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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

82



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:

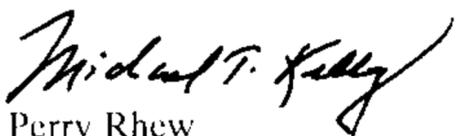


INSTRUCTIONS:

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,

for 
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was initially approved by the Director, California Service Center. After the beneficiary's visa interview at the U.S. Embassy in London, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR) on February 23, 2010. The director ultimately revoked the approval of the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 visa petition the petitioner stated that it is in the business of providing transportation for medical and school facilities. The petition approval whose revocation is the subject of this appeal was granted for the beneficiary to serve as an H-1B temporary 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). According to the Form I-129, the beneficiary was to serve as a Budget Analyst. Likewise, the Labor Condition Application (LCA) filed to support the petition was certified for a Budget Analyst position.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's NOIR; (3) the response to the NOIR; (4) the director's revocation letter; and (5) the Form I-290B and counsel's submissions on appeal.

U.S. Citizenship and Immigration services (USCIS) may revoke the approval of an H-1B petition pursuant to the revocation-on-notice provisions at 8 C.F.R. § 214.2(h)(11)(iii), which state the following:

- (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
 - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
 - (2) The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
 - (3) The petitioner violated terms and conditions of the approved petition; or
 - (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
 - (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

- (B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The director sent an NOIR to the petitioner, who was offered an opportunity to submit additional evidence or arguments for consideration. The third paragraph at page two of the NOIR stated as follows the contemplated grounds for revocation:

USCIS has received information regarding the beneficiary's continued qualification for the classification sought. In accordance with [8 C.F.R. § 214.2(h)(11)(iii)], it is the intent of USCIS to revoke the approval of the petition because [(1)] the beneficiary is no longer employed by the petitioner in the capacity specified in the petition; [(2)] the statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; [(3)] the petitioner violated the terms and conditions of the approved petition; the petitioner violated requirements of section 101(a)(15)(H) of the Act and 8 C.F.R. § 214.2(h), and/or the approval of the petition violated paragraph (h) of this section [, that is, the H-1B specialty occupation regulations at 8 C.F.R. § 214.2(h), and/or [(4)] the approval of the petition violated paragraph (h) of this section [, that is, the H-1B specialty occupation regulations at 8 C.F.R. § 214.2(h)].

The AAO notes that the above section, and the main body of the NOIR that followed, indicated an intent to revoke approval of the petition on each of the five revocation-on-notice grounds specified at 8 C.F.R. § 214.2(h)(11)(iii).

The AAO further notes that, in addition to the above-quoted paragraph reciting grounds for revocation, the NOIR alleged several aspects of the petition that required revocation of its approval.

First, the NOIR alleged that the beneficiary's foreign degree, evaluated to be equivalent to a U.S. bachelor's degree in Economics with a concentration in Agricultural Economics, did not qualify the beneficiary for service as a Budget Analyst if the position were found to be a specialty occupation.

As the "second issue to be discussed," the NOIR stated, in most pertinent part, that "[g]iven the complexity and nature of the petitioner's business there does not appear to be sufficient work for a budget analyst." Incidental to this second observation, the NOIR requested several categories of additional evidence "to establish a bona fide job offer for an [sic] Budget Analyst position."

As its third major factual basis, the NOIR alleged that the beneficiary “has not been and/or will not be performing duties in a specialty occupation as claimed on the petition.” The NOIR also framed this as “[t]he third issue to be discussed,” that is, “whether the position offered to the beneficiary qualifies as a specialty occupation.”

After receiving counsel's response to the NOIR, the director revoked the approval of the petition on May 20, 2010, finding that the evidence of record is insufficient to show that the job offered could not be performed by an experienced individual whose qualifications fall short of a baccalaureate degree, or the equivalent, in a specific specialty and, therefore, the proffered position does not meet any of the criteria for classification as a specialty occupation. The AAO observes that, if the proffered position is not a specialty occupation position, then statements of fact made in the visa petition were inaccurate, employment of the beneficiary in the non-specialty proffered position would be a violation of the terms and conditions of the approved petition, and employment of the beneficiary in the non-specialty proffered position would violate the requirements of section 101(a)(15)(H) and 8 C.F.R. §214.2(h). However, the director revoked approval of the petition on only one explicitly expressed ground, that is, her finding that the evidence in the record of proceeding does not support approval of this petition, in that, even upon consideration of the petitioner's response to the NOIR, the petitioner failed to establish the proffered position as a specialty occupation.

Upon review of the entire record of proceeding, and with particular attention to the NOIR, the response to the NOIR, the wording of the director's decision, and all of the submissions on appeal, the AAO concludes as follows. Although the NOIR also included additional grounds for the intended revocation, the director decided to revoke on only one of them, namely, that the approval of the petition was erroneous, because the petitioner had failed to establish the proffered position as a specialty occupation (which is a ground for revocation under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), that is, “The approval of the petition violated paragraph (h) of [8 C.F.R. § 214.2].” The AAO also concludes that, as will be apparent in the discussions below, the director was correct in revoking approval of the petition on that ground, and the submissions on appeal have not effectively rebutted or overcome the ground for revocation that the director specified in his decision to revoke. Accordingly, the appeal will be dismissed, and the approval of the petition will be revoked.

On appeal, counsel asserts that the director's basis for denial was erroneous, and counsel contends that, contrary to the director's decision, the petitioner satisfied all evidentiary requirements for a specialty occupation position. The AAO disagrees.

Section 214(i)(1) of the Immigration and Nationality Act (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.

With the visa petition, counsel submitted evidence sufficient to show that the beneficiary has a bachelor's degree in Agricultural Economics, awarded by the University of Reading, in the United Kingdom. Counsel also submitted an evaluation that states that the beneficiary's degree is equivalent to a bachelor's degree in economics, with a specialization in agricultural economics, awarded by a regionally accredited United States institution of higher learning.

Counsel submitted a letter, dated April 2, 2008, from the petitioner's CEO, who stated that the following are the duties of the proffered position:

[A]nalyze the budget, including for completeness, accuracy, and conformance with procedures and regulations and analyze budgeting and accounting reports for the purposes of maintaining expenditure controls, which would entail: analyzing monthly budgeting, accounting and reports to maintain expenditure controls; directing the preparation of regular and special budgets and reports; consulting with management personnel to ensure that budget adjustments are made in accordance with program changes; providing advice and technical assistance with cost analysis, fiscal allocation, and budget preparation; summarizing budgets and submitting recommendations for the approval or disapproval of funds allocation; seeking new ways to improve efficiency and increase profits; reviewing operating budgets to analyze trends affecting budget needs; examining budget estimates for completeness, accuracy, and conformance with procedures and regulations; and performing cost-benefit analysis to compare operating programs, review financial requests, or explore alternative financing methods.

In its response to the NOIR, the petitioner included the following comments to supplement the above-quoted April 2, 2008 letter from the petitioner's CEO:

The job duties for the position are described in my letter of April 2, 2008. The analysis and development of financial budgets entails, among other things, the Budget Analyst to work with the company Chief Executive Officer (CEO), myself, the Office Manager and Accountant. It should be noted that the Office Manager performs the bookkeeping for the company. (The Office Manager is responsible for, among other things, computing, classifying, and recording numerical data to keep the financial

records of the company complete. The Office Manager also checks the figures for mathematical accuracy; uses the computer; receives and records cash and checks; audits cash receipts, expenditures, accounts payable and receivable, and profit and loss, etc. The current Office Manager has been performing the bookkeeping for the company for the last two years.)

Initially, the budget analyst would review management achievements and fiscal performance in the previous years, which includes analyzing and reviewing the actual figures of the company and, based on this review, discussing goals and objectives for the company's financial initiatives and different business activities with the development and execution of a strategic short-range and to long range plan.

In addition, the Budget Analyst would estimate the costs required to achieve the objectives, including staff, supplies, insurance, repairs and equipment and other resources and include the CEO, office manager (bookkeeper) and accountant in discussions of costs to ensure that all resources required for the objectives are considered. The financial history of the previous years will be analyzed, reviewed and considered to determine some of this data for the strategic planning, and the Budget Analyst will also consider impending changes, such fluctuations in insurance and the inevitable repairs to the transportation equipment.

Furthermore, the Budget Analyst will consider income as well as expenses. Though income is unpredictable, the Budget Analyst may estimate revenues based on the financial history of the company and the current contracts for services.

In that letter, the petitioner's CEO also asserted that the petitioner needed to add someone to its staff "to help us to analyze and interpret data to help us meet our goals and initiatives." The CEO also asserted that that addition of a Budget Analyst will help the petitioner "develop a strategic short to long range plan" so that it can "meet certain financial initiatives" and "meet the goals and objectives of different business activities, such as "telephone costs, insurance costs, rental costs, and staffing costs, repair costs, office space costs, legal and professional costs, telephone and supply costs, traffic violations, and auto and truck costs, etc."

The AAO, by the way, accords no evidentiary weight to the CEO's statements that the beneficiary would assist with the claimed "financial initiatives" of "considering the diversification and expansion of our business over the next five years to include other transportation activities" and of "considering the acquisition of other businesses in the same industry, thus acquiring additional equipment (such as vans) and property, or perhaps the leasing or purchasing of new equipment." The AAO discounts those statements because there is no documentary evidence in the record of proceeding that substantiates the stage that the claimed "financial initiatives" have reached and that demonstrates that these initiatives have generated or in the future would generate any substantial amount of substantive budget-analyst work for the beneficiary that would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As a preliminary matter, the AAO finds that, to the extent that the proposed duties are described – which the AAO finds to be exclusively in generalized terms of functions generic to the claimed occupation in general – those duties fail to convey any particular level of specialization, complexity, and/or uniqueness that would distinguish them from those of budget analyst positions performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

As such, the AAO finds, that the extent to which the proffered position and its constituent duties are described in this record of proceeding do not convey, alone or in the aggregate, an inherent need for the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

The petitioner does not explain and document the proposed duties and the encompassing position in any substantially specific details that would convey the methodologies, analytical processes, and other substantive aspects of the proffered position; what performance of those job aspects would require in theoretical and practical applications of highly specialized knowledge; or any necessary correlation between such applications and attainment of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

As such, the AAO additionally finds, that the evidence in the record of proceeding does not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than positions which may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The AAO also observes that the petitioner has not supplemented the position and duty descriptions with persuasive evidence that their actual performance in the particular context of the petitioner's business operations would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

As these evidentiary assessments and findings are critical to its analysis of the criteria 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO hereby deems them incorporated into its analysis of each of those criteria later in this decision.

The support letter further states that the position qualifies as a specialty occupation because the minimum educational qualification for the position is a bachelor's degree. The petitioner's CEO did not state, however, that the proffered position requires a bachelor's degree in any specific specialty.

On February 23, 2010, the director issued the NOIR in this matter. The director requested additional information from the petitioner to rebut the grounds for its intent to revoke the approval of the petition. More specifically, the director requested evidence to demonstrate that the proffered

position qualifies as a specialty occupation position.

In response to the director's NOIR, counsel asserted, in a letter dated March 24, 2010, that, according to the *Handbook* and *O*NET*, business analyst positions fall within the business/economic analyst occupations, and that

It is well established that most analysts positions are considered H-1B level occupations by the AAO because the bachelor's degree or higher in a specialized field of study is usually required for most of these occupations.

Counsel quoted from West Publishing Company's *H-1B Handbook* for the proposition that Market Research Analyst, Management Analyst, Financial Manager/Planner, Operations Analyst, and Accountant and Auditor positions usually require a bachelor's degree. The AAO observes that the proffered position is not identified as a Market Research Analyst, Management Analyst, Financial Manager/Planner, Operations Analyst, Accountant, Auditor, or Business Analyst position, but as a Budget Analyst position. In any event, as the referenced quotation obviously does not address the particular position that is the subject of this proceeding, it merits little weight.

Counsel provided a letter, also dated March 24, 2010, from the petitioner's CEO, who reiterated the previous description of the duties of the proffered position and stated that the beneficiary would work with her, with the petitioner's office manager, and with its accountant. She further stated that the petitioner's office manager performs bookkeeping operations for the petitioner and that the minimum educational requirement for the proffered position is a bachelor's degree in business, economics, or a business or economics-related degree.

Counsel also submitted the petitioner's organizational chart and a letter, dated March 23, 2010, from the owner of Quick Link Inc., another transportation company. The owner of Quick Link stated that if his company were to hire someone to perform the duties of the proffered position it would require a bachelor's degree in business, economics, or a business-related field. It did not state that his company had ever employed anyone in such a position, or why the position would require such a degree. For these reasons, the AAO accords no probative weight to the Quick Link letter.

Next, the AAO also observes that both the petitioner's CEO and the owner of Quick Link asserted that a bachelor's degree in business would be a sufficient educational qualification for the proffered position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed

position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Thus, the petitioner's recognition of a bachelor's degree in business, without additional specification, as a *sufficient educational qualification for the proffered position*, is tantamount to an admission that performance of the proffered position does not require at least a bachelor's degree, or the equivalent, in a specific specialty. This is sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to revoke approval of the visa petition for failure to establish the proffered position as a specialty occupation. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that support revocation of the approval of this petition.

The director revoked approval of the petition, finding that the evidence of record is insufficient to show that the job offered could not be performed by an experienced individual with less than a bachelor's degree, or the equivalent, in a specific specialty, and, therefore, the proffered position does not meet any of the criteria for classification as a specialty occupation.

On appeal, counsel for the petitioner asserted that the director erred in determining that the proffered position is not a specialty occupation, citing the aforementioned *DOL Handbook*, the *O*NET*, and some AAO decisions that have not been published as precedent decisions.

Counsel has not established that the facts of the AAO decisions cited are substantially the same as the facts in the instant case, or that the analyses applied in that case should govern the outcome of this appeal. Further, while 8 C.F.R. § 103.3(c) provides that USCIS precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Yet further, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). Counsel's citation of unpublished, non-precedential AAO decisions about positions other than that proffered here is not persuasive and does rebut the director's basis for revocation.

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

The AAO will first address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

As earlier noted, the petitioner filed this petition for a position that it identified as being a budget analyst.

In the chapter entitled "Budget Analysts," the *Handbook* provides the following descriptions of the duties of those positions:

- Work with program and project managers to develop the organization's budget
- Review managers' budget proposals for completeness, accuracy, and compliance with laws and other regulations
- Combine all the program and department budgets together into a consolidated organizational budget and review all funding requests for merit
- Explain their recommendations for funding requests to others in the organization, legislators, and the public
- Help the chief operation officer, agency head, or other top managers analyze the proposed plan and find alternatives if the projected results are unsatisfactory
- Monitor organizational spending to ensure that it is within budget
- Inform program managers of the status and availability of funds
- Estimate future financial needs

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm>s (last visited May 29, 2012).

The duties the petitioner's CEO attributed to the proffered position are consistent with and, in fact, almost identical to the duties of budget analysts as described in the *Handbook*. Thus, the AAO finds that the proffered position as described in the record of proceeding generally comports with the budget analyst occupation as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of budget analyst positions:

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. For the federal government, a bachelor's degree in any field is enough for an entry-level budget analyst position. State and local governments have varying requirements but usually require a bachelor's degree

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

As reflected in the above quotation, the *Handbook* does not support the proposition that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position offered. Although the *Handbook* states that most budget analyst positions require a bachelor's degree, and that some others require a master's degree, it does not state that no budget analyst positions are available to people without either degree. In fact, it makes clear that some budget analyst positions are available to people with experience in the field, but without such a degree.

Further, even for those budget analyst positions that may require a minimum of a bachelor's degree or the equivalent, the *Handbook* does not support the position that the requisite degree must be in a specific specialty. In fact, it makes clear that any bachelor's degree is sufficient for an entry-level Federal budget analyst position, states that a degree in any of a wide array of subjects may be acceptable for a budget analyst position in state or local government, and makes no statement pertinent to the variety of degrees that may be acceptable in private companies.

As noted above, counsel also cited *O*NET* as support for the proposition that the proffered position is a specialty occupation position. The *O*NET OnLine* chapter pertinent to the Budget Analysts occupational category, available at <http://www.onetonline.org/link/summary/13-2031.00>, places budget analyst positions in Job Zone Four.

An *O*NET* designation of Job Zone 4 indicates that a position requires considerable preparation. *O*NET OnLine* states that most but not all of the occupations within that Job Zone require a bachelor's degree, but it does not indicate whether budget analyst positions do or do not require such a degree. Further, it does not specify that a bachelor's degree in any specific specialty is required for any particular occupation, even if that occupation happens to be among those that may require a bachelor's degree. For both reasons, the Job Zone 4 designation does not demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). *O*NET OnLine* does not, therefore, support the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

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, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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 a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, the record contains no submissions from professional associations in the petitioner's industry attesting that a degree is a minimum entry requirement.

The petitioner did submit a letter from the owner of another firm in the industry. The author of that letter, however, did not state that his company had ever employed a budget analyst. Further, she indicated that a degree in business, without further specification, would satisfy the educational requirement of the proffered position. As explained in detail above, that assessment does not indicate either that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, or that, for positions parallel to one proffered here and in organizations similar to this petitioner, the industry's employers commonly require at least a bachelor's degree, or the equivalent, in a specific specialty.

Therefore, the AAO concludes 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).

Next, the AAO finds that the petitioner 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 evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree may not be required for budget analyst positions, and that, even for those budget analysts that may require a degree, a wide spectrum of degrees may be acceptable, including degrees not in a specific specialty related to budget analysis.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other budget analyst positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a

specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The descriptions of the duties do not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Additionally, 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 counsel claims are so complex or unique. While a few related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

On appeal, counsel implied that the petitioner has never previously employed a budget analyst. In any event, the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).²

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Directing the preparation of the petitioner's budget and analyzing it, consulting with management personnel and providing assistance with cost analysis, fiscal allocation, etc., are all within the usual duties of budget analysts, at least some of which, the *Handbook* suggests, do not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The AAO finds that, to the extent that they are described, the proposed duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular

² 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").

educational level in a specific specialty. Rather, the AAO finds that the proposed duties are presented in the record of proceeding in terms of generalized and generic functions that, as so generally described, fail to convey that their performance would require application of a particular level of a body of highly specialized knowledge that is usually associated with attainment of a particular level of educational attainment in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of a level of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the evidence of record, including the submissions on appeal and in response to the NOIR has failed to establish that the petitioner has satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation or that the petitioner has effectively rebutted and overcome the ground upon which approval of the petition was revoked. . Therefore, the appeal will be dismissed and the approval of the petition will be revoked.

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 approval of the petition is revoked.