



U.S. Citizenship
and Immigration
Services

Administrative Appeals Office
U.S. Citizenship and Immigration Services
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Date: **JUN 12 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a 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 "Restaurant and food stores" firm. The record contains evidence that the petitioner operates four doughnut shops. To employ the beneficiary in what it designates as a business development 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 the petitioner intends to comply with the Labor Condition Application (LCA) as certified, and failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's bases for denial were erroneous, and contended that the petitioner satisfied all evidentiary requirements.

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 notice of intent to deny (NOID); (3) the response to the NOID; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

USCIS computer records show that, on June 6, 2006, the petitioner filed a previous Form I-129 visa petition with receipt number [REDACTED]. The beneficiary of the instant visa petition was also the beneficiary of that previous visa petition. On January 17, 2007, that visa petition was approved for employment from January 17, 2007 to October 1, 2009. Pursuant to the terms of that approved H-1B visa petition, the petitioner was obliged to pay the beneficiary \$44,000 annually, which equates to \$21.15 per hour.

The record contains Earnings Statements the petitioner issued to the beneficiary for the one-week pay periods ended May 2, 2009, May 9, 2009, May 16, 2009, May 23, 2009, May 30, 2009, June 6, 2009, and June 13, 2009. Those statements indicate that the beneficiary worked 40 hours during each of those weeks, for which he was paid \$8.00 per hour.

A notice of intent to deny (NOID) issued on September 16, 2009 noted the discrepancy between the amount the petitioner had agreed to pay, and was obliged to pay, to the beneficiary and the amount the earnings statements indicate that the beneficiary was actually paid.

In response, counsel submitted a letter, dated October 14, 2009, from the petitioner's president. That letter states, "Due to slow down of our business [the beneficiary] had to work part[-]time from end of April 2009- June 2009." However, the earnings statements provided make explicit that the beneficiary worked 40 hours during each of the pay periods listed, and was compensated at the rate of \$8.00 per hour. Counsel submitted no evidence or explanation to reconcile the petitioner's president's assertion with the evidence, either with that letter, or on appeal.

The primary rules governing an H-1B petitioner's wage obligations appear in the U.S. Department of Labor (DOL) regulations at 20 C.F.R. § 655.731. Based upon the excerpts below, the AAO finds that this regulation generally requires that the H-1B employer fully pay the LCA-specified H-1B annual salary (1) in prorated installments to be disbursed no less than once a month, (2) in 26 bi-weekly pay periods, if the employer pays bi-weekly, and (3) within the work year to which the salary applies.

The pertinent part of 20 C.F.R. § 655.731(c) reads:

(c) *Satisfaction of required wage obligation.* (1) The required wage must be paid to the employee, cash in hand, free and clear, when due. . . .

(2) "Cash wages paid," for purposes of satisfying the H-1B required wage, shall consist only of those payments that meet all the following criteria:

(i) Payments shown in the employer's payroll records as earnings for the employee, and disbursed to the employee, cash in hand, free and clear, when due, except for deductions authorized by paragraph (c)(9) of this section;

(ii) Payments reported to the Internal Revenue Service (IRS) as the employee's earnings, with appropriate withholding for the employee's tax paid to the IRS (in accordance with the Internal Revenue Code of 1986, 26 U.S.C. 1, et seq.);

(iii) Payments of the tax reported and paid to the IRS as required by the Federal Insurance Contributions Act, 26 U.S.C. 3101, et seq. (FICA). The employer must be able to document that the payments have been so reported to the IRS and that both the employer's and employee's taxes have been paid except that when the H-1B nonimmigrant is a citizen of a foreign country with which the President of the United States has entered into an agreement as authorized by section 233 of the Social Security Act, 42 U.S.C. 433 (i.e., an agreement establishing a totalization arrangement between the social security system of the United States and that of the foreign country), the employer's documentation shall show that all appropriate reports have been filed and taxes have been paid in the employee's home country.

(iv) Payments reported, and so documented by the employer, as the employee's earnings, with appropriate employer and employee taxes paid to all other

appropriate Federal, State, and local governments in accordance with any other applicable law.

(v) Future bonuses and similar compensation (i.e., unpaid but to-be-paid) may be credited toward satisfaction of the required wage obligation if their payment is assured (i.e., they are not conditional or contingent on some event such as the employer's annual profits). Once the bonuses or similar compensation are paid to the employee, they must meet the requirements of paragraphs (c)(2)(i) through (iv) of this section (i.e., recorded and reported as "earnings" with appropriate taxes and FICA contributions withheld and paid).

* * *

(4) For salaried employees, wages will be due in prorated installments (e.g., annual salary divided into 26 bi-weekly pay periods, where employer pays bi-weekly) paid no less often than monthly except that, in the event that the employer intends to use some other form of nondiscretionary payment to supplement the employee's regular/pro-rata pay in order to meet the required wage obligation (e.g., a quarterly production bonus), the employer's documentation of wage payments (including such supplemental payments) must show the employer's commitment to make such payment and the method of determining the amount thereof, and must show unequivocally that the required wage obligation was met for prior pay periods and, upon payment and distribution of such other payments that are pending, will be met for each current or future pay period. . . .

(5) For hourly-wage employees, the required wages will be due for all hours worked and/or for any nonproductive time (as specified in paragraph (c)(7) of this section) at the end of the employee's ordinary pay period (e.g., weekly) but in no event less frequently than monthly.

The earnings statements submitted indicate that the petitioner has not fulfilled its obligation to pay the beneficiary the wage rate specified on the LCA on a regular basis and without reduction, suspension, or delay except in certain limited circumstances that do not appear in this record of proceeding as required by 20 C.F.R. § 655.731(c). The AAO finds that the director did not err in his determination that the record before him failed to establish that the petitioner would comply with the terms of the approved LCA in the instant case, and it also finds that the submissions on appeal have not remedied that failure. The appeal will be dismissed and the visa petition will be denied on this basis.

The remaining basis for the decision of denial is the specialty occupation issue.

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 (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 instant visa petition, counsel provided evidence that the beneficiary received a National Diploma in Technology from the [REDACTED]. Counsel also provided some evidence pertinent to the beneficiary's employment experience. Further still, counsel provided an evaluation that stated that the beneficiary's education and seven years of professional experience in marketing and related areas are equivalent to a bachelor's degree with a dual major in marketing and mechanical engineering technology from an accredited U.S. college or university.

Counsel also submitted a letter, dated July 7, 2009, from the petitioner's president. That letter contains the following description of the duties of the proffered position:

Collect and analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand. Study trends, costs, estimated and realized revenues to soundly advise on long-term commitments; Identify, develop, and evaluate marketing strategy, based on knowledge of establishment objectives, market characteristics, and cost and markup factors. Formulate marketing activities and policies to promote products and services, working with advertising and promotion managers. Use sales forecasting and strategic planning ensure the sale and profitability of products, lines, or services, analyzing business developments and monitoring market trends. Chart financial growth, documenting trends and analyzing and correlating revenues with methods of marketing. Prepare reports for management based on sales progress and advise management regarding volume sales and new clients. Research and provide information to help determine position in the marketplace. Measure the effectiveness of marketing, advertising, and communications programs and strategies. Conduct research on consumer opinions and marketing strategies, collaborating with marketing professionals, statisticians, pollsters, and other professionals. Attend staff conferences to provide management with information and proposals concerning the promotion, distribution, design, and pricing of company

products or services. Gather data on competitors and analyze their prices, sales, and method of marketing and distribution.

The petitioner's president also stated that the proffered position requires a minimum of a bachelor's degree or its equivalent in marketing, business administration, or a related field.

The AAO notes, initially, that an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty and does not mark a position as a specialty occupation position.

Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (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 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.

In the September 16, 2009 NOID, the service center asserted that the evidence then in the record did not demonstrate that the petitioner would employ the beneficiary in a specialty occupation. In response, counsel asserted that the proffered position meets the statutory definition of a specialty occupation position.

In the April 27, 2010 decision of denial, as was noted above, the director found, *inter alia*, 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 asserted that the proffered position qualifies as a specialty occupation position.

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 U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The chapter entitled "Market Researchers Analysts," the *Handbook* includes the following descriptions of the duties of market and survey researchers:

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

The referenced section of the U.S. Dept. of Labor's Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm> (last accessed May 29, 2012).

The duties the petitioner's president attributed to the proffered position are consistent with the duties of market research analysts as described in the *Handbook*. The AAO finds that the proffered position is a market research analyst position as described in the *Handbook*.

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

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

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.

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."² Section 214(i)(1)(b) (emphasis added).

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

Further, as was noted above, the petitioner's president indicated that an undifferentiated bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. As explained above, that also indicates that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Finally, the AAO 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

² 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.

knowledge in market research, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

The petitioner has not demonstrated that a baccalaureate or higher degree, or its equivalent, in a specific specialty 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)(I).

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, normally requires market research analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of market and survey researchers or market research analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

With his response to the NOID, counsel provided four vacancy announcements. One of those announcements is for a position designated a Business Analyst, Business Development position. Another announcement is for a Marketing/Business Development Analyst position. The remaining two vacancy announcements are for positions designated as Business Development Analyst positions.

The positions announced are with [REDACTED] a video equipment company; [REDACTED] a defense technology firm; [REDACTED], a pharmaceutical company; and [REDACTED], a data storage technology firm. None of the vacancy announcements were placed by organizations in the petitioner's industry.

One of the vacancy announcements requires a bachelor's degree in business, finance, or a related field. As was explained above, a position with an educational requirement that can be satisfied by an otherwise undifferentiated degree in business is not a specialty occupation position. One announcement states that it requires a bachelor's degree in a "relevant discipline." That is not a requirement of a bachelor's degree in any specific specialty. One states that the position announced requires a bachelor's degree, but, again, does not indicate that the degree must be in any specific specialty.

The final vacancy announcement indicates that the position it announces requires a "Master's degree (M.A.) or equivalent formal education; or four to ten years related experience and/or training; or equivalent combination of education and experience. It does not indicate that the requisite degree must be in any specific specialty. Further, four to ten years of related experience would not ordinarily be equivalent to a bachelor's degree in a specific specialty. None of the various ways that the educational requirement of that position may be satisfied requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

None of the positions announced in those four vacancy announcements specifies a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty. Therefore, they can offer no support for the proposition that parallel positions among similar organizations in the petitioner's industry require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, even if all four positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the four announcements is statistically insufficient to demonstrate an industry-wide requirement.³ The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

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 business development analyst or

³ 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 four job postings with regard to determining the common educational requirements for entry into parallel positions in similar restaurant and food store organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of business development analyst or market research analyst for a restaurant and food store organization 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 may 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 may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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 an individual with such credentials.

The duties of the proffered position are described in terms of functions generic to the related occupation in general. They contain no indication of a high degree of complexity or uniqueness. As such, and as so generally described, the duties do not indicate that they comprise a position more complex or unique than positions in the occupation that do not require at least a bachelor's degree in a specific specialty. Collecting and analyzing data on customer demographics, preferences, needs, and buying habits; studying trends, costs, and revenues; identifying, developing, and evaluating marketing strategy; engaging in sales forecasting and strategic planning; charting financial growth, documenting trends, analyzing and correlating revenues with methods of marketing, for instance, appear to be generic duties of a market research analyst position. They do not contain any indication of a degree of complexity or uniqueness that would require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that the *Handbook* indicates that other market research analyst positions do not.

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

On appeal, counsel stated that, prior to employing the beneficiary, the petitioner had not employed anyone in the proffered position. 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).⁴

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 bachelor's or higher degree, or the equivalent, in a specific specialty.

The AAO finds that the generalized and generic terms in which the proposed duties are described do not convey the relative degree of specialization and complexity required to satisfy this criterion. Also, as described in this record of proceeding, the duties do not reveal complexity and specialization above

⁴ 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").

those of positions in the occupation that are not usually associated with knowledge that requires at least a bachelor's or higher degree in a specific specialty.

Absent any persuasive evidence pertinent to the complexity and specialization of the research and analysis to be performed, the generalized description provided of the duties of the proffered position contains no indication of complexity and specialization that would require knowledge usually associated with at least a bachelor's degree or the equivalent 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).

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 additional reason.

The record suggests an additional issue that was not addressed in the decision of denial. As was stated above, the record indicates that the beneficiary has a National Diploma in Technology issued in [REDACTED]. It indicates that his major was mechanical engineering technology. The record contains employment verification letters pertinent to the beneficiary's employment history.

The record of proceeding contains two evaluations of the beneficiary's qualifications. Neither states that the beneficiary's education, in itself, is equivalent to a bachelor's degree. Both of the evaluations assert that the beneficiary's education and his employment experience, considered together, are equivalent to a minimum of a bachelor's degree or the equivalent with a dual major in mechanical engineering technology and marketing.

If a petitioner wishes to rely on the beneficiary's employment experience or training, other than academic education, even in part, in showing that he or she has the equivalent of at least a bachelor's degree in a specific specialty, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the evaluation must be from an official who has 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.

Further, USCIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience.

One of the evaluations, dated December 8, 2006, is from a professor at the [REDACTED] business at [REDACTED]. It is accompanied by a letter, dated October 23, 2003, from an associate dean at the same school, stating that [REDACTED] has a program through which college-level credit may be issued based on a candidate's foreign academic studies, training, and professional experience," and that the professor who provided the evaluation "has authority to make recommendations regarding the granting of college-level credit for experience."

The authority to make recommendations is not the authority to grant academic credit. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), that December 8, 2006 evaluation will not be considered for the proposition that the beneficiary has the equivalent of a bachelor's degree in any subject.

The other evaluation, dated December 13, 2006, is from an assistant professor at the School of Business at . It is accompanied by a letter from the director of undergraduate business advisement stating that "faculty members and administrators can correlate college-level credit through a variety of internship programs, advanced degrees earned and transfer credit from other academic institutions." It further states that the assistant professor who provided the December 13, 2006 evaluation "can approve credit for professional experience through our internship programs." That letter does not indicate that has a program for granting academic credit based on an individual's work experience, other than that gained in internship programs. Further, that the professor can approve credit for participation in an internship program is not the same as the authority to grant academic credit for work experience in general. The AAO will not consider that evaluation for the proposition that the beneficiary has the equivalent of a bachelor's degree in any subject.

Because the evidence submitted is insufficient to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent in any specific specialty, the evidence does not show that the beneficiary is qualified to work in any specialty occupation position. The appeal will be dismissed and the visa petition denied on this additional basis.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The appeal will be dismissed and the visa petition will be denied on each of the bases described above, with each considered as an independent and alternative basis for the decision. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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