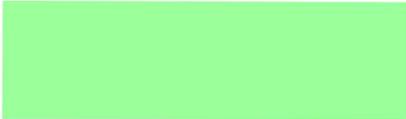
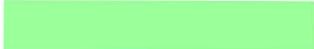


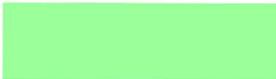
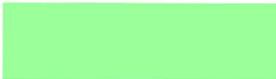


U.S. Citizenship  
and Immigration  
Services

(b)(6)



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

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the 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 "Retail/Wholesale Clothing" firm. In order to employ the beneficiary in what it designates as a "Survey Researcher" position, the petitioner seeks 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 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 petitioner's 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 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 survey researcher position, and that it corresponds to Standard Occupational Classification (SOC) code and title 19-3022.00, Survey Researchers. The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary has a bachelor's degree in communications from the [REDACTED]. Counsel also submitted a letter, dated October 26, 2010, from the petitioner's president and CEO, which contains the following description of the duties of the proffered position:

1. Gathering, compiling and analyzing industry data regarding the domestic and international apparel and fashion accessories industries, markets in the United States and Japan for our fashion designs and related products in order to develop medium and long term business plans, evaluate business expansion opportunities and target potential new products and sources of revenue. To accomplish these task [sic] the Survey Researcher is required to identify the business principles and policies in the fashion industry, gather data on our competitors and analyze their prices, sales, and method of marketing and distribution.
2. Preparation of comprehensive reports and projections analyzing market penetration, cost of manufacturing goods, quality assurance and quality control procedures by Asian manufacturers, analysis of industry trends and developing business forecasts and recommendations for future business planning purposes. These tasks entail analyzing data into usable segments, and separating the market information into manageable parts, developing graphs, charts and reports

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illustrating the data in order to allow our company to better understand the market and our positions of relative strength therein.

3. Conducting research and preparing in-depth reports concerning economic trends, market conditions, profitability and other business projections with emphasis on markets for potential products in the United States as part of the company's on-going plan to increase and refine its line of imported jewelry, fashion, sportswear and accessories, measure and assess customer and employee satisfaction and gauge marketing, advertising, and communications programs and strategies. The Survey Researcher will be required to collect and analyze data on our customer demographics, preferences, needs, and buying habits to identify potential markets and factors effecting product demand and analyzing the information based on computer programs and theories of statistical analysis to explain the meaning and significance of the data. The Market Research Analyst's duties include formulating methods to obtain existing data or generate procedures to collect necessary information such as customer surveys or after-market questionnaires to track marketing and sales trends.<sup>1</sup>
4. Analyzing and synthesizing business, financial and economic reports, reviewing industry trends and business forecasts in order to develop recommendations for future business planning purposes including industry growth projections for the jewelry, fashion, sportswear and accessories industries, future expansion of retail locations in the United States and analysis of other business operating costs. Attendance at company management meetings to provide management with information and proposals concerning subjects such as product design, product pricing, marketing, and distribution, and providing analysis and interpretation of market research results and information.

As to the educational requirement of the proffered position, the petitioner's president stated, "The nature of these duties is such that our company requires at a minimum the attainment of a baccalaureate degree in business administration, economics or a similar degree." The petitioner's president cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)* as evidence that the proffered position qualifies as a specialty occupation position.

On February 1, 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 (1) a letter, dated March 2, 2011, from the petitioner's president and CEO; (2) an evaluation of the proffered position; (3) three letters from people in businesses related

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<sup>1</sup> The petitioner's president referred to the proffered position, in this one instance, as a market research analyst position, which is a different position from a survey researcher position, such as that the petitioner purports to offer in the instant case.

to the petitioner's business; and (4) eight vacancy announcements. The vacancy announcements will be addressed below.

In his March 2, 2011 letter, the petitioner's president cited the letters from others in businesses related to the petitioner's as evidence that "a successful business in the fashion export industry emphasizing business with Japan must be prepared to perform constant and varied types of research." He cited the evaluation of the proffered position as evidence that the proffered position "has responsibilities and authority commensurate with professional standing." The petitioner's president again cited the *DOT* and the *Handbook* as evidence in support of the approvability of the visa petition.

The petitioner's president also provided a description of the proffered position which, although similar to the description previously provided, differs in some respects. That description follows:

1. Gathering, compiling and analyzing industry data regarding the domestic and international apparel and fashion accessories industries, markets in the United States and Japan for our fashion designs and related products in order to develop medium and long term business plans, evaluate business expansion opportunities and target potential new products and sources of revenue. To accomplish these task [sic] the Survey Researcher is required to identify the business principles and policies in the fashion industry, gather data on our competitors and analyze their prices, sales, and method of marketing and distribution.
2. Responding to the demands and requests of our Japanese wholesale and retail outlets for specific market and product information, product availability, sizing information, product materials, product content information, natural fibre and organic content verification, export restrictions, shipping conditions,
3. Preparation of comprehensive reports and projections analyzing market penetration, cost of manufacturing goods, quality assurance and quality control procedures by Asian manufacturers, analysis of industry trends and developing business forecasts and recommendations for future business planning purposes.
4. Analyzing and segmenting data, separating market information into manageable parts, developing graphs, charts and reports illustrating the data in order to allow our customers to better understand the market and products available.
5. Conducting research and preparing in-depth reports concerning a wide variety of wearing apparel, accessories, and jewelry economic trends, [sic] market conditions, profitability and other business projections with emphasis on markets for potential products in Japan and the United States as part of the company's on-going plan to increase and refine its line of imported jewelry, fashion, sportswear and accessories, measure and assess customer satisfaction and gauge marketing, advertising, and communications programs and strategies.

As to the petitioner's past employment practices, the petitioner's president stated:

In the past we have employed in-house survey and market researches [sic] as part of our business expansion plans. We have routinely conducted research into new products, pricing and consumer preferences for products and specific manufacturer brands prior to entering into distribution or purchase agreements.

When the company was first started I performed the marketing research since we were small and did not have the budget to hire others. Subsequently our marketing research was performed by [REDACTED] who has a bachelor's degree in economics. When [REDACTED] was promoted to a manager position the position was became vacant. [sic]

The evaluation was prepared by [REDACTED], who stated that she is a full-time faculty member at South University. An addendum to that evaluation states that she has a bachelor's degree in psychology, a master's degree in guidance and counseling, and a doctorate in adult education. She reiterated some of the duties of the proffered position and stated, without analysis, that those duties require a bachelor's degree in marketing, communications, or a related subject. She stated:

I base my assessment . . . after conducting a thorough review of employment websites . . . . As evidenced by the employment listings below, the position of Survey Researcher has an industry-standard of a bachelor's degree.

One of the industry letters relied upon is from the president of [REDACTED] which she states designs, manufactures wearing apparel, which it sells, both at retail and by wholesale export to Japan. She stated that both of the people currently working either full or part-time in market research have "a minimum 4-year degree." She did not state that they have degrees in any specific specialty closely related to survey research, and did not state that a degree in any such specialty is a requirement for survey researcher positions with her company.

Another industry letter is from the vice president of [REDACTED] and states that the company exports various items to Japan, including clothing. That letter further states that the company's market researchers have, and have had, degrees in economics, marketing, communications, international relations, "and similar fields of study."

The final industry letter is from the owner of [REDACTED] who stated, that the company's business is wholesale and export of hats and other clothing accessories, and further stated, "I have been engaged in performing market research in a variety of capacities and with a number of different job titles." He also stated that he has a four-year degree in business. He did not indicate whether his company has ever employed any other market researcher and did not state that a bachelor's degree is necessary for market research.

The director denied the petition on April 12, 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 contends that the evidence submitted shows that the proffered position requires a bachelor's degree. In the appeal brief, counsel cites to, *inter alia*, the evaluation by [REDACTED] and the *Handbook* to support his contention that the proffered position qualifies for classification as a specialty occupation. In the brief, counsel referred to the proffered position as a Market Research Analyst position.

The AAO observes preliminarily that market research analyst is not synonymous with "survey researcher," which is the position for which the instant visa petition was filed. The two job titles are not interchangeable terms for the same position. Market research analyst positions have different duties, pay scales, and educational requirements. If the proffered position actually is a survey researcher position, as claimed, then assertions pertinent to the educational requirements of market research analyst positions are of no direct relevance to any material issue in this case.<sup>2</sup>

Furthermore, the petitioner's claim that a bachelor's degree in business administration is a 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 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).<sup>3</sup>

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<sup>2</sup> If, on the other hand, the proffered position is a market research analyst position or a marketing manager position, then the instant visa petition would not be approvable, as it is not supported by an LCA certified for such a position.

<sup>3</sup> 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

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 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 will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup>

In the "Survey Researchers" chapter, the *Handbook* provides the following description of the duties of those positions:

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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.*

<sup>4</sup> 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.

Survey researchers design or conduct surveys and analyze survey data. Many groups use surveys to collect factual data, such as employment and salary information, or to ask questions that help them understand people's opinions, attitudes, beliefs, or desires.

More specifically, the *Handbook* states:

Survey researchers typically do the following:

- Conduct background research on survey topics
- Plan and design surveys and develop appropriate survey methods
- Test their surveys to make sure that people will understand the questions
- Conduct surveys and collect data
- Account for and solve problems caused by non-respondents or other sampling issues
- Analyze data using statistical software and techniques
- Summarize survey data using tables, graphs, and fact sheets
- Evaluate surveys, methods, and performance to improve future surveys

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Survey Researchers," <http://www.bls.gov/ooh/life-physical-and-social-science/survey-researchers.htm> (last visited June 12, 2013).

On the other hand, in the "Market Research Analysts" chapter, the *Handbook* provides the following description 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.

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.

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 June 12, 2013).

The distinction between survey researcher positions and market research analyst positions appears to be the degree of analysis involved. The duties of survey researchers appear to be largely restricted to designing and administering surveys, with some ancillary analysis duties. The duties of market research analysts, on the other hand, appear to consist largely of analysis, with some ancillary duties designing surveys.

The duties of the proffered position in the instant case, as described by the petitioner's president, include considerable analysis. On the whole, though, whether the position is a survey researcher position or a market research analyst position is unclear. Although it appears to be a market research analyst position, it may be a survey researcher. For the purpose of analyzing the specialty occupation issue, the AAO will assume, *arguendo*, that the proffered position is a survey researcher position, the position claimed on the visa petition, and the position for which the LCA was certified.

The *Handbook* states the following about the educational requirements of survey researcher positions:

Although some survey researchers have a bachelor's degree, many technical research positions require a graduate degree. Employers generally prefer candidates who have previous work experience using statistics, analyzing data, or conducting interviews or surveys.

The *Handbook* further states:

Survey researchers can have a bachelor's degree in a variety of fields, including business, psychology, and political science. Students should take courses in research methods, survey methodology, and statistics. Many also may benefit from taking business courses, such as marketing and consumer behavior, and social science courses, such as psychology, sociology, and economics.

*Id.* at "Survey Researchers," <http://www.bls.gov/ooh/life-physical-and-social-science/survey-researchers.htm#tab-4>. (last visited June 12, 2013).

The *Handbook* suggests that survey researcher positions require a minimum of a bachelor's degree; however, it makes clear that the degree need not be in any specific specialty, as it indicates that a degree in business, psychology, or political science may suffice. Further, as was explained in detail above, an educational requirement that may 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. For both reasons, the *Handbook* does not indicate that survey researcher positions as a category require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO will now address the evaluation by [REDACTED] states in her evaluation that she is a full-time faculty member at [REDACTED] but she did not state in what department or provide any evidence in support of that assertion. An addendum to that evaluation states that she has a bachelor's degree in psychology, a master's degree in guidance and counseling, and a doctorate in adult education, none of which is closely related to the proffered position. She reiterated some of the duties of the proffered position and stated, without analysis, that those duties require a bachelor's degree in marketing, communications, or a related subject. As noted above, she stated:

I base my assessment . . . after conducting a thorough review of employment websites . . . . As evidenced by the employment listings below, the position of Survey Researcher has an industry-standard of a bachelor's degree.

She provided descriptions of five vacancy announcements, but did not provide copies of those vacancy announcements. Her description indicates that the vacancy announcements upon which she relied are for positions entitled Survey Research Manager, Survey Analyst, Research Analyst, and Survey Research Analyst. They are with the Graduate Management Admission Council, the [REDACTED] the Society for Human Resources Management, and [REDACTED]. None of those organizations appears to be similar to the petitioner or in the petitioner's industry.

She also states that each of those positions requires a "Bachelor's degree in a related field of work." Whether she purports to be quoting or paraphrasing those vacancy announcements is not clear. Even if she was quoting, however, what degrees the hiring authorities at those organizations would consider to be related to those positions is not stated and is unknown to the AAO. Further, how the

she could determine, from vacancy announcements requiring a bachelor's degree "in a related field" that the requisite degree must be in marketing, communications, or field related to them, is entirely unclear, given that she provided no explanation for that leap.

Further, the AAO finds that neither the body of the evaluation nor its attachments establish that the evaluator is an expert in retail or wholesale operations, or in the apparel industry, or in the requirements of survey researcher positions. The record contains no indication that she consulted any reference materials in forming her opinion.

Further still, even if that conclusion were demonstrably correct, it is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, as marketing, communications, and all subjects related to them do not, in the aggregate, delineate a specific specialty.

For all of the above reasons, the AAO accords no probative weight to the evaluation of the proffered position provided in response to the RFE. 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 Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

Yet further, as noted above, the petitioner 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. 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](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 survey researcher 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 knowledge of survey design and administration, 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 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 "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 in the petitioner's industry.

Counsel did submit three letters from people working with other companies in fields related to that of the petitioner. However, as was explained above, none of those letters states that survey researcher positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Counsel's reliance upon the eight job vacancy advertisements is misplaced. The vacancy announcements submitted are for positions entitled Marketing Specialist, Market Research Analyst, Marketing Coordinator, Product Marketing Analyst, Marketing Research and Development Analyst, Research Analyst, Market and Business Analyst, and Market Research Associate. One of those positions makes explicit that it is for a market research analyst position. The job titles of some of the other positions and the duty descriptions contained in the announcements suggest that others are also for market research analyst positions or marketing manager positions. "[M]arket research analyst" and "marketing manager" are not interchangeable terms for "survey researcher," which is the position for which the instant visa petition was filed. Those other positions have duties, different pay scales, and educational requirements that are different from survey researcher positions. If the proffered position actually is a survey researcher position, as claimed, then vacancy announcements for market research analyst positions and marketing manager positions are of no direct relevance.<sup>5</sup>

One of the vacancy announcements appears to have been placed by the [REDACTED] which produces electronic components. One vacancy announcement was placed by [REDACTED] and one was placed by [REDACTED], both of which develop and market computer games. One vacancy announcement was placed by [REDACTED], an information technology hosting company. Another vacancy announcement was placed by [REDACTED]. One announcement was placed by [REDACTED] which provides information pertinent to executive compensation packages.

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<sup>5</sup> Again, if, as has been repeatedly implied, the proffered position is a market research analyst position, or if it is a marketing manager position, then the instant visa petition would not be approvable, as it is not supported by an LCA certified for either position.

The organization that placed one of the vacancy announcements is unidentified, and its industry is unknown to the AAO. The final vacancy announcement was placed by Metler, Ltd., whose industry is unknown to the AAO. None of the vacancy announcements provided have been shown to have been placed by companies in the petitioner's industry, and six of them were clearly placed by companies in other industries.

One of those vacancy announcements states that the position it announces requires a bachelor's degree in marketing, journalism, or communications or similar." Whether marketing, journalism, and communications are so closely related that they should be considered to delineate a single specific specialty is unclear. Whether that vacancy announcement states a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is also, therefore, unclear.

Two of the vacancy announcements state that the positions they announce require a bachelor's degree, but not that the requisite degree must be in any specific specialty. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states, "Bachelor's degree in Marketing, Communications, Advertising, or related field preferred." Whether marketing, communications, advertising, and the fields the hiring authority would consider to be related to them are so closely related that they delineate a specific specialty is unclear. In any event, however, a preference is not a minimum requirement. That vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states a requirement of a bachelor's degree in business or marketing. Another states that it requires a, "Bachelor [sic] degree in Business or Marketing or related field . . . ." As was noted above, an educational requirement that may 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. Those vacancy announcements do not, therefore, state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that the position it announces requires, "BS/BA degree from an accredited university (preferred majors include: accounting, economics, finance, mathematics, science, statistics, or other quantitative subjects)." Accounting, economics, finance, mathematics, science, statistics, and other quantitative subjects do not delineate a specific specialty and, in any event, a preference for a degree in one of those fields is not a minimum requirement. For both reasons, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states that the position it announces requires a, "Bachelor's degree in Marketing, Finance, Economics, or related [field] from accredited institution or equivalent." Marketing, finance, economics, and all fields that the hiring authority might deem to be sufficiently closely related do not delineate a specific specialty. Further, what the hiring authority might find to

be "equivalent" to such a degree is unknown to the AAO. For both reasons, that vacancy announcement does not announce a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if all of the vacancy announcements were for positions parallel to the proffered position, which some appear not to be, and all were with organizations similar to the petitioner and in the petitioner's industry, which none appear to be, and all indicated that survey researcher positions as a category require a minimum of a bachelor's degree in a specific specialty or its equivalent, which none of them do, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from eight announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>6</sup>

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 AAO will now discuss the industry letters submitted by the petitioner. One of the industry letters relied upon is from the president of [REDACTED]. She states that [REDACTED] designs and manufactures wearing apparel, which it sells, both at retail and by wholesale export to Japan. She stated that both of the people currently working either full or part-time in market research have "a minimum 4-year degree." She did not state that they have degrees in any specific specialty closely related to survey research, and did not state that a degree in any such specialty is a requirement for survey researcher positions with her company. That letter does not indicate that survey researcher positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another industry letter is from the vice president of [REDACTED], and states that the company exports various items to Japan, including clothing. That letter further states that the

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<sup>6</sup> 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 eight job postings with regard to determining the common educational requirements for entry into parallel positions in similar apparel clothing retail/wholesale operations. *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 survey researcher for a clothing company 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.

company's market researchers have, and have had, degrees in economics, marketing, communications, international relations, "and similar fields of study." The AAO observes that economics, marketing, communications, international relations, and similar fields of study, considered together, do not delineate a specific specialty. That letter does not indicate that survey researcher positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The final industry letter is from the owner of [REDACTED] who stated that the company's business is wholesale and export of hats and other clothing accessories and further stated, "I have been engaged in performing market research in a variety of capacities and with a number of different job titles." He also stated that he has a four-year degree in business. He did not indicate whether his company has ever employed any other market researcher and did not state that a bachelor's degree is necessary for market research.

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 survey researcher 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 other survey researcher positions. The duties of the proffered position (such as gathering, compiling, and analyzing data; and responding to requests of wholesale and retail outlets for specific market and product information) are described in terms of generalized functions generic to survey researcher positions in general, and so have not been shown to be more complex or unique than the duties of other survey researcher positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While related courses may be beneficial, or even necessary, to performing the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

(b)(6)

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I survey researcher, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of survey research. 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 survey researcher positions do not require such a degree.

For 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 AAO will next consider the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>7</sup> In his October 26, 2010 letter, the petitioner's president stated:

We have been searching for a Survey Researcher due to the departure of our former employee, [REDACTED] who fulfilled these duties.

\* \* \*

[REDACTED] was the holder of a baccalaureate degree and specialized in marketing and sales in Japan together with an A.A. degree in the United States in Fashion Merchandising.

In his March 2, 2011 letter, the petitioner's president stated:

When the company was first started I performed the marketing research since we were small and did not have the budget to hire others. Subsequently our marketing research was performed by [REDACTED] who has a bachelor's degree in economics. When [REDACTED] was promoted to a manager position the position was became vacant.

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<sup>7</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Those two versions of the petitioner's history of hiring survey researchers appear to conflict. However, the AAO will construe them as reconcilable and continue with the analysis of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner's president did not state the field in which I [REDACTED] earned her bachelor's degree and, in any event, provided no evidence in support of the assertion that [REDACTED] worked for the petitioner as its survey researcher and had a bachelor's degree in any specific specialty closely related to that position.

The petitioner's owner indicated that he has performed the duties of the proffered position, but did not indicate that he possesses any degree or equivalent, let alone a minimum of a bachelor's degree in a specific specialty closely related to the proffered position or its equivalent.

The petitioner's owner stated that [REDACTED] performed the duties of the proffered position and that she has a bachelor's degree in economics, but provided no evidence in support of that assertion.

Other than the petitioner's president's uncorroborated assertions, the record contains no evidence pertinent to anyone the petitioner may ever previously have hired 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).

Therefore, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>8</sup>

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. Preparation of reports and projections analyzing market penetration, cost of manufacturing goods, quality assurance and quality control procedures by Asian manufacturers, industry trends and business forecasts and recommendations; analyzing and segmenting data; separating market information into manageable parts; developing graphs, charts

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<sup>8</sup> 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").

and reports illustrating data; conducting research and preparing reports concerning wearing apparel, accessories, and jewelry, for instance, contain no indication of a specialized and complex nature beyond the ken of a survey researcher without a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than survey researcher 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 survey researcher position, a position with only a basic understanding of survey research. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely related to survey research, notwithstanding that some survey researcher positions require no such degree.

For both of the reasons explained above, the petitioner has not satisfied, therefore, 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 documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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