that the petitioner is a fully owned subsidiary of SARL BSP Reservations with headquarters in Paris, France. The petitioner stated that SARL BSP Reservations is a "travel agency specializing in hotels, car rental, cruises, excursions and tours" that has been in business since 1998. The petitioner explained that the proffered position is essential for SARL BSP Reservations to "plan the strategy for the introduction and marketing of its services in the most financially prudent manner."

The petitioner also claimed that "the attainment of a degree is associated with the duties of a Market Research Analyst" and that the position has an "SVP range of 7.0 < 8.0" according to O\*NET. The petitioner also asserted that "the services of such a professional is generally required for start-up businesses" and businesses, particularly small businesses, "routinely engage the services of a Market Research Analyst to evaluate the market conditions prior to beginning start up operations." The petitioner also stated that the "company will not be engaging in business operations, including the hiring and placing of agents within the United States, until the beneficiary has completed the preliminary analysis of the target market and made initial recommendations." Also, according to the petitioner, the beneficiary will report "directly to the parent company in France."

Citing to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), the petitioner asserted that a bachelor's degree is the "very minimum requirement for an entry level position as a Market Research Analyst" and that the beneficiary's "education directly matches the background suggested by the [*Handbook*] as the preparation for this specialty occupation."

The petitioner submitted the following: (1) a copy of a translated "Certificate/exerpt [sic] of registry of commerce and corporations" for "B.S.P. RESERVATIONS" issued by the "Clerk of Tribunal of Commerce of Paris"; (2) an organizational chart; (3) promotional material in French; (4) a copy of the beneficiary's University of Central Florida transcript; (5) a copy of a diploma awarding the degree of Master of Business Administration to the beneficiary by the University of Central Florida, previously submitted; (6) a copy of the beneficiary's "SUPERIOR CERTIFICATE OF RESPONSABILITY [sic] AND DEVELOPMENT AND INTERNATIONAL MARKETING" in French awarded by de l'Ecole de Commerce Européenne and accompanied by a translation; (7) a description of the academic program offered by de l'Ecole de Commerce Européenne; and (8) a copy of a job offer letter dated April 24, 2010, from the petitioner to the beneficiary.

The petitioner also provided the following job duties and approximate percentages of time spent on each duty:

**30% -**

**Perform research using primary and secondary sources to collect data**

Determine market segment, market target, market forecast and market position of competitors; [and]

Investigate the possibility of partnership/collaboration (e.g. Profiling & SWOT analysis of potential partners, evaluating business partnership).].]

**45% -**

**Conduct advanced quantitative and qualitative analyses of trends in target market and interpret information**

Analyze Macro & Micro Economic data (Supply & Demand, pricing, economic growth, sales by sector/industries, market demand and social analysis); [and]

Analyze market trends, growth, market size, market share, market competition (e.g. SWOT analysis, channel mapping identities of key channels, drivers of customers loyalty and satisfaction, brand perception, satisfaction levels, current competitor-channel relationship analysis)].]

**25% -**

**Develop, write reports presenting strategic recommendations that directly address specific research questions.**

Using data analysis make projections of business strategy, return of investment, financial set up needs analysis, cost/benefit analysis, projected profit & loss].]

The director denied the petition on September 3, 2010, finding that the proffered position is not a specialty occupation. The director found that the record was insufficient to classify the proffered position as a Market Research Analyst position and that the proffered position did not qualify as a specialty occupation. The director determined that the duties of the proffered position reflect the duties performed by marketing managers, as described in the *Handbook* under the title "Advertising, Marketing, Promotions, Public Relations, and Sales Managers." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Advertising, Promotions, and Marketing Managers," <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm> (last visited June 27, 2012).<sup>1</sup>

On appeal, counsel for the petitioner contends that the director erroneously determined that the proffered position is for a marketing manager and that the proffered position is "clearly encompassed" by the market research analyst description in the *Handbook*. Counsel for the petitioner also contends that similar businesses employ market research analysts and that the parent company of the petitioner is taking a "conservative approach" in choosing to analyze the

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<sup>1</sup> The director's decision referred to the 2010-2011 edition of the *Handbook*. All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

market through the use of a market research analyst rather than "simply opening a company and hiring advertising, marketing, sales, and other employees . . . ." Counsel further contends that the proffered position requires at least a bachelor's degree and that according to O\*NET, the position of market research analyst normally requires a bachelor's degree.

The petitioner also submitted the following with its appeal: (1) an article by Expedia Media regarding Destination Marketing Trends; (2) six job vacancy announcements; (3) articles regarding market research analyst careers; (4) a copy of an unpublished AAO decision; and (5) a print-out from the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, chapter on 19-3021 Market Research Analysts.

As a preliminary matter, the petitioner's claim in the document "NATURE OF POSITION AS SPECIALTY OCCUPATION" that a "Bachelors degree in Business Administration" is a minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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).<sup>2</sup>

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's

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<sup>2</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 (Comm'r 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

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

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The AAO finds that the duties described by the petitioner appear to comport closest with the duties of a "Market Research Analyst," as described in the *Handbook*. The *Handbook* describes the occupation of market research analyst as follows:

Market research analysts study market conditions in local, regional, or national areas to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.

#### Duties

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics,

preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop *advertising brochures and commercials, sales plans, and product promotions.*

Market research analysts evaluate data using statistical techniques and software. They must interpret what the data means for their client, and they may forecast future trends. They often make charts, graphs, or other visual aids to present the results of their research.

Workers who design and conduct surveys are known as survey researchers. For more information, see the profile on survey researchers.

Some market research analysts may become professors or teachers. For more information, see the profile on postsecondary teachers. As an instructor in a junior or community college, a market research analyst may need only a master's degree, but a Ph.D. is usually required to teach in a college or university.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Market Research Analysts, <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited June 27, 2012).

A review of the *Handbook's* education and training requirements for this occupation, however, indicates that it does not require a bachelor's degree in a specific specialty or its equivalent for entry into the position

Market research analysts need strong math and analytical skills. Most market research analysts need at least a bachelor's degree, and top research positions often require a master's degree.

#### Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or communications. Courses in statistics, research methods, and marketing are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

Many market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics, marketing, or a Master of Business

Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Market Research Analysts, <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited June 27, 2012). In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in the specific specialty."<sup>3</sup> Section 214(i)(1)(b) (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation. The petitioner, therefore, has failed to establish eligibility under 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.

As stated earlier, 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

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<sup>3</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

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

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Furthermore, for the reasons discussed below, the petitioner's reliance upon the job vacancy advertisements it submitted is misplaced.

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 copies of six advertisements. The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree or the equivalent in a *specific specialty* is not. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant as the record does not indicate that the posted job announcements are for parallel positions in similar organizations in the same industry.

Specifically, none of the six advertisements indicate that a bachelor's degree in a specific specialty is a requirement for entry into those positions. While the Robert Half advertisement states that a BA/BS in Business Administration, Computer Science, Data Management or Natural Sciences is required, as stated above, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Again, 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. Furthermore, the advertising entity, Robert Half Technology has more than 100 locations in North America, Europe, Australia, and Asia and is a provider of IT professionals, thus it cannot be found to similar to petitioner in terms of its size and the type and level of services provided such that they could be found to be similar organizations. As such, the record lacks sufficient evidence demonstrating that the advertised position is a parallel position.

The second, fifth, and sixth advertisements either state that a bachelor's degree in such fields as business is a requirement or that such a degree is preferred for entry into those positions. Again, although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Also, 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, without further specification, does not establish the position as a specialty

occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558. Furthermore, the record lacks sufficient evidence to establish the petitioner as being similar to the advertising companies in terms of its size and the type and level of services provided such that they could be found to be similar organizations.

Lastly, the third and fourth advertisements only state that a bachelor's degree without any specialty is required. As a result, 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.<sup>4</sup>

The petitioner also has 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." The petitioner and counsel claim that the duties of the proffered position are complex. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its equivalent.

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. 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. While one or two courses in marketing may be beneficial in performing certain duties of a market research analyst position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree in a specific specialty, or its equivalent are required to

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<sup>4</sup> 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 just six job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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 market research analyst in a single employee travel and tourism services firm 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.

perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other market research analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred social science coursework, not necessarily leading to a degree in a specific specialty, acceptable for market research analyst positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of market research analyst is so complex or unique relative to other market research analyst 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).

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>5</sup>

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. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with a degree in a specific specialty.<sup>6</sup>

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<sup>5</sup> 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").

<sup>6</sup> Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other market research analyst positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the

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

The AAO will now discuss the SVP rating of 7.0 < 8.0 assigned to market research analysts by O\*NET. See O\*NET Online, Market Research Analysts and Marketing Specialists, <http://www.onetonline.org/link/summary/13-1161.00> (last visited June 27, 2012). The AAO finds that an assignment of an SVP rating of 7.0 to 8.0 is not indicative of a specialty occupation. This is obvious upon reading Section II of the DOT's Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.<sup>7</sup> The section reads:

## II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);

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occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).

<sup>7</sup> The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (last visited June 27, 2012).

- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 through 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP information is not probative of the proffered position being a specialty occupation.

Furthermore, a designation of Job Zone 4 indicates that a position requires "considerable preparation." It does not, however, demonstrate that at least a bachelor's degree in a specific specialty or its equivalent is required, and does not, therefore, demonstrate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See O\*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 4 does not indicate any requirements for degrees in specific specialties) (last visited June 27, 2012).

Finally, beyond the decision of the director, the petition must be denied due to the petitioner's failure to establish that it qualifies as a United States employer or agent. The term "United States employer" is defined in the Code of Federal Regulations at 8 C.F.R. § 214.2(h)(4)(ii) as follows:

*United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;

- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

*See also* 56 Fed. Reg. 61111, 61121 (Dec. 2, 1991). The record of proceeding lacks sufficient documentation demonstrating that the petitioner has satisfied the first and second prongs of the definition of United States employer. Specifically, the record lacks evidence that the petition will engage the beneficiary to work in the United States. The petitioner stated in response to the director's RFE that the beneficiary will report "directly to the parent company [SARL BSP Reservations] in France" and there is nothing in the record evidencing who will supervise the beneficiary's work in the United States. Given this lack of evidence, the petitioner has also failed to establish who has or will have actual control over the beneficiary's work or duties. Thus, the petitioner has failed to establish that it will have and maintain the requisite employer-employee relationship with the beneficiary for the duration of the requested employment period. *See id.* Therefore, the appeal must be dismissed and the petition must be denied for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

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

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