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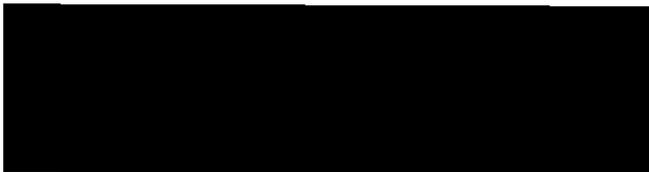
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Dr



Date: JUL 20 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a business employing 194 employees to "manage and operate duty free shops." To employ the beneficiary in what it designates as a "marketing manager (tech services)" position, the petitioner endeavors 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements:

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

The petitioner submitted the following documents, *inter alia*, with the Form I-129: (1) the petitioner's support letter dated February 1, 2010; (2) an evaluation of the beneficiary's foreign degree equivalency and work experience by [REDACTED] Morningside Evaluations and Consulting dated November 13, 2009; (3) a copy of the beneficiary's Certificate of Graduation and transcript issued by Yangzhou University in the People's Republic of China (PRC); (4) a copy of the petitioner's 2008 corporate income tax return; (5) a copy of the petitioner's Commonwealth of the Northern Mariana Islands Certificate of Incorporation; and (6) a copy of

the petitioner's claimed parent company's 2008 annual report. Mr. [REDACTED] concludes in his evaluation that on the basis of the beneficiary's academic studies and work experience, the beneficiary has attained the equivalent of at least a Bachelor of Business Administration degree, with a concentration in Tourism Management.

In the petitioner's support letter, the petitioner states that the beneficiary's job duties will be as follows:

*{The beneficiary} will be responsible {for} the day to day operations of the PRC and other market functions and customer relations. She will assist Division Sales and Marketing Vice President to create the Saipan Marketing Strategy for the PRC market and its implementation to maximize target results. She will participate in the PRC Marketing Committee of Marianas Visitors Authority to support and assist them to establish the Strategic Marketing Plan and its implementation, working together with the Division Sales and Marketing Vice President. [The beneficiary] will also provide management input related to visitor projections and movement to the Division Sales and Marketing Vice President. Duties of this professional position include:*

1. Analyzing and assessing market research and financial data concerning sales results in order to formulate a uniform policy to be implemented in the geographical area of her responsibility;
2. Designing and implementing strategies to increase profits, improve market share and rankings, and strengthen the brand image for the company's products, consistent with marketing efforts and business policies worldwide;
3. Directing staffing, training, and performance evaluations to develop and control sales and marketing program;
4. *Exercise fiscal control over profit and loss and sales and operating results;*
5. Supervising financial reporting under her responsibility with respect to sales and marketing activities;
6. Negotiating contracts, discounts, pricing, investment programs and spaces in key retail markets; and
7. Managing and overseeing the logistics, inventory control and distribution of products.

The petitioner states in its support letter that it requires a bachelor's degree in marketing, economics, or business administration for the position and that the duties of the position are "very complex." The petitioner further states that the duties of the position "necessitate the application of statistical analysis and financial theories, management, marketing and distribution principles and an understanding of principles of advertising and public relations."

On March 4, 2010, the director issued an RFE requesting the petitioner to submit the following: (1) a more detailed job description including specific job duties and percentages of time to be spent on each duty, level of responsibility, hours per week of work, and the minimum education, training, and experience necessary to do the job; (2) an explanation of why the position requires the services of a person with a bachelor's degree or its equivalent in the occupational field; (3) evidence demonstrating that the position meets one or more of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); and (4) evidence pertaining to the beneficiary's qualifications to perform services in a specialty occupation.

On April 6, 2010, in response to the director's RFE, the petitioner submitted the following documents: (1) a copy of the petitioner's 2008 corporate income tax return; (2) a copy of the petitioner's 2009 4<sup>th</sup> quarter Statement of Deposits & Filings; (3) a print-out of the U.S. Department of Labor's (DOL's) 2010-11 edition of the *Occupational Outlook Handbook* (hereinafter the *Handbook*) chapter on "Advertising, Marketing, Promotions, Public Relations, and Sales Managers"; (4) an organizational chart showing the hierarchy and staffing levels of the petitioner's Marketing Operations; (5) a letter from the petitioner's management company's Director of Compensation, Benefits, and Payroll explaining that "as a matter of policy, the normal minimum educational requirement for the position of Marketing Manager is a bachelor's degree in business, management, business administration or in a related field with relevant prior experience"; (6) sample job vacancy announcements for similar positions within the petitioner's employ; (7) job vacancy announcements printed from www.monster.com; (8) an evaluation of the beneficiary's foreign degree equivalency by ██████████ Morningside Evaluations and Consulting dated March 26, 2010; (9) an evaluation of the beneficiary's foreign degree equivalency and work experience by Warren Gary Sackler, an associate professor at the Rochester Institute of Technology (RIT), dated March 26, 2010.

Mr. ██████████ concludes in his evaluation that on the basis of the beneficiary's academic studies at Yangzhou University, and her hours of academic coursework, the beneficiary has attained the equivalent of at least a Bachelor of Science degree in Biological Technology. Mr. ██████████ concludes in his evaluation that on the basis of the beneficiary's academic studies and work experience, the beneficiary has attained the equivalent of at least a Bachelor of Business Administration degree with a concentration in Tourism Management.

In response to the director's RFE, the petitioner also explained that the beneficiary will "be responsible for managing and directing the company's sales promotions and marketing operations for the Chinese market" and provided the following description of the proffered position's job duties:

1. Working closely with the Marianas Visitors Authority, [the beneficiary] will review, analyze and study trends and preferences to determine appropriate marketing campaigns specifically aimed at the Chinese travel market, not only to attract visitors to DFS, but also to the Marianas in general (10%);
2. [The beneficiary] will work with airlines, cruise lines, in-bound tour operators in the Marianas and tour wholesale operators in China to develop new

products that will be beneficial to the company's business, taking into consideration such factors as demographics and types of tourism activities (10%);

3. [The beneficiary] will review and analyze market research studies, financial data, syndicated research studies and economic data in order to design and develop sales promotional programs and marketing programs to specifically target the Chinese tourism market. [The beneficiary] will design and implement strategies to increase profits, improve market share and rankings, and strengthen the DFS brand image in the target market as the premier destination for luxury brand products (15%);
4. [The beneficiary] will collaborate with brand houses at DFS Galleria in order to design, modify, implement and monitor sales promotional and marketing programs geared toward the target Chinese market. [The beneficiary] will evaluate each brands' strengths and weaknesses in the target market and provide input in the design and development of specific marketing programs for the target market segment. [The beneficiary] will coordinate the work of visual merchandisers, product development professionals and creative services personnel in order to design and develop esthetically appealing visual merchandising programs to enhance the brand's image as the premier luxury destination (15%);
5. [The beneficiary] will propose, finalize, execute, review and report sales promotion and marketing budgets on an annual basis. [The beneficiary] will provide fiscal control over profit and loss and sales and operating results (10%);
6. [The beneficiary] will provide managerial oversight with respect to financial reporting under her responsibility with respect to sales and marketing activities (10%);
7. [The beneficiary] will provide training to account executives and sales supervisors with respect to sales promotions and marketing programs. [The beneficiary] will review and monitor results and provide modifications to the company's programs on an ongoing basis (10%);
8. [The beneficiary] will lead in the negotiation for contracts, discounts, pricing and other terms for tie-in opportunities, collaborative programs and corporate programs on behalf of the company in the areas of sales promotion and marketing for the target market (10%); and
9. [The beneficiary] will otherwise ensure that the sales promotions and marketing programs for the Chinese market are effective and that the results are in line or exceed the annual business plan (10%).

The petitioner's counsel also explained that the proffered position is a "professional position because of the complexity of the duties" and that "[t]he attainment of a bachelor's degree is the minimum requirement of the petitioner and is a common requirement for the position of Marketing Manager."

The director denied the petition on April 15, 2010, finding that the proffered position of marketing manager reflecting the duties of "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" is not a specialty occupation. Citing to the *Handbook*, the director noted that the positions of Advertising, Marketing, Promotions, Public Relations, and Sales Managers are occupations that do not require a bachelor's degree in a specific specialty as a minimum for entry into the occupation. The director found that the petitioner failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also addressed the beneficiary's qualifications and concluded that Mr. [REDACTED] evaluation bears no probative value in the proceeding because (1) the evaluator is not a recognized authority in a field related to the proffered position, (2) there was no evidence showing that he is a college official with the authorization to grant college credit for training and/or employment experience, (3) there was no evidence showing that RIT has a program for granting college level credit for training and/or employment experience, and (4) there was no evidence showing that he is employed by RIT. The director also concluded that the beneficiary's foreign degree and the purported equivalency degree do not appear to relate to the majority of the proposed duties.

On appeal, the petitioner's counsel contends that the duties to be performed by the beneficiary are "highly unique and complex" and that the petitioner "require[s] a bachelor's degree" in positions such as the proffered position. The petitioner's counsel also contends that the director's decision "completely ignores the petitioner's employment practices standards as provided by the petitioner's management company." The petitioner's counsel also contends that the beneficiary possesses the requisite qualifications to perform the duties of the proffered position "based on her bachelor's degree and relevant professional experience in the travel industry."

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business, management, business administration or in a related field with relevant prior experience" 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). Furthermore, the mere requirement of a degree, without further specification, also does not establish the position as a specialty occupation. *See id.* ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employec, also does not establish eligibility.").

Therefore, the petitioner's assertion that its minimum requirement for the proffered position is a bachelor's degree in "business, management, business administration or in a related field with relevant prior experience," or simply a bachelor's degree, is tantamount to an admission that the

proffered position is not in fact a specialty occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>1</sup> The director's decision must therefore be affirmed and the petition denied on this basis alone.

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

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The petitioner claims that the duties of the proffered position are those of a marketing manager. The occupation of marketing manager is described as follows by the *Handbook*:

Advertising, promotions, and marketing managers plan programs to generate interest in a product or service. They work with art directors, sales agents, and financial staff members.

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<sup>1</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

*Id.*

<sup>2</sup> The AAO's references to the *Handbook* are to the 2012-13 edition available online. The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>.

## Duties

Advertising, promotions, and marketing managers typically do the following:

- Work with department heads or staff to discuss topics such as contracts, selection of advertising media, or products to be advertised
- Gather and organize information to plan advertising campaigns
- Plan the advertising, including which media to advertise in, such as radio, television, print, online, and billboards
- Negotiate advertising contracts
- Inspect layouts, which are sketches or plans for an advertisement
- Initiate market research studies and analyze their findings
- Develop pricing strategies for products to be marketed, balancing the goals of a firm with customer satisfaction
- Meet with clients to provide marketing or technical advice
- Direct the hiring of advertising, promotions, and marketing staff and oversee their daily activities

**Advertising managers** create interest among potential buyers of a product or service for a department, for an entire organization, or on a project basis (account). They work in advertising agencies that put together advertising campaigns for clients, in media firms that sell advertising space or time, and in organizations that advertise heavily.

Advertising managers work with sales staff and others to generate ideas for an advertising campaign. They oversee the staff that develops the advertising. They work with the finance department to prepare a budget and cost estimates for the advertising campaign.

Often, advertising managers serve as liaisons between the client requiring the advertising and an advertising or promotion agency that develops and places the ads. In larger organizations with an extensive advertising department, different advertising managers may oversee in-house accounts and creative and media services departments.

In addition, some advertising managers specialize in a particular field or type of advertising. For example, *media directors* determine the way in which an advertising campaign reaches customers. They can use any or all of various media, including radio, television, newspapers, magazines, the Internet, and outdoor signs.

Advertising managers known as *account executives* manage clients' accounts, but they don't develop or supervise the creation or presentation of the advertising. That becomes the work of the creative services department.

**Promotions managers** direct programs that combine advertising with purchasing incentives to increase sales. Often, the programs use direct mail, inserts in

newspapers, Internet advertisements, in-store displays, product endorsements, or special events to target customers. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, and contests.

*Marketing managers* estimate the demand for products and services that an organization and its competitors offer. They identify potential markets for the organization's products.

Marketing managers also develop pricing strategies to help organizations maximize profits and market share while ensuring that the organizations' customers are satisfied. They work with sales, public relations, and product development staff.

For example, a marketing manager may monitor trends that indicate the need for new products and services. Then they oversee the development of that new product. For more information on sales or public relations, see the profiles on sales managers, public relations managers and specialists, and market research analysts.

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Advertising, Promotions, and Marketing Managers," at <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-2> (last visited July 18, 2012).

While the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for *most* advertising, promotions, and marketing manager jobs, it does not indicate that such a degree is a minimum entry requirement or, more importantly, that the degrees held by such workers must be in a specific specialty that is directly related to advertising, promotions, and marketing, as would be required for the occupational category to qualify as a specialty occupation as that term is defined by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See *id.* at <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-4> (last visited July 18, 2012). That the *Handbook* does not indicate that marketing manager positions normally require at least a bachelor's degree in a specific specialty is evident in the following discussion in the "How to Become an Advertising, Promotions, or Marketing Manager" section of its chapter "Advertising, Promotions, and Marketing Managers," which does not specify a particular major or academic concentration:

A bachelor's degree is required for most advertising, promotions, and marketing management positions. For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A relevant course of study might include classes in marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography.

Most marketing managers have a bachelor's degree. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, completing an internship while in school is highly recommended.

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

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

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

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. Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of ten advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions.<sup>3</sup> The advertisements provided, however, establish at best that a bachelor's

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<sup>3</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just ten job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

degree is generally required, but not at least a bachelor's degree or the equivalent in a specific specialty. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry.

For instance, the first five advertisements submitted state only that a bachelor's degree, not a bachelor's degree in a specific specialty, is required. The sixth advertisement states that a "bachelor's degree" and a "marketing degree/certificate" is required. However, the advertisement is for a position in a company selling pet products and supplies which is a wholly different industry and dissimilar organization and, thus, it cannot be found to be a parallel position in a similar organization. The seventh advertisement states that it requires a "BA/BS in Marketing, Business, or related fields. MBA a plus." However, (1) as noted above, the requirement of a general business degree is insufficient to establish a requirement of a degree in a specific specialty; and (2) the advertisement is for an Internet Marketing Manager position performing duties dissimilar from the duties of the proffered position, and, thus, it cannot be found to be a parallel position.

The eighth advertisement states only that a "BA/BS" degree, not a bachelor's degree in a specific specialty, is required. The ninth advertisement states that the advertising company requires a "BA in Marketing or Business." However, (1) as noted above, the requirement of a general business degree is insufficient to establish a requirement of a degree in a specific specialty; and (2) the advertisement is for a position in a consumer packaged goods manufacturing firm, therefore, it cannot be found to be a parallel position in a similar organization. The tenth advertisement states that it requires a "Bachelor's Degree in Marketing, Finance, or Media Planning; Master's degree and retail experience a plus." However, the advertisement also states that "[t]he most important part of this job is that the candidate must have demonstrated and extensive social media experience. This means that the person is actively participating in a wide variety of social media activities such as blogging, community development and management, social bookmarking, commenting, etc. and is well connected with the broader social media world." Because there is no evidence that the proffered position requires any social media expertise, it cannot be found to be a parallel position in a similar organization.

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 has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The petitioner and counsel claim that the duties of the proffered position are complex, unique, and

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As such, even if the job announcements supported the finding that the position of marketing manager for a duty free store required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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

Specifically, the petitioner failed to demonstrate how the marketing manager duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While courses in marketing, economics, and statistics may be beneficial in performing certain duties of a marketing manager position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree in a specific specialty, or its equivalent are required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other marketing manager positions such that it refutes the *Handbook's* information to the effect that coursework not necessarily leading to a degree in a specific specialty, is acceptable for marketing manager positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than marketing manager positions or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of marketing manager is so complex or unique relative to other marketing manager positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, while the petitioner claims that it employs two marketing managers in parallel positions focusing on the Korean and Japanese markets, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

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<sup>4</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

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 marketing manager positions that are not usually associated with a degree in a specific specialty.

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

The AAO turns next to the issue of the beneficiary's qualifications. The AAO notes that the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that in any event, the combined evaluations of the beneficiary's education and work experience submitted by the petitioner are insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty in the field of business. Specifically, as the evaluations by [REDACTED] and [REDACTED] claim that equivalency was based in part on experience, there is no evidence that the evaluators have authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty in the field of business, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

Furthermore, the degree referenced by section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position. Therefore, in addition to a specific specialty degree requirement, the beneficiary must have a degree in that specific specialty or a closely related field to be considered qualified to perform the services of that specialty occupation. See *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). In other words, the petitioner must also demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.*

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occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Here, the opinion by Mr. [REDACTED] that the beneficiary's education in the PRC is equivalent to a U.S. Bachelor of Science degree in Biological Technology would not establish that that degree is one required by the proffered position if such position were a specialty occupation. The evidence of record lacks evidence establishing that the nature of the work proposed for the beneficiary involves the application of a bachelor's degree level of knowledge in Biological Technology. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty, or its equivalent, directly related to the proffered position, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. § 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.