



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 25 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:

[REDACTED]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The Form I-129 visa petition states that the petitioner designs vacuum systems, vacuum bakeout furnaces, special chambers, and custom machining. To employ the beneficiary in what it designates as a marketing analyst position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The visa petition in the instant case was signed by an attorney, who indicated that he had prepared that form. He also submitted a properly executed Form G-28 Notice of Entry of Appearance. The appeal in this matter, however, was submitted by a different attorney, who also submitted a properly executed Form G-28. All representations will be considered, but the decision in this matter will be furnished only to the petitioner and its present counsel of record.

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, present 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 present 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, the position must also meet one of the following criteria:

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *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.

With the visa petition, previous counsel provided evidence that the beneficiary has a bachelor's degree from [REDACTED] in Bangkok, Thailand; and a master's degree in business administration, international business option, from the [REDACTED] at Hayward. No evaluation of the beneficiary's foreign education was provided.

Previous counsel also provided a letter, dated August 4, 2010, from the petitioner's manager, which stated, "In [the proffered position], [the beneficiary] will conduct research and analysis on market conditions pertaining to the vacuum systems and components." More particularly, the petitioner's manager described the duties of the proffered position as follows:

1. Conduct surveys and tests to study consumer reaction to our company's new products, and to measure effectiveness of advertising media to aid our company in sales of goods and services;
2. Responsible for examining and analyzing statistical data to forecast future marketing trends for particular models, specifications and performance, gathering data on competitors, analyzing prices, sales and methods of marketing and distribution, collecting data on customer preferences and buying habits, and preparing reports and graphic illustrations of findings.
3. Devise methods and procedures for obtaining data, design surveys and questionnaires;
4. Offer product samples to assess consumer preferences and indicate current trends;
5. Evaluate and analyze the data in order to make recommendations to management based upon her findings and suggest a course of action; and

6. Provide management with information to make decisions on the promotion, distribution, design, and pricing of our company's products and services, and determining the advisability of adding marketing channels.

The petitioner's manager further stated that the proffered position "requires a minimum of [a] bachelor's degree in Business Administration or a closely[-]related field."

As a preliminary note, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. 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 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 explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Thus, the petitioner's recognition of a bachelor's degree in business, without additional specification, as a sufficient educational qualification for the proffered position, is tantamount to an admission that performance of the proffered position does not require at least a bachelor's degree, or the equivalent, in a specific specialty. This is sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

On September 28, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, previous counsel provided vacancy announcements and a letter, dated October 26, 2010, from the petitioner's manager. The vacancy announcements will be addressed below.

In his October 26, 2010 letter, the petitioner's manager provided a revised list of the duties of the proffered position. That list is the previous list, somewhat rearranged, and with the following duties added:

Study and analyze the technical data, design specifications, product specifications and production schedules of our manufacturing process, utilizing knowledge of information technology, business analysis, economic forecast, UV/UHV market research and product systems and operations.

Prepare reports and graphic illustrations of findings.

Maintain strategic customer relationships to facilitate the acquisition of customers['] feedback to surveys; and devise alternate marketing strategies as required.

Confer with management and production engineers regarding customer specifications and satisfaction on company products.

Design, develop and maintain company website; Plan and develop new advertising and marketing strategies for promotion, distribution of the volume of new products designed by [the petitioner]. Present market analysis reports to provide direction of new product design.

The petitioner's manager also reiterated that the proffered position requires a minimum of a bachelor's degree in business administration. The AAO reiterates that such an educational requirement is not indicative of a specialty occupation position.

The petitioner's president also cited the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)* as evidence that the proffered position qualifies as a specialty occupation position.

The director denied the petition on December 9, 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 its equivalent. On appeal, present counsel again asserted that the *Handbook* indicates that the proffered position is a specialty occupation position.

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

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, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, cited by present counsel and the petitioner's manager, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

In the "Market Research Analysts" chapter, the *Handbook* provides the following descriptions of the duties of those positions:

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.

More specifically, the *Handbook* states:

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

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> (last visited January 22, 2013).

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

Present counsel's reliance on the DOL's DOT is misplaced. Present counsel correctly noted that the DOT accords market research analyst positions a Specific Vocational Preparation (SVP) Level 7, and correctly asserted that this indicates that it is grouped with positions which require over two years of preparation and up to and including four years of preparation. However, the DOT is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational

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.

preparation required for a particular position.² It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

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

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.

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 philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.³ Section 214(i)(1)(B) (emphasis added).

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

² For an explanation of SVP levels see <http://www.onetonline.org/help/online/svp>.

³ 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. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

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 still, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some market research analyst positions do not require such a degree.

Finally, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of market research analysis, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty directly related to those duties 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 in a specific specialty, or its equivalent, 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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 a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Previous counsel did provide six vacancy announcements, as was stated above. The announcements are for positions entitled Marketing Analyst and Market Risk Analyst. They are with an Internet retailer, a newspaper publisher, a department store, an energy trading company, a can and rigid container manufacturer, and a biotechnical/pharmaceutical firm. Only the can and rigid container company is in a business remotely similar to the petitioner's industry.

One of those vacancy announcements states that the position announced requires a bachelor's degree, but not that the requisite degree must be in any specific specialty.

One vacancy announcement states that the position announced requires a bachelor's degree in marketing, statistics, or mathematics. The AAO observes that marketing, statistics, and mathematics do not delineate a specific specialty. Therefore, absent evidence that each field is directly related to the duties of that position, it cannot be found that the vacancy announcement states a requirement of a minimum of a bachelor's degree in "the specific specialty" or its equivalent, as required by the Act.

One announcement states a requirement of a bachelor's degree in business administration or a related field. As was explained in detail above, an educational requirement that can be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that the position requires a bachelor's degree or the foreign equivalent in finance, engineering, economics, or a related subject. Finance, engineering, and economics do not delineate a specific specialty. As such, absent evidence that each field is directly related to the duties of that position, it cannot be found that the vacancy announcement states a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement requires a bachelor's degree in marketing, business, or a related area. Again, an educational requirement that can 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 its equivalent.

The final vacancy announcement requires a bachelor's degree in marketing. Of the six vacancy announcements provided, that is the only announcement that states a requirement of a bachelor's degree in a specific specialty. At the same time, the announcement also states that a degree in another field is acceptable if the individual possesses "strong marketing experience." There is insufficient evidence, however, of what the company considers to be "strong marketing experience" and whether such experience when combined with a bachelor's degree in another field would be equivalent to a bachelor's degree in marketing.

Further, even if all six vacancy announcements provided had been placed by companies in the petitioner's industry, which they were not, and all six indicated a bachelor's degree in a specific specialty or its equivalent to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from

six announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty, the petitioner would be obliged to demonstrate that other Level I market research analyst positions, entry-level positions requiring only a basic understanding of market research analysis, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which appears to be contradicted by the *Handbook*.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its 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 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 the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty or its equivalent.

The record contains no evidence that would differentiate the work of the proffered position from the work of market research analyst positions in general. The duties of the proffered position (such as

⁴ 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 six job postings with regard to determining the common educational requirements for entry into parallel positions in similar manufacturing firms. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of market research analyst for a manufacturing firm 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 or its equivalent for entry into the occupation in the United States.

"conduct[ing] research and analysis on market conditions") are described in terms of functions common to market research analyst positions in general, and so have not been shown to be more complex or unique than the duties of other market research analyst positions, which the *Handbook* indicates do not require a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into the occupation.

Further, as was also noted above, the LCA submitted in support of the visa petition is certified for a Level I market research analyst, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of market research analysis. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree in a directly related field, especially as the *Handbook* suggests that some market research analyst positions do not require such a degree.

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

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁵

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 in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Even as more particularly described, conducting surveys and tests to study consumer reaction to new products and to measure effectiveness of advertising media, examining and analyzing statistical data to forecast future marketing trends, collecting data on customer preferences and buying habits, preparing reports and graphic illustrations of findings, devising methods and procedures for obtaining data, designing surveys and questionnaires, evaluating and analyzing data in order to make recommendations to management, and providing management with information to make business decisions, do not contain any indication that they

⁵ 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").

are so specialized and complex that they require knowledge associated with a minimum of a bachelor's degree in a specific specialty or its equivalent directly related to these duties. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I market research analyst position, a position with only a basic understanding of market research analysis. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to market research analysis, especially as some market research analyst positions require no such degree.

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

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

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.