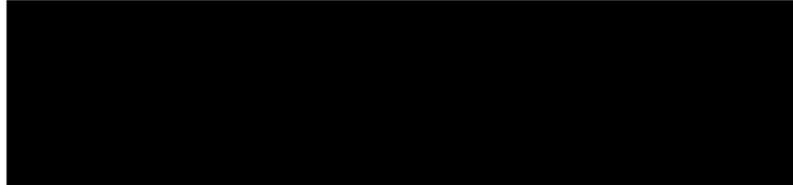


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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Date: **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 service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a manufacturer of custom-shaped structures. To employ the beneficiary in what it designates as a market research analyst position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which 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 a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> 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 provided evidence sufficient to show that the beneficiary has a Bachelor of Business Administration degree awarded by the Universidad Centroamericana José Simeón Cañas in El Salvador. Counsel also submitted an evaluation of the beneficiary's foreign education stating that it is equivalent to a bachelor's degree in business administration awarded by a regionally accredited university in the United States.

Counsel also submitted a letter, dated December 8, 2009, from the petitioner's CEO. It states the following about the duties of the proffered position:

We expect [the beneficiary's] job duties will be divided as follows. He will spend 20% of his time to seek and provide information to help [the petitioner] determine its position in the Spanish[-]speaking market for inflatable products. He will gather data on competitors and analyze their prices, sales, and method or marketing and distribution, especially with Spanish[-]speaking markets in mind.

He will spend 20% of his time to prepare reports of findings, illustrating data graphically and translating complex findings into written English text.

He will spend 25% of his time to collect and analyze data on customer demographics and Spanish speakers in particular, their preferences, their needs and their buying habits to identify potential markets and factors affecting product demand in the Spanish[-]speaking parts of Latin America and the United States.

He will spend 10% of his time to devise and evaluate methods and procedures for collecting data, such as surveys, opinion polls, or questionnaires, or arrange to obtain existing data. And he will monitor industry statistics and follow trends in trade literature about the Spanish[-]speaking community.

He will spend 15% of his time to measure the effectiveness of marketing, advertising, and communications programs and strategies aimed at Spanish speakers. He will forecast and track marketing and sales trends and analyze collected data.

He will spend 5% to present his reports to me to provide me and management with information and proposals concerning the promotion, distribution, design, and pricing of company products or services to Spanish speakers.

He will spend 5% of his time on various administrative matters.

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 market research analysts in general – those duties fail to convey any particular level of specialization, complexity,

and/or uniqueness that would distinguish them from market research 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.

Certainly the petitioner asserts many functional components for the proffered position, The petitioner, however, does not explain and document them 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 petitioner's CEO also stated, "For the [proffered] position, we require someone who has a bachelor[']s degree in business administration or accounting."

The AAO observes that a position with an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a specialty occupation position. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The petitioner has indicated that it finds the beneficiary's educational credentials sufficient for the performance of the proffered position. However, the beneficiary has only the equivalent of an otherwise undifferentiated U.S. bachelor's degree in business administration, which is not a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Further, the petitioner has not even alleged that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Either of these facts would form a sufficient basis to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

On January 14, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted a letter, dated February 24, 2010. In it, counsel reiterated the petitioner's CEO's description of the job duties of the proffered position. Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that market research analyst positions require a minimum of a bachelor's degree.

The director denied the petition on March 16, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

On appeal, counsel observed that the description of the duties of the proffered position correspond closely to the duties of market research analysts as described in O\*Net Online and in the *Handbook*. Counsel further observed that O\*Net Online indicates that 82% of market research analysts have a bachelor's degree or higher, and that the *Handbook* asserts that a bachelor's degree is the minimum educational requirement for such positions.

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.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the aforementioned *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

Counsel and the petitioner assert that the proffered position is a market research analyst position. In the chapter entitled "Market and Survey Researchers," the *Handbook* provides the following descriptions of the duties of market research analyst positions:

The AAO finds that the proposed duties as described by the petitioner comport with the general duties of the Market Research Analysts occupational category, as described in the 2012-2013 edition of the *Handbook*, which states, in pertinent part:

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.

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

U.S. Dept. 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> (accessed June 13, 2012).

The *Handbook's* section pertaining to the educational requirements of this occupational category states:

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.

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.

*Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (accessed June 13, 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>2</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

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<sup>2</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.

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.

Counsel also noted that, although the Department of Labor's O\*NET OnLine service indicates that 82% of market research analysts have a minimum of a bachelor's degree. The AAO notes, however, that the O\*NET contains no indication that market research analyst positions require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. Like the *Handbook*, then, the O\*NET also does not support the proposition that market research analyst positions constitute an occupational group which requires for entry at least a bachelor's degree, or the equivalent, in a specific specialty.

Further, the AAO finds, the petitioner has not presented any persuasive evidence to counter the implication of the pertinent sections of the *Handbook* and the O\*NET that a position's inclusion within the general occupational category of Market Research Analysts is not in itself sufficient to establish the position as one that for which the normal minimum requirement for entry is at least a bachelor's degree, or the equivalent, in a specific specialty. In this regard, the AAO also finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of technical knowledge in the field of market research, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

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

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the

industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 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. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 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 was observed above, the *Handbook* does not report that the petitioner's industry normally requires market research analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. Additionally, the record of proceeding contains no evidence pertinent to a professional association of market research analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. Also, the record contains no letters or affidavits from persons 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.

As just discussed, then, 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 market research 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 a person with such credentials.

The AAO here repeats that it is incorporating by reference into the analysis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) its earlier comments and findings regarding the generalized and generic level at which the proposed duties and the proffered position are presented in this record of proceeding. As

reflected in this decision's earlier discussion of the proffered position and the duties ascribed to it, the petitioner has not focused upon, nor provided evidence that develops, relative complexity or uniqueness as attributes of the proffered position. Further, the evidence of record 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, or, consequently, a person with at least a bachelor's degree in a specific specialty. Accordingly, the petitioner has not shown that its particular position is so complex or unique that it can be performed only a person with at least a bachelor's degree, or the equivalent,

Therefore, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In his response to the RFE issued in this case, counsel stated that this is the first time the petitioner has sought to employ a market research analyst. 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).<sup>3</sup>

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.

However, the duties of the proffered position, as described by the petitioner's CEO, contain no indication of specialization and complexity such that the knowledge they require is usually associated with any particular level of education.

As generically and generally as they are described, the duties of the proffered position (such as, for instance, devising and evaluating methods and procedures for collecting data; monitoring industry statistics; following trends in trade literature, measuring the effectiveness of marketing, advertising, and communications programs and strategies; forecasting and tracking marketing and sales trends; analyzing collected data; presenting reports; performing various administrative tasks, etc.) are not developed with sufficient detail and explanation to establish the knowledge that they would require

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<sup>3</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").

when and as actually performed in the specific context of the petitioner's particular business operations. Consequently, the record of proceeding does not establish the requisite association between such knowledge and the attainment of at least a bachelor's or higher degree in a specific specialty.

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

As the petitioner has not 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 is a specialty occupation position. The AAO concludes, therefore, that the director did not err in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue which, although not addressed in the decision of denial, nevertheless also precludes approval of this petition.

Evidence in the record shows that the beneficiary's education is equivalent to an otherwise undifferentiated bachelor's degree in business administration. Thus, if the petitioner had established the proffered position as a specialty occupation – that is, a one that requires at least a bachelor's degree in a specific specialty- the beneficiary would not be qualified to serve therein, as an undifferentiated bachelor's degree in business administration, that is, one without additional specialization, does not qualify as a degree in a specific specialty.

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 (9<sup>th</sup> 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.