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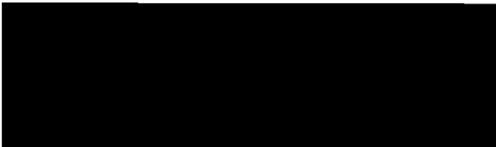
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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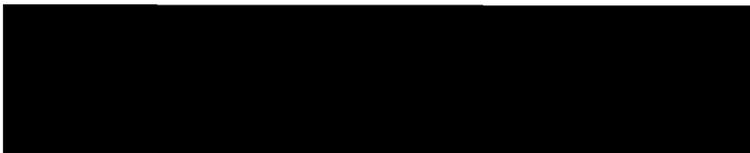


Date: **MAR 08 2012** Office: CALIFORNIA SERVICE CENTER FILE:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a weight loss and nutrition medical service provider with 12 employees and a stated gross annual income of \$819,256. It seeks to employ the beneficiary as a market research analyst 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

The primary issue before the AAO is whether the 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 one that requires:

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a market research analyst. In the petitioner’s letter dated October 28, 2009, the petitioner states that the beneficiary will be responsible for the following:

- (1) research and set up marketing strategies;

- (2) conduct statistical surveys, research customers' trends;
- (3) create and run market tests and prepare strategies for marketing;
- (4) gather data on competitors and analyze prices, sales and methods of marketing.

The AAO's first point with regard to its analysis of the proffered position is that, despite the petitioner's assumption to the contrary, market research analysts do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As will now be discussed, the *Handbook* indicates that market research analysts do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty. See Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook (Handbook)*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed February 27, 2012).

The "Market and Survey Researchers" chapter at the 2010-2011 edition of the *Handbook* indicates that while a bachelor's degree is often sufficient for entry-level market and survey research jobs, higher degrees are usually required for advancement and more technical positions. Strong quantitative skills and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data also are important for advancement. *Id.*

More specifically, the introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

While in college, aspiring market and survey researchers should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable toward obtaining a full-time position in the field, because much of the work may center on these duties. Some schools help graduate students find internships or part-time

employment in government agencies, consulting firms, financial institutions, or marketing research firms prior to graduation.

Id.

Although the *Handbook* indicates that “many” market and survey research jobs require a bachelor's degree as the minimum educational requirement, it does not state that a market research analyst requires a bachelor's degree or its equivalent *in a specific specialty*. Therefore, the *Handbook* does not support the view that a particular position within the wide spectrum of market and survey researcher jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a general market and survey research position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).

The AAO notes that, as reflected in the job description quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, which, the AAO finds, do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of market research analyzing knowledge that the beneficiary would have to apply to those matters. As discussed in greater detail, *infra*, as the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal must be dismissed, and the petition denied for this reason.

In its support letter, the petitioner indicates that the position requires a highly skilled professional to be able to suitably handle the complex duties that are a part of the job, and therefore, a master's degree in business administration or its equivalent is an essential prerequisite to filling this position. The petitioner also submitted copies of the beneficiary's Master of Arts in Business Administration and transcripts from Kingston University.

On November 12, 2009, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation, including evidence that a bona fide job offer for an accountant position exists.

In response to the RFE, the petitioner submitted another supporting letter dated December 1, 2000 stating the reason why the petitioner is willing to employ the beneficiary in the position of market research analyst. The petitioner explains that it employed the beneficiary in 2006 as a project director to direct, coordinate and exercise functional authority for location, planning, integration, and completion of construction projects, and that she has successfully set up [REDACTED]. The petitioner continues that since the project has been completed satisfactorily and she has been awarded a Master of Business Administration degree from Kingston University, the petitioner would like to employ her as a market research analyst.

Counsel also submitted the petitioner's organizational chart, federal income tax returns for 2007 and 2008, State Quarterly Wage Reports for all four quarters in 2007 and 2008 and the beneficiary's paystubs.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel for the petitioner argues that the proffered position of market research analyst qualifies as a specialty occupation because the position meets at least one of the four requirements. The petitioner cites the 2008-09 edition of the *Handbook* to support its assertion. To establish that a degree requirement is common to the industry, the petitioner submitted a letter from Skin Perfect & Slender Choice Medical.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns 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)).

Although the job description includes non-market research analyzing duties, the AAO agrees with counsel for the petitioner that the proffered position most closely resembles the position of market research analyst as generally described in the *O*Net* based on the main duties described by the petitioner. According to the *Handbook*, the position of market research analyst in the *O*Net* is covered in the chapter titled Market and Survey Researchers in the *Handbook*. See *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos013.htm> (last accessed February 27, 2012). Nevertheless and for the reasons discussed in greater detail *infra*, the AAO finds that the position of market research analyst as covered in the *Handbook's* chapter on Market and Survey Researchers does not categorically qualify as a specialty occupation.

Here and in accordance with the *Handbook's* descriptions of market research analysts, the record's descriptions of the proposed duties are limited to generic and generalized functions which, even when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically. Specifically, the *Handbook's* description of a market research analyst under the section on Market and Survey Researchers provides in pertinent part:

Market and survey researchers gather information about what people think. *Market research analysts help companies understand what types of products people want, determine who will buy them and at what price. Gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution, they analyze data on past sales to predict future sales.*

Market research analysts devise methods and procedures for obtaining the data they need by designing surveys to assess consumer preferences. While a majority of surveys are conducted through the Internet and telephone, other methods may include focus group discussions, mail responses, or setting up booths in public places, such as shopping malls, for example. Trained interviewers usually conduct the surveys under a market research analyst's direction.

Market opinion research has contributed greatly to a higher standard of living as most products and services consumers purchase are available with the aid of market research. *By making recommendations to their client or employer, market research analysts provide companies with vital information to help them make decisions on the promotion, distribution, and design of products or services.* For example, child proof closures on medicine bottles exist because research helped define the most workable design; and the growing variety of ready to cook meals, such as microwaveable soups and prepackaged meat products, exist because of increasing public demand for fast and convenient meals. The information also may be used to determine whether the company should add new lines of merchandise, open new branches, or otherwise diversify the company's operations. *Market research analysts also help develop advertising brochures and commercials, sales plans, and product promotions such as rebates and giveaways based on their knowledge of the consumer being targeted.*

Survey researchers also gather information about people and their opinions, but these workers focus exclusively on designing and conducting surveys. They work for a variety of clients—such as corporations, government agencies, political candidates—gathering information to help make fiscal or policy decisions, measure the effectiveness of those decisions, and improve customer satisfaction. Survey researchers may conduct opinion research to determine public attitudes on various issues; the research results may help political or business leaders measure public support for their electoral prospects or social policies. *Like market research analysts, survey researchers may use a variety of mediums to conduct surveys, such as the Internet, telephone interviews, or questionnaires sent through the mail.* They also may supervise interviewers who conduct surveys in person or over the telephone.

Survey researchers design surveys in many different formats, depending upon the scope of their research and the method of collection. Interview surveys, for example, are common because they can increase participation rates. *Survey*

researchers may consult with economists, statisticians, market research analysts, or other data users in order to design surveys. They also may present survey results to clients.

Id. (emphasis added).

Further, the Training, Other Qualifications, and Advancement section of the *Handbook* states the following:

A bachelor's degree is the minimum educational requirement for many market and survey research jobs. However, a master's degree is usually required for more technical positions.

In addition to completing courses in business, marketing, and consumer behavior, prospective market and survey researchers should take social science courses, including economics, psychology and sociology. Because of the importance of quantitative skills to market and survey researchers, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Market and survey researchers often earn advanced degrees in business administration, marketing, statistics, communications, or other closely related disciplines.

Id. Therefore, while the *Handbook* indicates that "many" market and survey research jobs require the minimum of a baccalaureate or higher degree, it does not state that such a degree is in fact the minimum, entry requirement for such positions, or more importantly, that such a degree must be in a specific specialty. Instead, a variety of courses in various specialties is sufficient.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

While the AAO acknowledges that majority of the duties described by the petitioner are similar to those under the section on market and survey researchers in the *Handbook*, it indicates that the proffered position does not belong to an occupational classification for which there is a categorical requirement for at least a bachelor's degree in *a specific specialty*. The duties of the proffered position as described in the record of proceeding do not indicate that the particular position proffered in this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry.

In addition, it must be noted that the petitioner's claimed entry requirement of at least a master's degree in "business administration" 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. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed supra, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business 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).

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose master's degree, i.e., a master of business administration degree. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. Therefore, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director's decision must be affirmed and the petition denied on this basis alone.

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.

Again, 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).

As reflected in this decision's discussions regarding the *Handbook's* information, 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. On appeal, counsel submits an undated letter from [REDACTED]. This letter states that the company is engaged in the weight loss and dieting business, it has employed a market research analyst to be responsible for the duties as

described by the petitioner for the proffered position. The letter goes on to state that the company considers a bachelor's degree in business administration or its equivalent as an essential prerequisite to filling this position. As previously discussed, this letter likewise fails to establish that the market research analyst position at [REDACTED] is a specialty occupation because, as with the petitioner, it only requires a general-purpose bachelor's degree, such as a degree in business administration, which will not justify a finding that a particular position qualifies for classification as a specialty occupation.

Further, even if a general bachelor's degree was sufficient, which it is not, the record does not contain any evidence showing that this company has employed a market research analyst and the position requires a bachelor's degree in business administration as a minimum educational requirement. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). While the letter claims that the company is engaged in the same industry as the petitioner and the position performs the same duties as described by the petitioner for the proffered position in this matter, it does not provide any information about the size and organizational structure. Therefore, the letter fails to establish that a bachelor's degree in a specific specialty is common to the petitioner's industry in positions that are parallel to the proffered position and located in organizations that are similar to the petitioner.

In addition, this letter is on computer-created letterhead and undated. The language used for the duties and skill requirements of a market research analyst is exactly the same as that used for the proffered position in this matter. This raises a question of the letter's reliability and credibility. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Therefore, the AAO cannot give this letter full evidentiary weight in this proceeding.

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

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst positions that require the application of market analyzing principles, but that are not at a level that require the degree of highly specialized knowledge in market research that is attained through at least a bachelor's degree, or the equivalent, in market research. Furthermore, the petitioner requires a general-purpose degree in business administration without a specific specialty. The petitioner's general-purpose degree requirements do not demonstrate that the proffered position is a specialty occupation requiring at least a bachelor's degree or the equivalent in a specific specialty and, in fact, support the opposite conclusion.

Next, the petitioner claimed that it previously employed the beneficiary in a project director position and seeks to continue employing her in the proffered position since the project has been completed. 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).¹

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized and generic nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge of market research and analysis at a level usually associated with at least a bachelor's degree, or the equivalent, in market research and analysis or a related specialty. Furthermore, the fact that the proffered position was classified as a Level I, or entry-level position, on the submitted Labor Condition Application (LCA) draws into question the credibility of any of the petitioner's claims regarding the complexity or specialization of the proffered position.

The AAO, therefore, concludes that the proffered position failed to satisfy 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 reason.

Beyond the director's decision, the AAO finds additional grounds of ineligibility. Specifically, the record shows that the instant petition was filed by the petitioner under the name of [REDACTED], which was incorporated on January 1, 2001 and elected as an S corporation on January 12, 2001 filing its federal tax returns on Form 1120S. The petitioner is identified with the federal employer identification number (FEIN) [REDACTED] doing business as [REDACTED].

¹ 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").

[REDACTED] for the petitioner also submitted some documents for a corporation named [REDACTED]. The evidence in the record shows that Sherman was incorporated on June 8, 1992, elected as an S corporation on September 1, 1992, identified with the FEIN of [REDACTED] is filing its own federal tax returns on the IRS Form 1120S and doing business at the same address with the petitioner. The record does not contain any evidence showing that these two S corporations are the same corporation or that one of them is the subsidiary or trade name of the other. Instead, the official business database held and maintained by the California Secretary of State shows that [REDACTED] [REDACTED] are active but independent California corporations. See <http://kepler.sos.ca.gov/cbs.aspx> (last accessed February 27, 2012). While it is noted that two corporations are owned by the same person, [REDACTED] and doing business at the same address, the AAO finds that each of them is a separate independent corporation with their own FEIN and therefore, the petitioner cannot use [REDACTED] information or documents to establish eligibility of the instant petition.

In the instant matter, the underlying LCA was filed by and certified to the petitioner on behalf of the instant beneficiary to fill the position of market research analyst for two years from November 1, 2009 to November 1, 2011.² On the LCA, the petitioner lists [REDACTED] [REDACTED] as the petitioner's trade name/doing business as and also filed the LCA with the FEIN of [REDACTED] which is assigned by the IRS for [REDACTED]. The petitioner indicates on the instant petition that it currently has twelve employees and the petitioner's organizational chart submitted in response to the director's RFE shows that the twelve positions consist of [REDACTED]

[REDACTED] two front desks and three nurses) at the main office in Rosemead and two (one front desk and one nurse) at the Rowland Heights Branch. However, Form 941 Employer's Quarterly Federal Tax Return and California Employment Development Department (EDD) Form DE-6 Quarterly Wage and Withholding Report submitted into the record show that while [REDACTED] had seven employees on its payroll in the first and second quarters, eight in the third quarter, and ten in the fourth quarters of 2007, and eleven employees in the first quarter, nine in the second quarter, and seven in the third and fourth quarters of 2008, the petitioner never had more than two persons (the instant beneficiary and the president of the petitioner) on its payroll during the years of 2007 and 2008. The petitioner's tax returns corroborate this information and show that the petitioner paid \$76,000 for compensation of officers and \$34,500 for salaries and wages in 2008, and \$72,000 for compensation of officers and \$34,500 for salaries and wages in 2007. In the meantime, Sherman's tax return shows that it paid salaries and wages of \$186,872 in 2007.

Therefore, the AAO finds that the instant petition was not filed with a properly filed and valid LCA and thus, the petitioner did not comply with the LCA requirement set forth by the regulations, because the submitted LCA was not filed by and certified for the petitioning corporation identified by its own FEIN.

The AAO also finds that the organizational chart provides inconsistent information about the

² USCIS records show that the beneficiary has been in the United States in H-1B status since February 19, 2004 [REDACTED] and thus, her six year limit would end on February 18, 2010. Therefore, the petition cannot be approved for the period requested even if the beneficiary were otherwise qualified.

number of employees employed by the petitioner. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not contain any independent objective evidence or even an explanation to resolve this inconsistency. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* The AAO cannot accept or give full evidentiary weight to that organizational chart. With the organizational chart containing a false statement/information, the petitioner not only failed to establish that the proffered position is a specialty occupation but also failed to demonstrate that the petitioner offered a *bona fide* job to the beneficiary at the time of filing the instant petition. The petition must be denied for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, 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, even if the petitioner had established that the proffered position is a specialty occupation, the beneficiary would still not qualify for the proffered position because the beneficiary's master of business administration degree is not from a regionally accredited college or university in the United States and has not been demonstrated as being equivalent to such or to being concentrated in any specialty.

Finally, beyond the decision of the director, the AAO also finds that the petition cannot be approved for another reason. Specifically and as noted above, it is clear from the admissions in the record that the petitioner initially obtained H-1B approval for the beneficiary to work as a project director [REDACTED]. During this approved H-1B employment, however, the petitioner materially changed the beneficiary's employment to that of the proffered position without filing the requisite amended petition seeking authorization for this change from USCIS. See 8 C.F.R. § 214.2(h)(2)(i)(E). Further, instead of clearly requesting that change with the instant petition, the petitioner compounded its violation of the prior terms and conditions of employment by marking box b under number two in Part 2 of the Form I-129, requesting "Continuation of previously approved employment without change with the same employer." The fact is that the instant petition did not seek to continue that previously approved employment and instead sought to employ the beneficiary in a materially different position. For this additional reason, the appeal must be dismissed and the petition denied.

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

Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). 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.

The appeal will be dismissed and the petition denied. 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.