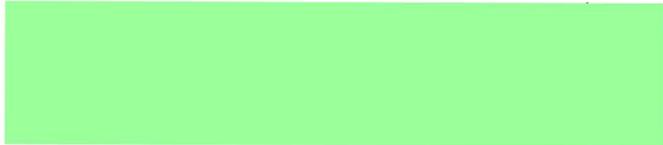


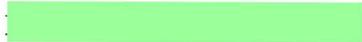


U.S. Citizenship
and Immigration
Services

(b)(6)



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

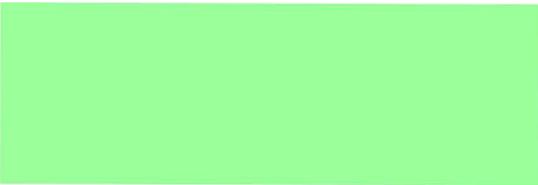


IN RE: Petitioner:
Beneficiary:



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.

In a letter dated November 2, 2009, submitted in support of Form I-129 visa petition, the petitioner stated that it is the "management company for [REDACTED] medical practice, which does business as [REDACTED]." In order to employ the beneficiary in what it designates as a marketing/business analyst 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 asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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 before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements:

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

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

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

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

In the November 2, 2009 letter referenced above, the petitioner's president/owner, Dr. [REDACTED] provided the following description of the duties of the proffered position:

- 20% of the time – Research and analyze market data in order to develop & coordinate marketing programs;
- 10% of the time – Study demographic data and consumer profiles with site visits to identify target audiences to collect data on customer preferences, habits and preparing reports on finds, such as case studies;
- 20% of the time – Research market conditions in the local area of each office to determine potential business expansion, such as improving existing conditions;
- 10% of the time – Plan and develop marketing plans, preparing reports and graphic illustrations of findings and suggest to upper management advertising policies and procedures;
- 10% of the time – Research and analyze market data to assist in implementing marketing and promotional programs targeted to specific groups, as well as to the general population of the area;
- 10% of the time – Inspect layouts, advertising copies, web sites, and edit scripts for audience to our business goals and specifications;
- 10% of the time – Monitor and analyze marketing and advertising results to determine cost effectiveness of promotion campaign; and
- 10% of the time – Compare cost of advertising and rate of return to the business from each media source.

Dr. Batra also stated the following:

The job responsibilities described above are typically learned at the university level in Business College due to the advanced and complex nature of the skills involved in understanding business and management. Due to the complex nature of the duties

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described above, the position is considered professional.

* * *

[The petitioner] normally requires the minimum of a bachelor [sic] degree for the [proffered position].

On February 8, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, a more detailed description of the duties of the proffered position and evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted a letter, dated March 8, 2010, in which she provided another version of the duties of the proffered position. That version, however, is only slightly amended from the duty description previously submitted, and provides no additional detail of the duties themselves. Counsel stated that the proffered position "requires that the applicant have been trained in multiple disciplines, such as marketing, advertising and business and these skills are usually obtained in a university program in the obtainment of a bachelor's degree." Counsel further stated:

The job duties specifically stated in [sic] above are considered specialized and require performance by someone with greater than a bachelor's degree because the position requires specialized knowledge in marketing, advertising and business. The position requires the applicant to have had undergraduate work in marketing, business and advertising. These subjects are taught in a university setting in the obtainment of a bachelor's degree.

In response to the RFE, counsel also provided (1) nine vacancy announcements and (2) two letters from others in the petitioner's industry. The AAO will address that evidence below.

The director denied the petition on March 22, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. 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 (1) an evaluation, dated May 18, 2010, of the proffered position, and (2) a brief.

The evaluation of the proffered position discusses the duties of the proffered position and concludes that the position requires a minimum of a bachelor's degree in business administration or a related area.

In her brief, counsel asserted that the proffered position is similar to a market research analyst position as described in the U.S. Department of Labor's *Occupational Outlook Handbook*

(*Handbook*), and that the *Handbook* indicates that such positions qualify as specialty occupation positions.

Counsel also cited the letters provided by others in the petitioner's industry, the evaluation of the proffered position, and a decision of the AAO in asserting that the proffered position is a specialty occupation position.

As a preliminary matter, it is noted that while 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all United States Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel asserted that the case found that a particular market research analyst position requires a bachelor's degree. Even if that finding were relevant to the instant case, it would have no precedential force. Further, that finding is not directly relevant. The case counsel cites was not an H-1B case, but involved an immigrant petition for an EB-2 visa. As such, whether market research analyst positions require a minimum of a bachelor's degree or the equivalent *in a specific specialty* was not an issue in that case. For both reasons, counsel's citation of the unpublished AAO case will not be accorded any weight towards the resolution of this particular appeal.

The AAO is also not persuaded by counsel's comments on *Unical Aviation, Inc. v. INS*, 248 F. Supp. 2d 931 (D.C. Cal 2002). The material facts of the present proceeding are distinguishable from those in *Unical*. Specifically, *Unical* involves: (1) a position for which there was a companion position held by a person with a Master's degree; (2) a record of proceedings that included an organizational chart showing that all of its employees in the marketing department held bachelor's degrees; and, in the court's words, (3) "sufficient evidence to demonstrate that there is a requirement of specialized study for [the beneficiary's] position." Also, the proffered position and related duties in the present proceeding are different from those in *Unical Aviation, Inc.*, where the beneficiary was to liaise with airline and Maintenance Repair Organization ("MRO") customers in China for supply of parts and services; analyze and forecast airline and MRO demands to generate plans to capture business; provide after-sales services to customers in China; and develop new products and services for the China market. Moreover, there is no indication in the record of proceeding that the petitioner is in the same industry or is in any way similar in size or type of business as *Unical Aviation, Inc.*

Further, in *Unical Aviation* the Court partly relied upon *Augut, Inc. v. Tabor*, 719 F. Supp. 1158 (D. Mass. 1989), for the proposition that Immigration and Naturalization Service (INS, now USCIS), had not used an absolute degree requirement in applying the "profession" standard at 8 U.S.C. § 1101(a)(32) for determining the merits of an 8 U.S.C. § 1153(a)(3) third-preference visa petition. That proposition is not relevant here, because the H-1B specialty occupation statutes and regulations, not in existence when INS denied the *Augut, Inc.* third-preference petition, mandate not just a baccalaureate or higher degree, or its equivalent, but a degree "in the specific specialty." § 214(i)(1) of the Act; *see also* 8 C.F.R. § 214.2(h)(4)(ii). The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same

district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Furthermore, the petitioner's claim that a bachelor's degree 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, 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) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, 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.¹

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

¹ Even if established by the evidence of record, which it is not, that the petitioner requires a bachelor's degree in business administration, the requirement of such a degree is inadequate to establish that a position qualifies as a specialty occupation. The claimed requirement of a bachelor's degree in a major such as business administration, without specialization, 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.

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)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

The *Handbook* describes the occupation of market research analyst as follows:

What Market Research Analysts Do

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

Duties

Market research analysts typically do the following:

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

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

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012–2013 edition available online.

information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop advertising brochures and commercials, sales plans, and product promotions.

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Market Research Analysts, <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited June 5, 2013).³ The AAO agrees with the director's classification of the proffered position into this occupational category.

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

How to Become a Market Research Analyst

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

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or communications. Courses in statistics, research methods, and marketing

³ Since the issuance of the director's decision, an updated version of the *Handbook* has become available.

are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited June 5, 2013). In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties.⁴ Section 214(i)(1)(B) of the Act (emphasis added).

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

⁴ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

position as being a specialty occupation. Based upon the record of proceeding, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

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

As was observed above, the *Handbook* does not report that the petitioner's industry normally requires market research analysts to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of market research analysts that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry.

The petitioner did provide two letters from others in the medical industry. Both of the writers are California surgeons. Both state that market research analyst positions in their industry require a minimum of a bachelor's degree. As neither writer indicates that such a position requires a bachelor's degree *in a specific specialty*, their observations are not probative evidence toward satisfying this or any other criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As was noted above, counsel provided copies of nine vacancy announcements, all published by firms other than the petitioner for positions in marketing analysis. Those announcements were placed by a telecommunications services company; a corporate decision management, tools, and applications company; a telephone service provider; a solar power technology company; a bank; a tool and equipment supplier; a marketing company; a manufacturer of dental devices and supplies; and an unidentified company in an unidentified industry. None of those companies have been shown to be, and none appear to be, in the petitioner's industry.

Two of those announcements state that the positions they offer require bachelor's degrees, but not that the degrees must be in any specific specialty or even in any particular range of subjects. Those announcements do not indicate that the advertising employers reflect a common industry requirement for at least a bachelor's degree in a specific specialty.

One of the vacancy announcements provided states that the position it announces requires a degree in marketing, business, or computer science. Another states a requirement of a bachelor's degree in

marketing, business, or a related major. Two indicate that the positions announced require a bachelor's in marketing, finance, or business administration. The requirement for each of those positions can be satisfied by a degree in an array of subjects that is too wide to delineate a specific specialty. As such, they, too, are not indicative of the advertising employers' requiring at least a bachelor's degree in a specific specialty.

Further, the educational requirement of each of those positions may be satisfied by an otherwise unspecified degree in business administration. As was explained above, an educational requirement that can be satisfied by an otherwise unspecified degree in business administration is not one for degree in a specific specialty.

One vacancy announcement states that the position announced requires a bachelor's degree, "preferably within statistics, mathematics, economics or a technology focused degree." That a degree in one of those fields is preferred does not indicate that it is a minimum requirement. Further, even if a degree in one of those three fields or in a technology-focused field were a minimum requirement, a requirement of a degree in such a wide array of apparently diverse and disassociated subjects without a common body of highly specialized knowledge is not a requirement of a degree in a specific specialty. For both reasons, that announced position does not require a minimum of a bachelor's degree in a specific specialty or the equivalent.

Another announcement specifies an educational requirement of a bachelor's degree in mathematics, statistics, economics, or the equivalent, and the final vacancy announcement indicates that the educational requirement of the position it announces is a bachelor's degree in marketing, statistics, or a related field.

The wide range of non-congruent educational requirements that this group of advertisements specify, the fact that the advertising firms have not been established as organizations substantially similar to the petitioner, and the failure to additionally establish that the proffered position and those in the submitted advertisements are sufficiently similar to be deemed parallel are all individually sufficient reason for discounting the vacancy announcements as evidence showing a common practice in the industry to require for the type of position here proffered at least a bachelor's degree in a specific specialty or the equivalent. As such, none of these vacancy announcements is indicative of a common degree requirement in the petitioner's industry for positions parallel to the one proffered here.

Further, even if all nine positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree in a specific specialty or the equivalent, the submission of the nine announcements is statistically insufficient to demonstrate an industry-wide requirement.⁵ The record contains no

⁵ 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 nine job postings with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl

independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

As the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, it has not satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The petitioner and counsel claim that the duties of the proffered position are complex or unique. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its equivalent.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While a few related courses may be beneficial, or even required, to perform certain duties of the proffered position, 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 particular position here proffered.

Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of market research analyst for a company in the petitioner's industry and otherwise similar to the petitioner 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.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred social science coursework, not necessarily leading to a degree in a specific specialty, acceptable for market research analyst positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than market research analyst or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of market research analyst is so complex or unique relative to other positions in the occupation that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position. Although the petitioner's owner stated in his November 2, 2009 letter that the petitioner normally requires a minimum of a bachelor's degree for the proffered position, he did not allege that the petitioner requires a degree in any specific specialty for the position. Further, he did not provide any evidence that the petitioner had ever previously hired anyone in the position. The record contains no evidence, therefore, for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁶

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

However, the duties of the proffered position: preparing reports and graphic illustrations, suggesting advertising policies and procedures to upper management, researching and analyzing market data, analyzing marketing and advertising results, *et cetera*, do not convey a usual association between the knowledge required to perform them and the attainment of a particular educational level in a specific specialty. Rather, the AAO finds that the proposed duties are presented in the record of proceeding

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

in terms of generalized and generic functions that, as so generally described, fail to convey that their performance would require application of a particular level of a body of highly specialized knowledge usually associated with attainment of a particular level of educational attainment in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of a level of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific discipline, 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 record suggests an additional issue that was not addressed in the decision of denial.

The record does not indicate that the beneficiary has a bachelor's degree, *per se*. Rather, the petitioner is relying on the beneficiary's employment experience being found to be equivalent to such a degree. The record contains evidence that the beneficiary has 24 years of employment experience. It also contains an evaluation, dated June 16, 2009, which states that the beneficiary's employment experience is equivalent to a bachelor's degree in business administration awarded by a regionally accredited U.S. university.

When a petitioner seeks to rely on an evaluation of the beneficiary's work experience or training, other than college education, to show that the beneficiary has the equivalent of a bachelor's degree, that evaluation must, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), be prepared by an official who has authority to grant college-level credit for training and/or experience in the appropriate specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. *See also* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The record contains no indication that the person who prepared the evaluation of the beneficiary's qualifications has authority to grant college-level credit for training and/or experience in the appropriate specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Therefore, it is not competent evidence that the beneficiary's employment experience is equivalent to a bachelor's degree, and will not be considered for that proposition.

Further, as was explained above, a position, the educational requirement of which may be satisfied by an otherwise unspecified bachelor's degree in business administration, is not a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. As such, even if the petitioner had demonstrated, with competent evidence, that the beneficiary has the equivalent of a bachelor's degree in business administration, it still would not have demonstrated that the beneficiary is qualified to work in any specialty occupation.

(b)(6)

For both reasons, the petitioner has not demonstrated that the beneficiary is qualified to work in a specialty occupation position. The petition must be denied on this additional basis.

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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