

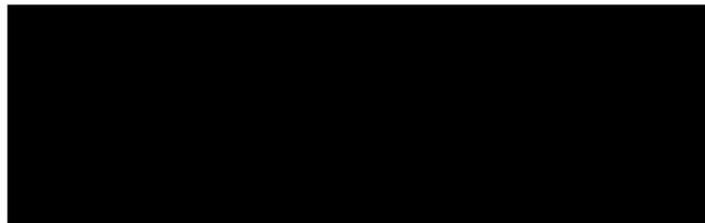
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



D2

Date: **JUL 05 2012** Office: CALIFORNIA SERVICE CENTER

FILE:

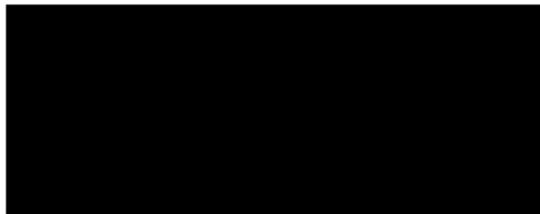


IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the 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 director of the California Service Center denied the nonimmigrant visa petition, and the matter is before the Administrative Appeals Office (AAO) on appeal. 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 "retail" business with 48 employees. It seeks to employ the beneficiary in a part-time capacity as a "Market Research Analyst" and to classify her 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 had not complied with the requirements for filing a Form I-129, Petition for a Nonimmigrant Worker.

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

The issue before the AAO is whether the petitioner established filing eligibility at the time the Form I-129 was received by U.S. Citizenship and Immigration Services (USCIS).

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) (2010) in pertinent part as follows:

General. Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission.

Further discussion of the filing requirements for applications and petitions is found in pertinent part at 8 C.F.R. § 103.2(b)(1):

Demonstrating eligibility at time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

In matters where evidence related to filing eligibility is provided in response to a director's request for evidence, 8 C.F.R. § 103.2(b)(12) (2010) states in part:

An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

The regulations require that before filing a Form I-129 petition on behalf of an H-1B employee, a petitioner obtain a certified Labor Condition Application (LCA) from the U.S. Department of Labor (DOL) in the occupational specialty in which the H-1B nonimmigrant will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The June 12, 2009 version of the instructions that accompanied the Form I-129 filed in this matter also specify that an H-1B petitioner must document the filing of an LCA with the DOL when submitting the Form I-129.

On November 5, 2009, USCIS issued correspondence which provided that, in order to accommodate the public in light of ongoing processing delays at DOL, H-1B petitions could be filed with uncertified LCAs for the period from November 5, 2009, through March 4, 2010. This temporary acceptance of uncertified LCAs required petitioners to wait at least seven calendar days from the filing of the LCA before filing the corresponding H-1B petition, and further required petitioners to submit evidence of the filing of the LCA in the form of the e-mail notice from DOL confirming receipt of the LCA on or before the date the H-1B petition was filed.

Moreover, in a subsequently issued question and answer posting, USCIS states in pertinent part the following:

USCIS will not deny an H-1B petition filed during the temporary extension on the basis that the LCA originally filed with [the] petition was certified after the petition was filed, *as long as the case is found to be otherwise eligible.*

* * *

[T]he certified LCA submitted in response to the RFE must be the same LCA that was pending at the time of filing of an H-1B petition receipted under the temporary acceptance procedures. Each LCA has a unique identification number. *Submission of a new certified LCA possessing a different identification number than the LCA referenced upon initial filing will be denied.* The only exception is if the new LCA was certified prior to the filing of the petition.

U.S. Citizenship and Immigration Services, *Questions and Answers: Temporary Acceptance of H-1B Petition Filed without DOL's Certified Labor Condition Applications (LCAs)* (Dec. 8, 2009),

<http://www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=bf296bc8a6f65210VgnVCM100000082ca60aRCRD&vgnnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD> (last visited June 27, 2012) (emphasis added).

In this case, the petitioner filed the instant petition on Form I-129 with USCIS on December 17, 2009. The petitioner also submitted a copy of an e-mail from DOL confirming that the petitioner had filed an LCA (I-200-09336-534341) (LCA #1) on December 2, 2009.

On December 18, 2009, the director issued an RFE and requested a certified copy of the LCA filed on December 2, 2009. In response, on January 20, 2010, counsel for the petitioner submitted a letter stating that the LCA was pending as a result of DOL's inability to verify the petitioner's Federal Employer Identification Number (FEIN). Counsel also submitted an email dated December 22, 2009, from DOL stating the following:

Thank you for submitting the requested information related to the FEIN for Kiku Corporation. Based on the documentation submitted to the CNPC on DECEMBER 11, 2009, the FEIN has not been verified as an obviously valid nine-digit FEIN assigned by the Internal Revenue Service (IRS). In order for the employer to overcome the issue identified on the denial determination for any future LCAs submitted using this exact FEIN, the CNPC must obtain documentation from the employer clearly showing the FEIN and the name of the employer associated with the unique identification number.

On February 16, 2010, the director denied the petition. The director found that the petitioner failed to provide a copy of an LCA certified prior to the filing of the petition that covered the requested validity period.

On appeal, counsel submits a copy of a certified LCA (I-200-10033-321184) (LCA #2) filed with DOL on February 2, 2010, and certified on February 8, 2010. Counsel notes that the IRS confirmed the petitioner's FEIN as 84-1001556 on January 26, 2010, which the AAO notes is *after* the December 3, 2009 denial of LCA #1. Counsel also submitted a copy of the January 26, 2010 IRS letter responding to the petitioner's January 26, 2010 telephone inquiry regarding the petitioner's FEIN.

Copies of e-mail correspondence submitted by counsel on appeal regarding the FEIN matter indicate that the petitioner's counsel sent a copy of the IRS letter to DOL on January 27, 2010, and that DOL acknowledged the submitted information on January 29, 2010. DOL's January 29, 2010 email states the following:

Thank you for submitting the requested information related to the FEIN for Kiku Corporation. The FEIN has been verified as a valid nine-digit FEIN assigned by the Internal Revenue Service (IRS). *The employer may now submit a new ETA Form 9035E for processing.*

(emphasis added).

Counsel contends that the petitioner attempted to verify its FEIN by submitting documentation to DOL but that such efforts were "futile." Noting that the "obvious inaccuracy" alleged by DOL did not exist and that LCA #2 contains the same information as LCA #1, counsel contends that the petitioner's failure to submit a certified LCA by January 17, 2010, was through no fault of his client.

A review of the evidence submitted on appeal demonstrates that LCA #1 was denied on December 3, 2009, and that contrary to counsel's claim on January 20, 2010, that LCA was not "still pending." Although the AAO notes that the basis of the December 3, 2009 denial of LCA #1 was an inaccuracy in the petitioner's FEIN number that appears now to have been accurately stated on LCA #1, it is clearly stated in the December 3, 2009 denial notice (sent via e-mail) that the petitioner could file a corrected LCA, but that a corrected LCA would be considered a new application. Moreover, DOL's January 29, 2010 e-mail to the petitioner, which confirms receipt of the petitioner's evidence clarifying its FEIN number, also states that "[t]he employer may now submit a *new* ETA Form 9035E for processing." (emphasis added). Finally, DOL's February 2, 2010 e-mail to the petitioner confirming receipt of LCA #2 clearly confirms that this new LCA, which is the LCA submitted by the petitioner on appeal, is not the same LCA upon which the petition in this matter was based.

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing. Alternatively, the temporary public accommodation implemented by USCIS on November 5, 2009, allowed the petitioner to supplement the record with evidence of an approved LCA subsequent to the filing of the petition in accordance with the specific guidelines set forth above. However, the petitioner failed to satisfy these requirements and, instead, attempted to submit an LCA that was both filed and certified after the petition was filed in this matter. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The petitioner failed to comply with the filing requirements at 8 C.F.R. § 214.2(h)(4)(i)(B), and the appeal must be dismissed and the petition denied for this reason.

Beyond the decision of the director, even if the petitioner had satisfied the temporary acceptance procedures outlined above, the petitioner is not otherwise eligible for the benefit sought in this matter. Specifically, beyond the decision of the director, the AAO finds that the petitioner has failed to establish that the 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), 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, *inter alia*, the following documents: (1) an evaluation of the beneficiary’s foreign degrees; (2) a copy of the beneficiary’s Master of Business Administration diploma awarded by Teikyo Loretto Heights University in Colorado; (3) a copy of the beneficiary’s Teikyo Loretto Heights University transcript; (4) a copy of the beneficiary’s Bachelor of Arts in International Business diploma awarded by Teikyo Loretto Heights University; and (5) a summary of the petitioner’s offer of employment to the beneficiary.

The petitioner states in an attachment to the Form I-129 that the beneficiary’s job duties will be as follows:

[The beneficiary] will design and plan research methodology and implement procedures for obtaining data from local, regional, and national markets. [The beneficiary] will analyze, organize, and evaluate gathered data to determine potential sales markets, marketing trends, pricing, as well as comparisons with competitors’ data. [The beneficiary] will develop marketing strategies based

upon market and demographics analysis, as well as preparations and updates of marketing reports to management. [The beneficiary] will create marketing campaigns and advertising plans.

In its Form I-129 support letter, the petitioner explained that it is a retail business with three restaurants and that it intends to expand its business and establish a franchise. The petitioner stated that the "highly specialized and demanding position" requires an individual with "at least a Bachelor's Degree in Marketing, Business Administration, or related field."

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of "at least a Bachelor's Degree in Marketing, Business Administration, or related field" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *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, 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).¹

¹ 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.

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. 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 DOL's *Occupational Outlook Handbook* (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.² Based on the petitioner's statements, 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

² The AAO's references to the *Handbook* are to the 2012-2013 edition available online. The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>.

- 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."³ 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

³ 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.

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 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.

Consequently, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions in the field of the proffered position that can be performed by persons without a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). 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"). Accordingly, the petitioner has failed to establish 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. 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 at least a bachelor's degree in a specific specialty or its equivalent. Again, the petitioner simply provides its own unsupported opinions with regard to the qualifications necessary for an individual to perform the duties of the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them.⁴ Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

⁴ Moreover, the petitioner has designated the proffered position as a Level I position on both LCA #1 and LCA #2, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).

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

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).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

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