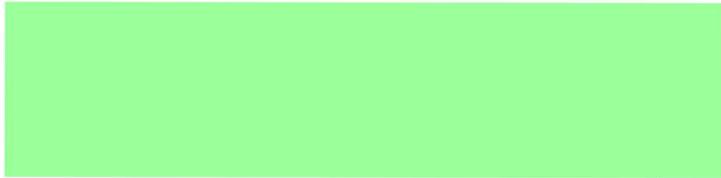


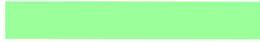
(b)(6)

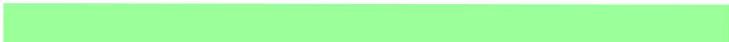
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **MAR 11 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:

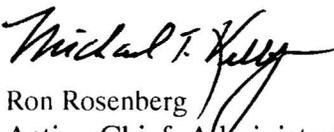


INSTRUCTIONS:

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

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

Thank you,

*For*   
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 the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a hospitality company with 22 employees. It seeks to employ the beneficiary as a full-time "Business Analyst" and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The Labor Condition Application (LCA) submitted by the petitioner to support the petition was certified for the SOC (O\*NET/OES) Code 13-1111, the associated occupational classification of Management Analysts, and a Level I prevailing wage rate.

At the outset, for appropriate emphasis and to help orient the petitioner to the bases of this decision, the AAO states its finding – to be discussed at length later in this decision – that both the director and the petitioner err to the extent that they assume that Management Analysts constitute an occupational group for which entry requires attainment of at least a bachelor's degree, or the equivalent, in a specific specialty. Thus, also, the director and the petitioner err to the extent that they assume that, to establish the proffered position as a specialty occupation, all the petitioner would need do is establish that it is within the Management Analysts occupational group.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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 support of the Form I-129, counsel for the petitioner submitted, *inter alia*, the following documents: (1) a support letter from the petitioner; (2) a copy of the aforementioned LCA that was certified for a job within the Management Analysts occupational classification; and (3) documentation concerning the beneficiary's academic credentials and maintenance of status.

In its support letter dated September 19, 2011, the petitioner provided the following description of the business analyst duties (verbatim):

1. Support operations and communicating between clients, customer service and information systems;
2. Plan study of work problems and procedures, such as organizational change, communications, information flow, inventory control, or cost analysis;
3. Work closely with the management in designing/redesigning and testing [the petitioner's] information systems applications;
4. Provide [ongoing] analysis of internal business data. This includes monthly reporting on services and interpretation of that analysis; highlighting any underlying trends. From this analysis make recommendations to the management;

5. To provide market intelligence. The [ongoing] monitoring and analysis of the external market place, but also identifying new market opportunities;
6. To undertake [ongoing] competitor analysis on other hotels such as Marriot International, Hilton Hotels, Starwood Hotels & Resort Worldwide. Through production of an internal Quarterly Competitor Update highlight new products and services launched to the marketplace. Identify new customers;
7. To manage customer satisfaction process-measuring feedbacks gained throughout [the petitioner's business]. Working with the corporation managers within the business to ensure client feedback processes are in place and the maximum benefit is gained from the information gathered; and
8. To produce quarterly analysis of all feedback, present findings to relevant parties and where appropriate identify potential areas for improvement.

At the outset, the AAO finds that, as reflected in both the above-quoted description of duties from the petitioner's September 19, 2011 letter of support and also in the list of duties included in the petitioner's response to the RFE, the petitioner describes the duties of the proffered position in terms of generalized functions that do not relate substantial information regarding the substantive work into which actual performance of those functions would translate, or regarding the substantive matters upon which the beneficiary would apply himself within the petitioner's particular business operations, or regarding the practical and theoretical applications of highly specialized knowledge that the beneficiary would have to employ, or regarding a necessary correlation between such applications and the attainment of a particular minimum educational or education-equivalent level in a specific specialty.

As such, the AAO finds that the petition does not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than positions which may share those same generalized functions as ascribed to the proffered position and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on October 7, 2011. Within the RFE, the director outlined the specialty occupation regulatory criteria and requested specific documentation to establish that the proffered position qualifies for classification as a specialty occupation. Additionally, the director sought information specific to the petitioner.

Counsel for the petitioner responded to the director's RFE and submitted the following: (1) quarterly wage reports; (2) the petitioner's income tax returns for the years 2009 and 2010; (3) copies of Internet printouts about the hotel; (4) a copy of the petitioner's franchise documentation; (5) the petitioner's organizational chart; (6) copies of six job advertisements; (7) an Internet printout from the U.S. Department of Labor's (DOL's) Occupational Information Network (O\*NET) section on the Management Analysts occupational classification; (8) an

Internet printout from the O\*NET's section on the Administrative Services Managers occupational classification; and (9) a breakdown of the proposed duties, with a percentage breakdown on time spent on each duty.

The petitioner's breakdown of time spent on the duties appears as follows:

1. Plan study of work problems and procedures, such as organizational change, communications, information flow, inventory control, or cost analysis; (15% of routine work)
2. Provide [ongoing] analysis of internal business data. This includes monthly reporting on services and interpretation of that analysis; highlighting any underlying trends. From this analysis make recommendations to the management; (15% of routine work)
3. To provide market intelligence. The [ongoing] monitoring and analysis of the external market place, but also identifying new market opportunities; (15% of routine work)
4. Support operations and communicating between clients, customer service and information systems; (15% of routine work)
5. Work closely with the management in designing/redesigning and testing [the petitioner's] information systems applications; (15% of routine work)
6. To undertake [ongoing] competitor analysis on other hotels such as Marriot International, Hilton Hotels, Starwood Hotels & Resort Worldwide. (10% of routine work)
7. Through production of an internal Quarterly Competitor Update highlight new products and services launched to the marketplace. (5% of routine work)
8. Identify new customers; (5% of routine work)
9. To manage customer satisfaction process-measuring feedbacks gained throughout [the petitioner's business]. Working with the corporation managers within the business to ensure client feedback processes are in place and the maximum benefit is gained from the information gathered; (3% of routine work)
10. To produce quarterly analysis of all feedback, present findings to relevant parties and where appropriate identify potential areas for improvement; (2% of routine work)

In a cover letter submitted in response to the director's RFE, counsel contended that the proffered position qualifies as a specialty occupation. Specifically, counsel argued that the O\*NET data from the Internet relevant to the Standard Occupational Classification (SOC) Code 13-1111 and

its associated occupational classification, Management Analysts, indicate that the occupational duties fall within a Job Zone 4 rating, and as such, counsel argued, a four-year bachelor's degree is required for entry into the occupation – and therefore into the proffered position. Counsel further argued that comparison with the O\*NET data on the unrelated SOC occupational classification of Administrative Services Managers (SOC code 11-3011) supported his argument. As reflected in this decision, the AAO finds the argument without merit.

On January 12, 2012, the director denied the petition, finding that the proffered position is not a specialty occupation. The director also stated that the petition was denied because the petitioning entity does not appear to be of the size and scope that would be necessary to hire the beneficiary in the proffered business analyst position.

On the Form I-290B submitted on appeal, counsel for the petitioner contends that the director erroneously determined that the proffered position is not a specialty occupation, and counsel submits that the petition qualifies as a specialty occupation and meets more than one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel maintains that the service erred in denying the petition based on the size and scope of the petitioner's business, and states that the petitioner needs the services of a business analyst in order to grow. On the Form I-290B, counsel states that the forthcoming brief and additional documents would discuss detailed errors of law and fact. Subsequent to the filing of the appeal, however, counsel submitted a letter dated March 8, 2012 requesting that the appeal be adjudicated on the record of proceedings because a brief would not be submitted as previously indicated on the Form I-290B.

As a preliminary matter, the AAO finds that the petitioner's assertion as adequate credentials for the proffered position a bachelor's degree in management science, information technology, or other similar degree (regarding which the petitioner identifies no specific degree or degree-range as acceptably "similar"), or equivalent experience (for which the petitioner has specified no objective standard for determining equivalency) is insufficient even to adequately allege that the proffered 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, acceptance of a degree with a generalized title, such as business administration, without further specification, or acceptance of a range of disparate degrees that do not reflect such a precise, specific, and closely related course of studies, are not indicative of a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

In order to make a determination as to whether the employment described by the petitioner qualifies as a specialty occupation, the AAO will now look to the criterion at

8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner claims that the proffered position is a business analyst that is akin to the management analyst job classification as described by DOL's *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*). The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The director found, based on a review of the information in the record of proceeding about the petitioner's business operations and organizational complexity, that the petitioner did not appear to have a need for management analyst services. Additionally, the director found that the proposed duties were not sufficiently similar to the duties stated in the occupational classification to characterize the proffered position as one that would fit within the Management Analysts occupational classification.

To determine whether the duties of the proffered position support bear sufficient similarity to the occupational classification, the AAO turns to the 2012-2013 online edition of the *Handbook* for its discussion of the Management Analysts occupational group. According to the *Handbook*, this occupation is described as follows:

#### **What Management Analysts Do**

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

#### **Duties**

Management analysts typically do the following:

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

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<sup>1</sup> The AAO's references to the *Handbook* are to the 2012-2013 edition, available online. The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>.

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

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

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

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

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

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm#tab-2> (last visited January 7, 2013).

The AAO finds that, on appeal, the petitioner provided no substantial rebuttal, and no documentary evidence to counter the director's findings that the nature of the petitioner's business - as a hotel-operation running as a franchisee of [REDACTED] - was engaged in business operations that would support a Management Analyst occupational-classification position for any appreciable length of time, whether in a part-time or a full-time status. Further, the AAO also finds that, as reflected in the director's comments, the nature of the franchise agreement submitted into the record undermines the petitioner's claimed need for the beneficiary to perform a substantial portion of the stated duties. In this regard, the AAO notes that the agreement indicates that the franchisor is charged with the formulaic business analysis and marketing implementation relative to the company brand that would relieve the beneficiary of such duties. More specifically, the AAO agrees with the director's finding that the franchise agreement indicates that all of the marketing, operating, technical training, management techniques and expertise developed and perfected by the franchisor are provided to the franchisee.

Next, the AAO also finds that the duties described in the aforementioned RFE-response letter and in the letter of support consist of a relatively abstract discussion of the type of work that the petitioner attributes to the proffered position, and that the duties appear to be an amalgam of marketing duties, customer service duties, and business duties, which are not described with sufficient detail to establish the substantive work that they would actually involve. The AAO further finds that, as such, the job duties presented do not provide more than a generalized overview of general functions that the petitioner appears to find generic to the Management Analysts occupational classification in general. As such, those letters' overview of the job and its related duties do not provide any substantive information with regard to particular management-analyst work, and associated education requirements, that the petitioner's particular business operations would generate for the beneficiary if this petition were approved. Accordingly, the AAO finds that the evidence of record lacks a credible factual basis for a finding that the petitioner has satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In light of the contextual background discussed in the last two paragraphs above, the AAO is not persuaded that the proffered position would, in fact, constitute one within the Management Analysts occupational group as it is described in the *Handbook*. That being said, the AAO will nevertheless address the proffered position as such, in order to identify additional evidentiary deficiencies that preclude the AAO from finding that the petitioner has satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Therefore, the AAO will proceed with its analysis of the proffered position as if it had been established as falling within the Management Analyst occupational classification, as the petition asserts.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO begins by repeating that, despite the director's and the petitioner's statements to the contrary, Management Analysts do not constitute an occupational group for which entry normally requires attainment of at least a bachelor's degree, or the equivalent, in a specific specialty. Thus, the director and the petitioner err to the extent that they assume that, to satisfy the first criterion of at 8 C.F.R. § 214.2(h)(4)(iii)(A), all the petitioner need do is establish that the proffered position falls within the Management Analysts occupational group.

That is to say, based upon the information in the *Handbook*, a position's inclusion within the Management Analyst occupational classification is not sufficient in itself to establish that the particular position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, as is required to satisfy this criterion. See U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm>. (last visited January 7, 2013).

That the *Handbook* does not indicate that management analyst positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "How to Become a Management Analyst" section of its chapter "Management Analysts," which does not specify a requirement of a bachelor's degree in a particular major or academic concentration:

### **How to Become a Management Analyst**

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

#### **Education**

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

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

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

#### **Certification**

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

#### **Work Experience**

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

#### **Advancement**

As consultants gain experience, they often take on more responsibility. L At the senior level, consultants may supervise teams working on more complex projects and become more involved in seeking out new business. Those with exceptional skills may eventually become partners in their consulting organization and focus on attracting new clients and bringing in revenue. Senior consultants who leave their consulting company often move to senior management positions at non-consulting organizations.

*Id.* The *Handbook* therefore indicates that a general business degree is suitable for entry into management analyst positions. *Id.* Again, such a general degree standard is insufficient on its own to justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

That the *Handbook* reports that "[m]ost management analysts have at least a bachelor's degree" is not an endorsement of the occupational group, or this particular position, for that matter, as normally requiring for entry at least a bachelor's degree, or the equivalent, in a specific specialty.<sup>2</sup>

The *Handbook* also indicates that persons with bachelor's degrees in a variety of fields may enter the occupation of management analyst, including those with such disparate majors as business or engineering. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty."<sup>3</sup> Section 214(i)(1)(b) (emphasis

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<sup>2</sup> The statement that "most management analysts have a bachelor's degree" does not support the view that any management analyst position qualifies as a specialty occupation, as "most" is not indicative that a particular position within the wide spectrum of management analyst jobs normally require at least a bachelor's degree, or its equivalent, in a specific specialty. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of computer programmer positions require at least a bachelor's degree in computer science or a closely related field, it could be said that "most" computer programmer positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

<sup>3</sup> 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

added).

The AAO notes that counsel alleged in the RFE cover-letter, dated December 28, 2011, that the O\*NET demonstrates that the Management Analysts occupational classification is one in which a bachelor's degree or equivalent is normally the minimum requirement for entry into the particular position. However, contrary to the assertions of counsel, the O\*NET does not state a requirement for a bachelor's degree, let alone for one in a specific specialty. Rather, it assigns the management analyst occupation a Job Zone "Four" rating, which groups the occupation as one of which "most," but not all, "require a four-year bachelor's degree." Further, the O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. See the U.S. Department of Labor's Occupational Information Network (O\*NET) occupational classification on Management Analysts on the Internet at <http://www.onetonline.org/link/summary/13-1111.00> (last accessed on January 7, 2013). Therefore, the O\*NET's information is not probative of the proffered position being a specialty occupation as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).<sup>4</sup>

Here, and as already discussed; the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

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 closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO considers whether the petitioner has 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.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of six advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions. The advertisements, however, do not succeed in this endeavor.

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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.

<sup>4</sup> Within the RFE cover letter, counsel distinguished the Job Zone 4 Management Analysts occupational classification from those associated with the Job Zone 3 Administrative Services Managers Occupational classification. Specifically, counsel noted that the job duties differ tremendously between the two occupational classifications, and thus the elevated educational and training threshold for Management Analysts exceeds that of Administrative Services Managers. The AAO does take notice of this distinction, but finds that it does not clarify the specialty occupation question before the AAO. However it may be compared or discussed, Job Zone 4 simply does not indicate that occupations included in it require at least a bachelor's degree in a specific specialty.

The Botsford Associates vacancy announcement is for a similarly titled position. However, while it states that a “Bachelor’s degree or equivalent experience is required,” it does not specify any specific specialty as a required major or academic concentration. This aspect alone leads the AAO to find that the document is not probative evidence for satisfying this or any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO also notes that there is no documentary support in the record that the nature and scope of the Botsford Associates operations are substantially similar to the petitioner. In this regard the only information provided in the advertisement is that Botsford Associates is a “Prestigious Hotel & Resorts Management Company.” It is clear that the petitioner is not. Further, the advertisement’s list of Skills and Requirements do not correspond with the duties specified in the petition.

The Gaylord Hotels advertisement specifies a “Bachelor’s in a related discipline” as “preferred,” but not as required. Also, there is no evidence of record establishing that the duties listed in this document’s “Job Summary” are substantially similar to those of the proffered position, while the duties advertised include types of work not specified in the petition. Likewise, it is not apparent that the petitioner’s organization and operations are substantially similar to the organization in the advertisement, in that the advertisement specifies the employing organization as a 2,888 room resort and convention center; with 600,000 square feet of meeting space, 10 restaurants and lounges, and a 27,000 square-foot European spa.

The petitioner fails to establish that the firm advertising for the “Business Analyst” in Miramar, Florida is substantially similar to the petitioner. The advertisement - issued by an unknown business entity that has several “operational departments” including, but not limited to, Information Technology, Hotel Operations, and Brand Marketing - does not state its organizational structure and the nature and scope of its operations in sufficient detail to merit a finding that it and the petitioner are similar organizations. Also, the duties specified in the advertisement are much more detailed than are those described in the petition for the proffered position, which leaves unresolved whether the duties of the two positions in question are sufficiently similar to qualify their related positions as parallel. In any event, the advertisement does not support the proposition of an industry-wide requirement for at least a bachelor’s degree in a specific specialty, or for at least a bachelor’s degree from a close group of degrees in related specialties closely related to the advertised position: the advertisement only states a preference for a bachelor’s degree, and, further does not even specify a major or concentration for such degree, beyond it being “in area of specialty” – which is not identified.

Next, on its face, the job-vacancy announcement produced by Caesars Entertainment, for a “Sr. Analyst - Hospitality/Convention Sales Analytics” in the firm’s Enterprise Analytics Department, is for a position in an organization beyond the petitioner’s industry. As described in the advertisement, Caesar’s Entertainment Corporation is “the world’s largest casino entertainment company.” Further, the advertisement indicates that the scope of the advertised position is materially broader than that of the proffered position, in that, per the advertisement, the Caesar’s Entertainment position would address not just hotel issues but also issues arising from the gaming industry.

Next, the AAO finds that reading the Infor job-vacancy announcement's Summary and Job Responsibility's sections in conjunction with this petition's information about the proffered position indicates that the petitioner and Infor - self-described as "the third largest provider of enterprise applications and services, helping 70,000 customers in 164 countries" - are different types of organizations engaged in materially different businesses. Consequently, the content of the Infor advertisement is not relevant to this particular criterion, the focus of which is recruiting and hiring practices in parallel positions in similar organizations within the same industry.

Finally, there is the "Gaming Hospitality Career" advertisement, which states its educational requirement as "bachelor's Degree in Business, Finance, or related field." The AAO finds that the range of duties and the matters upon which they would focus exceed the boundaries of the proffered position, as indicated by the fact that the focus of the advertised position extends to Kiosk performance, gaming machine performance, labor management reports, "anti information in Table Games," promotional events, analysis of game performance and "overall performance of the floor." As such, neither the industry nor the organization nor the duties advertised appear in any substantial sense similar to the profiles in this petition, such that the advertisement can reasonably be taken as evidence of a recruiting practice in the petitioner's industry, in an organization similar to the petitioner, for a position parallel to the one here proffered.

Aside from the evidentiary deficiencies identified above, there is a fundamental problem inherent in the petitioner's reliance on the job-vacancy advertisements to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The flaw with depending upon the advertisements is the fact that the documents are not self-authenticating as representing an established, common-to-the-industry course of recruiting and hiring for the type of position advertised. That is to say, absent authoritative supporting documentation endorsing those advertisements as representing the common recruiting and hiring practice in the industry for the type of position specified in the advertisement for the type of organization issuing the advertisement, the advertisements only serve to show hiring requirements announced for the period advertised by the firms that issued the advertisements. There is no basis in this record to conclude that the advertisements were the exclusive recruiting tools used by the firms that generated them during the period advertised, or that they stated the only recruiting standards published for the advertised position, or that the educational standards upon which hiring - if any - was based dovetailed with the educational requirements advertised.

For the reasons stated above, 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).

Now, the AAO looks to 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."

Although counsel expressly states that the proffered position is complex in that its attendant duties are complex, the record is devoid of any explanation regarding the position's relative complexity, and, more importantly, that the position is so complex that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Further, despite the stated complexity, the AAO notes that the petitioner has designated the proffered position as a Level I position on the submitted LCA, a designation for an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (Rev. Nov. 2009). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than similarly described positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. In this regard, the AAO finds that, as evident in the excerpts earlier in the decision, the petitioner presents the duties, and the position that they comprise, in generalized terms that do not demonstrate relative complexity or uniqueness as distinguishing dimensions of this particular position, let alone as dimensions so elevated as to require the services of a person with at least a bachelor's degree or the equivalent in a specific specialty. Consequently, as the petitioner fails to demonstrate how the proffered position is more complex or unique than management analyst positions 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).

Next, the AAO evaluates the record of proceeding to see whether the petitioner has established that it normally requires a degree or its equivalent for the position, pursuant to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Within the record of proceeding, counsel stated that the proffered business analyst position has not been advertised, and thus there is not an established history of recruiting and hiring that would be necessary to satisfy that the position actually requires the theoretical and practical application of knowledge. As a result, the record of proceeding does not establish the prior history of recruiting and hiring required to satisfy this particular criterion. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The AAO hereby incorporates by reference its earlier comments and findings with regard to the generalized level at which the proposed duties are described. Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position's duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than management analyst positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty. Furthermore, the petitioner did not submit any evidence to indicate that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Moreover, the AAO here also incorporates its earlier discussion and analysis regarding the implications of the submission of an LCA certified for a Level I wage level, which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation."<sup>5</sup> The LCA Level I wage-level materially undermines the credibility of the petition's assertions relative to the issue of the relative level of specialization and complexity of the asserted duties.

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine

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<sup>5</sup> For additional information regarding DOL guidance for prevailing wage determinations, see DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty is not relevant.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed, and the petition will be denied.

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