



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 11 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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,

Ron Rosenberg
Acting 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.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner stated that it is an "Internet Marketing (Flash marketing)" firm. To employ the beneficiary in what it designates as an "Internet Marketing Specialist" position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

The issue on appeal before the AAO is whether the 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), 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The labor condition application (LCA) submitted to support the visa petition is approved for standard occupational classification (SOC) 19-3021.00, Market Research Analyst.

Counsel for the petitioner also submitted an evaluation of the beneficiary's foreign education which states that the beneficiary received a bachelor's degree in "Audio-Visual Communications and Multimedia Communications" and completed a "master's-level program in Audio-Visual Communications" at the [REDACTED] and that those studies are equivalent to a "Bachelor of Science Degree in Communications and a Master of Science Degree in Communications from an accredited college or university in the United States."

Counsel also submitted a letter, dated October 15, 2010, from the petitioner's CEO, which provides the following description of the duties of the proffered position:

In this position, [the beneficiary] will be responsible for developing and marketing our site, as well as for working with customers to develop their flash marketing campaigns conducted through our site. Our initial challenge is to ensure that our site attracts sufficient subscribers to make it an effective marketing tool for our small business customers. [The beneficiary] will develop, plan, and implement an overall internet marketing strategy for our site based on email, banner ads, search engine marketing, social media, advertising and public relations. He will develop and implement a media plan to ensure the successful launch of our site, as well as ongoing marketing initiatives, including promotions and event sponsorships designed to raise our site's visibility with our potential subscribers. Our initial market research has confirmed that a flash marketing site focused on a niche market is likely to have more success than sites with a general audience. In this regard, [the beneficiary] will perform consumer research to enable us to understand our target market and offer discount coupons tailored to the lifestyle, desires, and entertainment choices of our target market.

In addition, [the beneficiary] will be the primary contact for providers and customers for the Spanish Portal. He will provide marketing and pricing analysis and work with customers to develop their flash marketing campaigns conducted through our site. He will work with business customers to develop strategies in areas such as coupon pricing and limits on coupons offered, based on research and analysis of local customers, pricing, and the level of demand the business can meet.

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[The beneficiary] will oversee the launch of our site in the [REDACTED] markets, including managing all content and developing a detailed site plan and implementation schedule to meet our long-term goals concerning development and company sustainability. He will oversee the work of our Seattle-based contractor, [REDACTED] which will be responsible for the coordination of our online order entry system, database and website presence.

[The beneficiary] will research the Spanish market for business opportunities and analyze current trends for market evaluation and feasibility. He will also be accountable for identifying e-commerce trends and marketing opportunities, as well as providing competitor performance analysis. [The beneficiary] will work with the two international account executives to be based in Spain, who will be responsible for our marketing to business customers and expanding our subscriber base in Barcelona and Madrid, in order to define our product offerings and requirements. He will ensure that our portals conform both to our brand and to local market needs and he will coordinate online marketing initiatives and sales/promotional strategies to optimize our brand exposure.

[The beneficiary] will be responsible for conducting effective market research utilizing his expertise in internet and international marketing to develop significant, relevant data resources and create short and long term marketing plans. He will manage all aspects of the site related to content and marketing strategy and will facilitate our entry into the Spanish market utilizing his knowledge of Spain's urban centers and gay and lesbian culture. Our successful launch will enable our future expansion into U.S. and Canadian urban center markets.

The petitioner's CEO further stated that the position requires a bachelor's degree in marketing, communications, or a closely-related field, citing the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as evidence that Market Researcher positions and, therefore, the proffered position, require a minimum of a bachelor's degree.

On November 2, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. Specifically, the RFE requested the following:

Provide, in layman's terms, a clear explanation of what differentiates the proffered position from other related "non-specialty occupation" positions. Compare and contrast those duties to be performed that are more discretionary, demanding, complex, highly advanced, specialized, or sophisticated – exceeding industry or normal position standards – such that a baccalaureate level of education in a specific field of study is a realistic prerequisite for entry into the proffered position. Be exact and provide documentation to substantiate the claims of complexity.

In response, counsel submitted, *inter alia*, (1) a letter, dated November 17, 2010, from the petitioner's CEO; (2) 20 vacancy announcements; (3) an undated evaluation of the proffered position prepared by a professor of marketing at [REDACTED]; and (4) counsel's own letter, dated November 29, 2010.

In his November 17, 2010 letter, the petitioner's CEO provided the following expanded list of the duties of the proffered position:

- Research the Spanish market for business opportunities and analyze current trends for market evaluation and feasibility; conducting effective market research utilizing expertise in internet and international marketing to develop significant, relevant data resources and create short and long term marketing plans; accountable for identifying e-commerce trends and marketing opportunities, as well as providing competitor performance analysis. (25%).
 - This will include market research of specific neighborhoods in the target market for potential merchant advertisers; evaluation of those merchants' products and services and the applicability of the projects and services offered as they relate to our subscriber base.
 - In addition, an evaluation of the merchants' current marketing approach and effectiveness will be completed to provide a sales tool to the local account executives. This research will include the design and implementation of a marketing research tracking system to ensure contact, follow up; and sales closing effectiveness.
 - As part of the research, this position will design mockups of potential merchant advertisers' deal pages as they would appear on our site for presentation to the potential merchant by the local account executives. The research will incorporate and require an understanding of the cultural variances impacting mass media marketing; recommendations on marketing plan adjustments to compensate for cultural variances; and evaluation of the effectiveness of marketing plan adjustments.
 - It is the responsibility of this position to identify and stay abreast of e-commerce trends and apply those trends to our marketing strategy ahead of our competitors.
- Develop, plan and implement an overall internet marketing strategy for our site based on email, banner ads, search engine marketing, social media, advertising and public relations; develop and implement a media plan to ensure the successful launch of our site, as well as ongoing marketing initiatives, including promotions and event sponsorships designed to raise our site's visibility with our potential subscribers. (40%).
 - In order to develop, plan and implement our overall internet marketing strategy, the [beneficiary] will design the necessary

algorithms and proprietary tools to monitor and identify the intersection between social media marketing and search engine optimization (SEO) to ensure the effectiveness of the marketing strategy.

- The [beneficiary] will be required to utilize knowledge of information theory and media technology to design and implement keyword optimization of social content; define channels of search engine promotion; and refine Organic Search Engine Optimization to obtain a natural placement on organic search engine results pages through the identification and use of keywords, back linking and link building.
- The [beneficiary] will evaluate and define the optimal approach for our Search Engine Marketing (SEM) plan including the application of analytics to quantify the effectiveness of the SEM plan. In designing our internet marketing strategy, consideration of the effectiveness and cost of a Pay Per Click (PPC) marketing strategy will be the responsibility of this position in order to determine if the approach is economically beneficial.
- The [beneficiary] will design, monitor, and provide daily marketing content for the Social Media component of our marketing campaign on sites such as Facebook, Twitter, and other social media sites as determined relevant to our target market.
- The position will design, implement and evaluate our Affiliate Marketing Program including the development of competitor analysis evaluation tools to ensure that our affiliate program ranks first in the minds of affiliate sponsors to increase traffic to our site.
- The position will be responsible for the Mobile Commerce (mCommerce) application and must possess the knowledge required to adapt our site to the emerging mCommerce market place. This will include the use of Mobile Marketing concepts and technology that differs from ecommerce strategies, and the ability to incorporate the rapidly changing trends and strategies inherent in this new platform.
- The [beneficiary] will design all banner ads as well as the related media plan for banner ad placement. He will be responsible for tracking banner ad effectiveness by analyzing the source of new subscribers and preparing a cost benefit analysis of the banner ad component of the marketing plan.
- The [beneficiary] will design our email campaign, which will include frequency of distribution analysis to ensure that the email campaign does not create a negative impact on our brand, yet provides frequent enough exposure to encourage viral sharing by our customers.

- The position will utilize analytics and cross-component analysis reporting to evaluate the effectiveness of the overall marketing plan along with designing and implementing real time changes to increase ROI. Marketing results, analysis, and a report of implemented strategic changes will be delivered weekly to the CEO.
 - In addition, the position will measure, monitor and report impressions, number of hits, visits, unique visitors, conversion rate, bounce rate and key performance indicators on a daily basis and be prepared to discuss the impact on the company's marketing strategy.
 - The position will be responsible for creating print promotional materials, both general and merchant specific, to market our website. In addition, the creation of promotional events, establishment of promotional partnerships, and event coordination will be required.
 - The Specialist will be responsible for identifying traditional media markets (print, radio, tv) for consideration in the overall marketing plan. He will work closely with outside designers on the creation of all traditional marketing material.
 - The [beneficiary] will be the first media contact for the company and produce all press releases, respond to media enquiries, and actively seek promotional opportunities in the local and national press to increase site visibility.
- Perform consumer research to enable us to better understand our target market and offer discount coupons tailored to the lifestyle, desires, and entertainment choices of our target market. (3%).
 - This will include using specific software survey tools to approach current customers by running periodical surveys in order to analyze and understand our target market to build a personalized offer strategy to increase sales and revenues.
 - The site's online user forum will be monitored for direct feedback on the site; merchant offer feedback; as well as the creation of a social network forum to increase interaction between users. The [beneficiary] will be responsible for researching and developing an onsite social networking plan, which will include identifying media applications directing users to social items relevant to their interests, such as viral videos, YouTube links, etc.
 - Ensure that our portals conform both to our brand and to local market needs and coordinate online marketing initiatives and sales/promotional strategies to optimize our brand exposure. (5%).

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- This will include monitoring our online and offline exposure to further our brand and ensure that the brand properly relates to the personality of the company and the marketing services offered. This will include analyzing our brand perception in the market place as it applies to the individual brand components: name, symbol, color combination, and slogan.
- Oversee the launch of our site in the [REDACTED] markets, including managing all content and developing a detailed site plan and implementation schedule to meet our long-term goals concerning development and company sustainability. (5%).
 - This will include the use of quality assurance methodologies to verify the accuracy of new feature implementation and functionality and to act as lead in coordinating with the web developers and database administrators to minimize downtime.
 - The [beneficiary] will develop and coordinate all site content which will include the daily merchant deal copy, knowledge base articles, promotional content, customer email responses, moderating the onsite social media forum, etc.
 - This will include planning and coordinating with the account executives on the company's marketing strategy, as well as providing identification of required adjustments to the marketing plan, communicating with impacted team members, and ensuring that marketing plan adjustments have been implemented and are effective.
- Work with our Seattle-based contractor, [REDACTED] which will be responsible for the coordination of our online order entry system, database and website presence. (5%).
 - This will include establishing a database plan according to our requirements and improving the system to meet growth and expansion in the market. This will also involve measuring and monitoring distribution and flow of the site traffic. This position will work with the database administrators to ensure the website is up and functional, the user interfaces are optimized for ease of use, and the content changes are timely and accurate.
- Serve as the primary contact for providers and customers for the [REDACTED] including providing marketing and pricing analysis; working with customers to develop their flash marketing campaigns conducted through our site; and working with business customers to develop strategies in areas such as coupon pricing and limits on coupons offered, based on research and analysis of local customers, pricing, and the level of demand the business can meet. (5%).

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- The position will include designing detailed marketing plans for the local businesses advertising on our site including the copy, the images and graphics, and the application of interactive marketing best practices (Multimedia, Opt-in, Personalization, Story Construction, Compelling Offer, Immersion, Usability, Effective ROI, Brand Reshaping, and Viral Sharing) to ensure that the campaign meets professional standards and the merchant's revenue expectations.
- Work with the two international account executives to be based in Spain, who will be responsible for our marketing to business customers and expanding our subscriber base in [REDACTED] in order to define our product offerings and requirements. (5%).
 - This will include coordinating with the account executives to target specific local businesses that have been identified by the [beneficiary] as prime candidates for promotion on our site. The account executives will utilize the draft campaigns prepared by the [beneficiary] and related marketing tools to maximize selling agreements with the merchants. This will also include monitoring financial performance of the workforce and the effectiveness of the marketing tools provided to the account executives.

In her November 29, 2010 letter, counsel asserted that, in addition to being similar to a market research analyst position as described in the *Handbook*, the proffered position is very similar to Electronic Commerce Specialist positions as described in the Occupational Information Network (O*Net). Counsel observed that data collection is still underway for this latter type of position, and that it is not currently included, *per se*, in the *Handbook*.

Counsel further stated that the duties of the position demonstrate that the position requires specialized expertise in marketing, media, communications and their application to e-commerce and technology. Counsel stated, yet further, that the *Handbook* indicates that a minimum of a bachelor's degree or the equivalent in a specific specialty is required for "market researcher" positions.

The director denied the petition on December 14, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or the equivalent. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the evidence and the *Handbook* demonstrate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. In a brief filed to supplement the appeal, counsel asserted that market research analyst positions have routinely been recognized by USCIS, including the AAO, as specialty occupation positions, citing unpublished AAO decisions for that proposition.

Counsel also reiterated that the proffered position, because it is an internet marketing position, requires expertise in marketing and the ability to apply it to internet commerce. She stated:

Because of the complex, technical, and rapidly evolving nature of internet marketing, it is VERY common in the industry to require a bachelor's degree in marketing, communications, or a related field for this type of position.

Counsel cited the vacancy announcements provided as evidence in support of that statement, and also cited the evaluation of the proffered position by a [REDACTED] professor as evidence that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The vacancy announcements and the evaluation of the proffered position will be addressed below.

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

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

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 an authoritative, objective, and reliable resource, such as 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 petitioner asserts in the LCA that the proffered position falls under the occupational category "Market Research Analysts." The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Market Research Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or the equivalent, is normally the minimum requirement for entry. In the "Market Research Analysts" chapter, the *Handbook* provides the following descriptions of the duties of those positions:

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

Market research analysts study market conditions in local, regional, or national areas to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.

Duties

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop advertising brochures and commercials, sales plans, and product promotions.

Market research analysts evaluate data using statistical techniques and software. They must interpret what the data means for their client, and they may forecast future trends. They often make charts, graphs, or other visual aids to present the results of their research.

Workers who design and conduct surveys are known as survey researchers. For more information, see the profile on survey researchers.

Some market research analysts may become professors or teachers. For more information, see the profile on postsecondary teachers. As an instructor in a junior or community college, a market research analyst may need only a master's degree, but a Ph.D. is usually required to teach in a college or university.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited January 9, 2013).

The *Handbook* does not state that a baccalaureate (or higher degree) in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states the following about this occupational category:

Market research analysts need strong math and analytical skills. Most market research analysts need at least a bachelor's degree, and top research positions often require a master's degree.

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or communications. Courses in statistics, research methods, and marketing are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

Many market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics, marketing, or a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited January 9, 2013). 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).

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.

Here, although the *Handbook* indicates that a bachelor's or higher degree is typically 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." Although a general-purpose bachelor's degree, such as a degree in business, 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, 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 knowledge of marketing, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

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

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement for 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.

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 first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next review the record regarding 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."

As evident in the earlier discussion about the descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst positions that can be performed by persons without a specialized degree or its equivalent.

In the RFE, as was noted above, the service center requested that the petitioner explain, in layman's terms, the difference between the proffered position and other market research analyst positions that may not require a minimum of a bachelor's degree or the equivalent in a specific specialty:

Although counsel has repeatedly stated that the proffered position demonstrably requires a minimum of a bachelor's degree or the equivalent in a specific specialty, she provided no analysis to demonstrate that the position could not be filled by a market research analyst without a minimum of a bachelor's degree or the equivalent in a specific specialty.

As was noted above, counsel submitted 20 vacancy announcements to support the position that positions in internet marketing require a minimum of a bachelor's degree or the equivalent in a specific specialty. Those positions have job titles that include web marketing specialist, digital marketing specialist, online marketing specialist, internet marketing specialist, e-marketing specialist, E-commerce marketing specialist, internet product marketing specialist, paid search specialist, SEM/SEO analyst, E-commerce reporting analyst, E-commerce coordinator, E-commerce analyst, search engine optimization expert, product marketing specialist, and business analyst-marketing.

The petitioner's business plan is to distribute discount coupons for various restaurants, entertainment venues, and other companies, and, presumably, to charge those companies for that service. Whether it is now in that business is unknown to the AAO. The industries of some of the companies that placed those vacancy announcements are not identified. Other positions announced, though, are with a hospital, an arts and crafts supply company, a satellite dish television access provider, a scientific supply company, a university, a life insurance company, a manufacturer of hydraulic system components, a software company, an apparel company, a manufacturer of mechanical power transmission components and commercial water management products, a marketer of discount home improvement products, and a beer and wine distributor. None of the companies that placed those

vacancy announcements have been shown to be in the petitioner's industry, and most are clearly not in the petitioner's industry. The petitioner has not demonstrated that the duties of an internet marketing specialist with a hospital, for instance, are substantially the same, or of similar complexity, as the duties of the proffered position, and no reason exists to believe that the complexity of any of the jobs announced in those vacancy announcements is the same as that of the proffered position, or that any of those positions likely have the same educational requirement as the proffered position.

Further, although some of those announcements state that the position announced requires a minimum of a bachelor's degree in a specific specialty or the equivalent, others do not.

Many of the announcements state that a degree in any of a wide array of courses of study would be a sufficient qualification for the positions they announce. As was explained above, a requirement of a degree in any of a wide array of subjects is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

Moreover, some announcements state that a degree in business administration would be a sufficient educational qualification for the positions they announce. As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent.

One of the announcements states that a bachelor's degree is required and that either a degree in marketing or an advanced degree is preferred. A preference is not a minimum requirement. That announcement does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

None of the vacancy announcements provided has been shown to be for a parallel position in a company similar to the petitioner in the petitioner's industry and to require a minimum of a bachelor's degree or the equivalent in a specific specialty. As such, none are reliable evidence that the proffered position qualifies as a specialty occupation position pursuant to the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further, even if all 20 of the vacancy announcements indicated a bachelor's degree in a specific specialty or the equivalent to be a prerequisite for the vacancies they announce, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 20 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

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 20 postings with regard to determining the common educational requirements for entry into parallel positions in similar 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

The evidence of record does not refute the *Handbook's* information to the effect that there is a wide spectrum of degrees acceptable for market research analyst positions, including degrees not in a specific specialty related to market research analysis.

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other market research analyst positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The evaluation provided by the [REDACTED] professor states that the proffered position cannot be performed without bachelor's-level training in marketing, communications, media communications, or a related area. The opinion rendered by the professor is not probative.

First, despite his statement that he has "become familiar with the role generally occupied by marketing and media professional engaged in the development of new strategic communications strategies, including marketing professionals in the digital media industry," neither the professor's letter nor any other evidence of record substantiates that he is qualified as an expert on recruiting and hiring practices in market research analysis or, more particularly, in internet marketing.

Further, there is no extrinsic evidence of expertise in the area, such as scholarly research conducted by the professor on the specific area upon which he is opining; books, articles, or treatises authored by him in the area of claimed expertise; or recognition by professional organizations as an authority on the internet marketing. As the professor has not established his credentials as an expert on industry hiring standards, his opinion in this area merits no special weight and is not persuasive.

Second, the record does not indicate that the professor has adequate knowledge of the particular position at issue here. The professor appears to rely exclusively on the list of duties provided by the petitioner's CEO in determining that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. There is no indication of any additional knowledge of the precise position offered in this case. He does not relate any personal observations of the petitioner's operations or of the work that the beneficiary would perform.

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 internet marketing specialist for a company like the petitioner in the petitioner's industry 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 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.

Third, this evaluator's opinions are conclusory: he does not cite studies, treatises, surveys, or any other factual basis for them.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r. 1988).

The record contains no evidence that would differentiate the work of the proffered position from the work of marketing research analysts in general. As such, the duties of the proffered position (such as "market research of specific neighborhoods," "evaluation of the merchants' current marketing approach," etc.) are described in terms of generalized functions generic to market research analysts in general, and so have not been shown to be more complex or unique than the duties of other market research analyst positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree or the equivalent in a specific specialty. Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In his November 17, 2010 letter, the petitioner's CEO stated that the petitioner has never hired anyone to work in the proffered position. The record contains no evidence, therefore, for analysis under the criterion at 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 baccalaureate or higher degree, or the equivalent, in a specific specialty.

The petitioner has provided a long list of the duties of the proffered position. That those duties or any one of them is so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree or the equivalent in a specific specialty, however, is not self-evident.

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").

In the RFE, the service center asked that the petitioner to identify those duties to be performed that are so discretionary, demanding, complex, highly advanced, specialized, or sophisticated that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. Neither the petitioner nor counsel has identified any such duties.

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than those of market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁵ The petitioner has not, therefore, 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 reason.

It is noted that counsel refers to unpublished AAO decisions to support her argument that the proffered position qualifies as a specialty occupation. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all United States Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding.

In any event, the AAO does not contest that a market research analyst position could be a specialty occupation position, if its nature and duties are such that it requires a specialized degree or the equivalent. However, counsel did not demonstrate, nor even assert, that the duties of the positions addressed in those unpublished decisions were substantially identical to the duties of the proffered position in the instant case.

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

⁵ It is noted that the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dept of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).

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equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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.

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