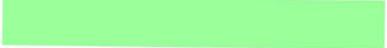


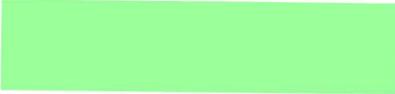


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 25 2013** Office: VERMONT 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:



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 stated that it is an oil and gas safety company. To employ the beneficiary in what it designates as an international safety training advisor position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on two grounds, namely, that the petitioner failed to establish (1) that it would employ the beneficiary in a specialty occupation position, and (2) that the beneficiary is qualified to work in a specialty occupation position.

On appeal, counsel asserted that the director's bases for denial were erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on both of the bases specified in his decision. 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 first 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.

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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an International Safety Training Advisor position, and that it corresponds to Standard Occupational Classification (SOC) code and title 19-3021, Market Research Analysts from the Occupational Information Network (O*NET).

On the visa petition, the petitioner stated its name as [REDACTED]. On the LCA, in answer to section C item 2 "Trade name/Doing Business As (DBA), if applicable," the petitioner stated: [REDACTED]

With the visa petition, the petitioner provided a letter, dated October 15, 2009, from the business development director of [REDACTED], a company in [REDACTED]. That letter describes the history of companies allegedly related to the petitioner. It states that [REDACTED] was renamed [REDACTED], which formed another company named [REDACTED]. The letter further states that expansion into other fields led to the incorporation of [REDACTED] and [REDACTED]. Finally, he stated that [REDACTED] both sold a majority of the shares in their corporations to [REDACTED] that is part of the [REDACTED] and that, "as a part of this transition, both [REDACTED] and [the petitioner] are now jointly branded under the [REDACTED]

That the petitioner is branded under the [REDACTED] name does not adequately explain the business relationship between it and [REDACTED], or the relationship between the petitioner and the business development director who wrote that letter. That person's assertion is the only evidence in the record that the petitioner and [REDACTED] are identical.¹

¹ Counsel provided a copy of the 2007 annual report of [REDACTED]. That document, however, contains no reference to ownership or any other business relationship between [REDACTED] and either [REDACTED]. The record contains no evidence to corroborate the assertion of a business

The business development director of [REDACTED] stated that the proffered position requires a bachelor's degree or the equivalent in marketing and provided the following description of the duties of the proffered position.

- Develop, coordinate and implement marketing plans and strategies designed to retain existing business and to identify and capture new opportunities within International Safety Training Consulting and Training sector;
- Lead the long[-]term strategy formulation and portfolio formation process;
- Review the current business portfolio and make recommendations to better align with company long[-]term strategy;
- Identify relevant industry trends and evaluate their potential for new business opportunities;
- Prepare the Corporate Strategic Plan annually and assist subsidiary companies and joint ventures to prepare their plans and ensure[] their strategies are aligned with the parent company;
- Support strategic marketing and operations planning towards the overall new business goals of the company;
- Serve on the Proposal Strategy Board;
- Develop [REDACTED] services portfolio for sales and services to support a defined value proposition;
- Align company functional Teams with growth initiatives with customer market segment;
- Research various energy[-]related industries to determine new market potential for [REDACTED] services portfolio;
- Oversee the identification and development of on-going relationships with key customers to seize potential opportunities in both domestic and international markets;
- Direct the development of creative price to win strategies to improve competitive posture and capture new business opportunities
- Assess [REDACTED] capabilities/strengths/weaknesses and assist in the development of long-range business plans and marketing philosophies;
- Identify resources (human, financial, contracting) required to capture opportunities;
- Partner with the proposal staff to ensure implementation of strategies and optimal business leverage; and
- Develop and maintain relationships with potential partner companies in the joint pursuit of selective business opportunities.

The AAO observes that the job description seems unlikely to correspond with a position entitled International Safety Training Advisor, as it contains no duties pertinent to providing advice on safety training. Further, the person who provided that description of the claimed duties of the proffered

relationship between the petitioner and either [REDACTED]

position did not demonstrate that he has any relationship with the petitioner. He did not detail his knowledge of the petitioner's operations. The record contains no indication that he is competent to attest to the duties of the proffered position or its educational requirements. For the purpose of providing an analysis of the job as described in the record, however, the AAO will assume, *arguendo*, that this individual has personal knowledge of the duties of the proffered position and that the description of the duties of the proffered position that he provided is accurate. Although, if the proffered position were otherwise found to be a specialty occupation based on this description of duties, the AAO observes that the business development director of [REDACTED] would be obliged to demonstrate that he is competent to describe the duties of the proffered position before the petition could be approved. The petitioner might also be required to explain the discrepancy between the title of the proffered position and its reported duties.

On November 25, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation position. That RFE stated, "[T]he duties related to the proffered position appear to be the duties of a market research analyst."

In response, counsel submitted (1) copies of four vacancy announcements printed from web content; (2) evidence pertinent to other employees; and (3) counsel's own letter, dated January 7, 2010. The vacancy announcements provided and the evidence pertinent to other employees are addressed below.

In his own letter, counsel provided an amended description of the duties of the proffered position, and assigned percentages to the various duties. Counsel eliminated, "Align company functional Teams with growth initiatives with customer market segment" from the list of duties, and changed "Lead the long[-]term strategy formulation and portfolio formation process" to "Assist in the long[-]term strategy formulation and portfolio formation process." Counsel also changed the order of the duties. The AAO finds, however, that counsel's description of the duties of the proffered position is substantially the same as the previous description provided.

Counsel also stated:

The position of International Safety Training Advisor is considered a specialty occupation because a Bachelor's degree in Marketing (or its equivalent) is normally the minimum requirement for entry into the position, and the nature of the position's duties [is] so specialized and complex that only those with a Bachelor's or higher degree would be able to perform them.

Counsel asserted that the evidence provided supports the conclusion that the proffered position is a position in a specialty occupation.

The director denied the petition on January 25, 2010, finding, *inter alia*, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty

occupation. In that decision, the director analyzed the proffered position as a marketing manager position.

On appeal, counsel stated, "The duties related to the [proffered] position of International Safety Training Advisor are not those of a mere Market Research Analyst role as asserted in [the RFE]."

The AAO observes that the petitioner is obliged to provide an LCA that corresponds with the proffered position, and that the LCA provided, as was noted above, states that the proffered position corresponds to an SOC code and title 19-3021, Market Research Analyst position as described in O*NET. If, as counsel asserts, the proffered position does not correspond with a market research analyst position, then the visa petition is not supported by a corresponding LCA. That issue will be addressed further below.

In any event, counsel reiterated her assertion that the duties of the proffered position are sufficiently sophisticated that they can only be performed by a person with a minimum of a bachelor's degree or the equivalent in marketing.

As was observed above, the AAO will assume, *arguendo*, that the business development director of [redacted] was qualified to describe the duties of the proffered position from his personal knowledge. Without that assumption, the duties of the proffered position would be unknown to the AAO, and the failure of the petitioner to establish the substantive nature of the work to be performed by the beneficiary with a statement from someone demonstrably competent to attest to those duties would preclude a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Again, for purposes of providing a full and complete analysis of the job as described, however, the AAO will assume, *arguendo*, that this description of the duties of the proffered position is accurate and, pursuant to that assumption, the AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first 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 *Occupational Outlook Handbook* (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)(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* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² As noted above, the petitioner claims in the LCA that the proffered position corresponds to an SOC code and title 19-3021, Market Research Analyst position as described in O*NET. The *Handbook* describes the duties of market research analyst positions 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

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

methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited June 24, 2013).

The duties listed by the petitioner's business development director and counsel do not closely correspond to the duties the *Handbook* attributes to market research analyst positions. Because the petitioner asserted, on the LCA, that the proffered position corresponds to a market research analyst position, however, the AAO will analyze the proffered position based on the assumption, made *arguendo*, that it is a market research analyst position. The AAO reiterates that, if the proffered position does not correspond to a market research analyst position, the visa petition is deniable on another ground.

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

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 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.

Id. at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4>.

The *Handbook* indicates that "Most market research analysts need at least a bachelor's degree," which implies that some do not. Further, even as to those market research analyst positions that may require at least a bachelor's degree, the *Handbook* indicates that the degree may be in statistics, math, computer science, business administration, one of the social sciences, or communications.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" 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 (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.³ Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, although a general-purpose bachelor's degree, such as a degree in

³ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

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

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

Again, 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 support the proposition that the petitioner's industry, or any other, normally requires market research analysts to possess a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. The record contains no evidence pertinent to a professional association of market research analysts that requires a minimum of a bachelor's degree in a specific specialty or its equivalent as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

As was noted above, the petitioner provided copies of four vacancy announcements.

1. Safety Awareness Specialist for [REDACTED] a producer of wind-powered electrical generators, requiring a "Relevant Master's Degree;"
2. Sales Rep II – S&T (science and technology) for an unidentified company stating that a "Bachelor's Degree in Engineering, Marketing or Business Administration [is] preferred";

3. ENV & SAF Advisor for [REDACTED] which is in the electronics industry, requiring a "Bachelor of Science degree in field preferably in a field [sic] related to EHS"; and
4. Field Sales Trainer for [REDACTED] a waste management company, requiring a bachelor's degree in "business, marketing or related field, or equivalent work experience.

On the visa petition, the petitioner stated that it is an oil and gas safety company. None of the vacancy announcements submitted have been shown to be in that industry, and three of the four clearly are not. Further, although some of the vacancy announcements contain duty descriptions, none is sufficiently detailed to show that the position announced is sufficiently similar to the proffered position that it could be characterized as a "parallel" position.

In addition, the first vacancy announcement states that its education qualification would be satisfied by a "Relevant Master's Degree." What array of subjects the hiring authority would consider to be sufficiently closely related to a safety awareness specialist position is not stated. For that reason, that vacancy announcement does not state a requirement of a degree in a specific specialty or its equivalent.

Further still, the second vacancy announcement states that a "Bachelor's Degree in Engineering, Marketing or Business Administration [is] preferred" for the position. First, a preference is not a minimum requirement. Second, for the reasons explained in detail above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business or business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For these two reasons alone, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet further, the third vacancy announcement requires a bachelor's degree "preferably in a field related to EHS." Even if a degree "related to [environmental health and safety]" were shown to be a degree in a specific specialty within the meaning of the pertinent statutes and regulations, a *preference* for a degree in a specific specialty 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.

The fourth vacancy announcement states a requirement of a bachelor's degree in "business, marketing or [a] related field, or equivalent work experience." Again, an educational requirement that may be satisfied by an otherwise undifferentiated business degree is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. That vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all four announcements were demonstrated to be for parallel positions in the petitioner's industry with organizations otherwise similar to the petitioner and required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the four

announcements is statistically insufficient to demonstrate a common, industry-wide requirement.⁴ The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations and has not, therefore, satisfied the 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." 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing 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.

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

As such, even if the job announcements supported the finding that the position of market research analyst for an oil and gas safety 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.

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, even for those market research analyst positions that require degrees, there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category 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.⁵ In the brief on appeal, counsel stated that the proffered position is a new position that no one has previously held. Although counsel provided information pertinent to other employees, that evidence is not directly relevant to whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has not provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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, however, the duties of the proffered position contain insufficient indication of a high degree of specialization and complexity. Preparing the corporate strategic plan, supporting strategic marketing and operations, serving on the Proposal Strategy Board, researching various energy-related industries to determine new market potential, overseeing the identification and development of on-going relationships with key customers, directing the development of creative pricing strategies, identifying resources required to capture opportunities, developing and maintaining relationships with potential partner companies, etc., contain insufficient indication that they are so specialized and complex relative to other market research analyst positions that the knowledge

⁵ It is noted that, 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").

required to perform them is usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. A beneficiary's credentials to perform a particular job are only relevant, however, when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .*

As was noted above, the duties of the proffered position, as described by the business development director of [REDACTED] include:

- Develop, coordinate and implement marketing plans and strategies designed to retain existing business and to identify and capture new opportunities within International Safety Training Consulting and Training sector;

- Lead the long[-]term strategy formulation and portfolio formation process;
- Review the current business portfolio and make recommendations to better align with company long[-]term strategy;
- Identify relevant industry trends and evaluate their potential for new business opportunities;
- Prepare the Corporate Strategic Plan annually and assist subsidiary companies and joint ventures to prepare their plans and ensure[] their strategies are aligned with the parent company;
- Support strategic marketing and operations planning towards the overall new business goals of the company;
- Serve on the Proposal Strategy Board;
- Develop [redacted] services portfolio for sales and services to support a defined value proposition;
- Align company functional Teams with growth initiatives with customer market segment;
- Research various energy[-]related industries to determine new market potential for [redacted] services portfolio;
- Oversee the identification and development of on-going relationships with key customers to seize potential opportunities in both domestic and international markets;
- Direct the development of creative price to win strategies to improve competitive posture and capture new business opportunities
- Assess [redacted] capabilities/strengths/weaknesses and assist in the development of long-range business plans and marketing philosophies;
- Identify resources (human, financial, contracting) required to capture opportunities;
- Partner with the proposal staff to ensure implementation of strategies and optimal business leverage; and
- Develop and maintain relationships with potential partner companies in the joint pursuit of selective business opportunities.

As was explained above, the AAO is assuming, *arguendo*, that those are the actual duties of the proffered position, although that has not been satisfactorily demonstrated by a preponderance of the evidence.

As was also noted, the *Handbook* lists the following duties of market research analysts:

- 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, and
- Prepare reports and present results to clients or management.

Those duty descriptions bear no great resemblance. The description of the duties of the proffered position does not establish that it is a market research analyst position. Further, as was noted above, counsel stated, on appeal: "The duties related to the [proffered position] are not those of a mere Market Research Analyst."

On the balance, even if the AAO were to concur with counsel and affirmatively find that the proffered position is not a market research analyst position, it would then follow that the submitted LCA certified for a market research analyst position would not correspond with the visa petition as required by the regulations cited above. Accordingly, the petition must be denied for this additional, alternative reason. In other words, if the proffered position is not a market research analyst, the petition must still be denied in the alternative for failure to be supported by an LCA that corresponds to the position being offered, whether or not that position would qualify as a specialty occupation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* 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.