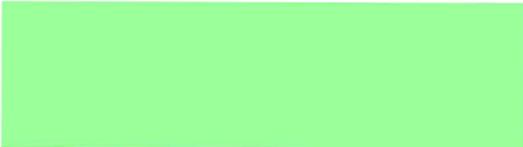


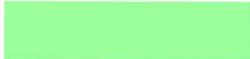
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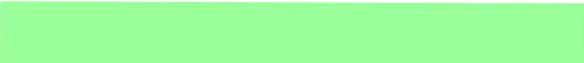
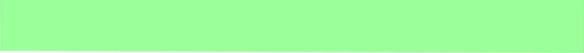
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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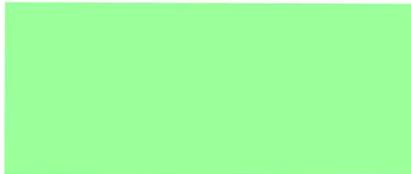


DATE: **JUN 13 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen 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.

On the Form I-129 visa petition, the petitioner describes itself as a "hotel management company" with 14 employees. In order to employ the beneficiary in what it designates as a management analyst position, the petitioner seeks 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 his 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 is whether the petitioner has demonstrated that 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 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a management analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1111 Management Analysts. The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel provided copies of the following diplomas awarded to the beneficiary: (1) a diploma awarding a two-year degree in pharmacy by [REDACTED]; (2) a diploma awarding a bachelor's degree in information technology by [REDACTED]; and (3) a diploma awarding an International Master of Business Administration degree by [REDACTED].

Counsel also provided a letter dated August 29, 2011, from the petitioner's president. In that letter, the petitioner's president stated that the petitioner operates the [REDACTED] motel and that it "requires the services of a Management Analyst to help guide [the petitioner's] general daily operations and its continuing growth in the coming years. The petitioner's president also provided the following list of duties and responsibilities of the proffered position:

- Analyze and prepare the financial reports as well as execute cash management strategies.
- Responsible for business valuations, data warehouse reporting, audits and compliance, A/P, A/R, regulatory accounting.
- Lead the managers to analyze and understand price components across customers and customer segments.

- Guide sales managers to offer direction and setting rules for how prices are applied across the Organization.
- Help close service contract negotiations by giving account managers tools to better negotiate a deal, including price elements.
- Capitalize on the business opportunities in efforts to improve the various elements of an organization's brand in both management and marketing perspectives.
- Lead the business users to evaluate P&L reports, operating and working capital reports, as well as budget management reports.

As to the educational requirement of the proffered position, the petitioner's president stated:

Due to the complex nature of the duties and responsibilities sought to be performed, it is our company's policy to hire only those candidates possessing a minimum of a bachelor's degree in business administration, accounting, commerce, or the equivalent.

On September 21, 2011, 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, counsel submitted vacancy announcements and counsel's own letter, dated October 11, 2011. In her October 11, 2011 letter, counsel paraphrased the duties described by the petitioner's president and added the percentages of time that the beneficiary would perform those duties. Counsel also added the following duties:

Perform industry analysis and present outlook forecasts related to customer and business trends during regular meetings with management[,and] Perform industry research and trend analysis to determine feasibility of potential new business opportunities in other business sectors.

Counsel also stated that, based on the duties of the proffered position, it requires a minimum of a bachelor's degree, but not that it requires a degree in any specific specialty. Counsel asserted that the vacancy announcements provided also show that similar positions require a bachelor's degree.

The director denied the petition on October 21, 2011, 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. 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 submitted additional copies of evidence previously submitted and a brief in which he asserted that the evidence of record demonstrates that the petitioner would employ the beneficiary in a specialty occupation.

Counsel's brief contains the following amended list of duties of the proffered position:

10% Identify business problem or procedures and gather and organize business data relating to those issues

10% Analyze the gathered business data and develop solutions as well as any alternative methods of processing by preparing reports and strategic business proposals

20% Confer with management to make sure the newly implemented business systems or procedures are functioning properly and offer recommendations to management on pricing, and cost structuring (i.e. updated accounts payable system, and accounts receivable system, and business information systems)

20% Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with this program

15% Review forms and reports and confer with management and users regarding format, distribution, and to identify problems and make improvements to the program

5% Interview personnel and conduct on-site observation to determine unit functions, work performed, and methods, equipment, and personnel used

5% Document findings of the study and prepare recommendations for implementation of new systems, procedures, or organizational changes

5% Prepare manuals and train workers in the use of the new forms, reports, procedures in accordance with organizational policy

5% Design, evaluate, recommend, and approve changes of forms and reports

5% Plan studies of business problems, such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis

As a preliminary matter, the petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty

occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).¹

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36

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

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

Id.

F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the "Management Analyst" chapter, the *Handbook* provides the following description of the duties of those positions:

What Management Analysts Do

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues

Duties

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

² 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.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Management Analysts," <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (last visited June 12, 2013).

Most of the duties the petitioner's president attributed to the proffered position are consistent with the duties of management analysts as described in the *Handbook*. Despite the lack of documentary evidence demonstrating the petitioner's need for a management analyst, the AAO will assume *arguendo* that the proffered position is a management analyst position as described in the *Handbook*.

The *Handbook* states the following, in pertinent part, about the educational requirements of management analyst positions:

How to Become a Management Analyst

Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.

Education

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

Certification

The Institute of Management Consultants USA, Inc. (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

Work Experience

Many analysts enter the occupation with years of work experience. Organizations that specialize in certain fields try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

Id. at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited June 12, 2013).

The *Handbook* indicates that a general business degree is suitable for entry into management analyst positions. *Id.* Again, such a general degree standard is insufficient on its own to 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.

The *Handbook* also indicates that individuals with bachelor's degrees in a variety of fields may enter the occupation of management analyst, including those with such disparate majors as business or engineering. 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 and engineering, would not meet the statutory requirement that the degree be "in *the*

specific specialty."³ Section 214(i)(1)(b) (emphasis added).

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

Further, 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 U.S. Dep't 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. 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 since the *Handbook* suggests that some management analyst positions do not require such a degree.

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 management analysis, but do not establish any particular level of formal, post-secondary 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 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.

As stated earlier, 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

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.

"routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As 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 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.

The petitioner did provide ten vacancy announcements. They are for positions entitled Financial Systems Reporting Analyst; Revenue Analyst, Financial Analyst; Analyst, Revenue Management; Business Analyst; Operations Analyst; Sr. Financial Analyst; Treasury Analyst; and Analyst, Financial Hotel Operations. None of those vacancy announcements is accompanied by a description of duties sufficient to demonstrate that it is a position so similar to the proffered position, a Level I position, that they can be presumed to require the same education.

The vacancy announcements are for positions at the [REDACTED], a global hospitality company with nine brands and 492 properties [REDACTED], the revenue management arm of [REDACTED], which has 3,800 hotels in 90 countries; [REDACTED] a hotelier with numerous hotels, convention centers, and other properties, including the Grand Ole Opry in Nashville, Tennessee; the [REDACTED] which operates two theme parks, three on-site hotels, and an entertainment complex; [REDACTED] a leading discount travel website [REDACTED] l company; [REDACTED], parent company of [REDACTED]; and the [REDACTED] cruise line. None of those companies has been shown to be similar to the petitioner in terms of size and the type and level of services provided such that they could be found to be similar organizations.

One of the vacancy announcements requires a bachelor's degree in finance, accounting, or computer science, "or equivalent work experience." The AAO observes that finance, accounting, and computer science do not delineate a specific specialty. Further, what experience the hiring authority would consider equivalent to one of those degrees is not described. For both reasons, that vacancy announcement has not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the vacancy announcements states that it requires a bachelor's degree in business, economics, finance, or hospitality management, or a high school diploma or GED in addition to two years' work experience in a hotel revenue management role, including working at the front desk. This vacancy announcement does not state a minimum requirement of a bachelor's degree in a specific specialty or its equivalent for a number of reasons. First, business, economics, finance, and hospitality management do not describe a single specific specialty. Second, as was noted above, an educational requirement that may be satisfied by an otherwise unspecified degree in business administration is

not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Third, a high school diploma and two years' experience as a hotel desk clerk is not equivalent to a minimum of a bachelor's degree in a specific specialty.

Another announcement requires a minimum of a bachelor's degree in finance, accounting, economics, or business. Again, finance, accounting, economics, and business do not delineate a specific specialty, and, in any event, an educational requirement that may be satisfied by an otherwise unspecified degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the vacancy announcements requires a bachelor's degree in economics, statistics, accounting, finance, or a related business major. Economics, statistics, accounting, finance, and any business major related to those subjects do not, considered together, delineate a specific specialty.

Another announcement requires a minimum of a bachelor's degree in "a quantitative discipline such as Operations Research, Industrial Engineering, [or] Statistics." Operations research, industrial engineering, statistics, and other quantitative disciplines, considered together, do not delineate a specific specialty.

Another vacancy announcement states, "Bachelor's degree required, degree in Hotel Management, Business, Operations Research (OR), Economics, Mathematics, Engineering or other technical field a plus." That announcement requires a bachelor's degree, but does not require that it be in any of the fields listed. Further, even if it did, that wide array of fields does not delineate a specific specialty. For both reasons, that vacancy announcement does not state a minimum educational requirement of a bachelor's degree in a specific specialty or its equivalent.

One of the announcements states a requirement of a bachelor's degree in "hospitality management, information systems or [a] related business field." Hospitality management, information systems, and related business fields do not delineate a specific specialty.

Three of the vacancy announcements state that the positions they announce require a bachelor's degree in finance or accounting. Those fields are sufficiently closely related that they may delineate a specific specialty.

None of the vacancy announcements provided has been shown to announce a position parallel to the proffered position with a company similar to the petitioner in the petitioner's industry and to require a minimum of a bachelor's degree in a specific specialty or its equivalent.⁴

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 ten job postings with regard to determining the common educational requirements for entry into parallel positions in similar hotel management 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

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 deficiency of every vacancy announcement has been addressed.

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, notwithstanding that other management analyst positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, 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 record contains no evidence that would differentiate the work of the proffered position as more complex or unique than the work of management analyst positions in general. The duties of the proffered position (such as analyzing and preparing financial reports; executing cash management strategies, performing business valuations, data warehouse reporting, audits and compliance, accounts payable, accounts receivable, and regulatory accounting; leading managers to analyze and understand price components; guiding sales managers in setting price rules; giving account managers tools to negotiate service contracts; capitalizing on business opportunities; and leading business users to evaluate profit and loss reports, operating and working capital reports, and budget management reports) are described in terms so abstract that whether they are sufficiently complex or unique that they require a minimum of a bachelor's degree in a specific specialty or its equivalent cannot be determined. The duties do not demonstrate, for instance, that the proffered position is more complex or unique than the duties of other management analyst positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I management analyst, an indication that the proffered position is an entry-level position for an

"[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 management analyst for a small motel or hotel 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 does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

employee who has only a basic understanding of management 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, notwithstanding that the *Handbook* suggests that some management analyst positions do not require such a degree.

For both 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).

On appeal, counsel stated that the petitioner has not previously employed a management analyst. The record contains no evidence, therefore, 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. Identifying a business problem and gathering and organizing relevant business data; analyzing the data and developing solutions; conferring with management on the functioning of newly implemented business systems or procedures; offer recommendations on pricing and cost structuring; developing and implementing a records management program and assuring compliance; reviewing forms and reports and conferring with management; interviewing personnel and conducting on-site observation to determine unit functions, work performed, and methods, equipment, and personnel used; documenting study findings and prepare recommendations for implementation of new systems, procedures, or organizational changes; preparing manuals and training workers in the use of the new forms, reports, and procedures; designing, evaluating, recommending, and approving changes of forms and reports; and planning studies of business problems are so abstractly described that they contain no indication of specialization and complexity requiring a specialized degree. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than management analyst

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").

(b)(6)

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 management analyst position, a position for an entry-level employee with only a basic understanding of management analysis. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to management analysis, especially as the *Handbook* indicates that some management 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.

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 whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. 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.