

(b)(6)

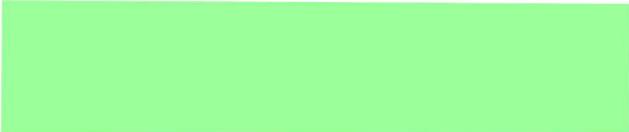
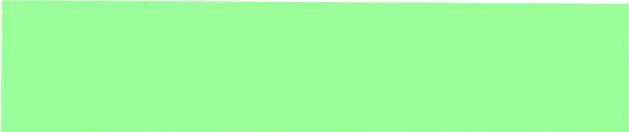
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

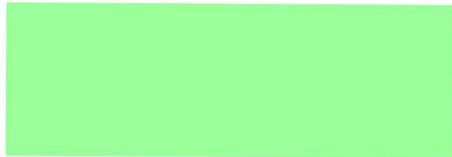


Date: OCT 04 2013 Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a "wholesale trade" business established in 2010, which currently employs 10 personnel in the United States, and reported a gross annual income of \$15 million at the time the petition was filed. In order to employ the beneficiary in what it designates as a market research analyst position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, determining that the petitioner failed to establish that the position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B, Notice of Appeal or Motion, counsel's brief, and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the entire record of proceeding, the AAO concurs with the director's ultimate determination that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will remain denied.

The Law

The issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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.

Facts and Procedural History

In a letter submitted in support of the petition, the petitioner stated that to become "a major participant in the wholesale industry, it is imperative that [it] hire[s] qualified employees in the specialty occupation of a Market Research Analyst." The petitioner provided the following description of the beneficiary's responsibilities:

- Researching market conditions to determine potential sales of products;
- Gathering information on competitors, prices, sales, and methods of marketing and distribution;
- Analyzing buying trends, prices of products and budgets;
- Implementing sales quotas, forecasts, sales and management reporting; and,
- Organize and represent in local and national trade shows.

[Bullet points added.]

The petitioner stated that its minimum requirements for the proffered position "include a Bachelor's of Science, Business, or related field." The petitioner provided the required certified Labor Condition Application (LCA) which indicates that the occupational classification for the

position is "Market Research Analysts and Marketing Specialists," SOC (ONET/OES) Code 13-1161.00, at a Level I (entry-level) wage.¹

Upon review, the director requested further detail regarding the proposed position, sufficient to establish it as a specialty occupation. The director outlined the specific evidence to be submitted.

The petitioner, in a response dated February 29, 2012, stated that it is a Texas-based "wholesaler and distributor of cigarettes and tobacco products." The petitioner noted the overall decline of the tobacco industry and indicated that it had created a revitalization plan to reduce costs, expand its customer base, and differentiate its patrons' purchasing experience. The petitioner provided a revised description of the duties of a market research analyst position and listed the time to be allocated to each of the described duties as follows:

- Researching market conditions in local, regional, or national area to determine potential sales of services – 25 percent.
- Analyzing past trends, sales records, and pricing to determine values and yield – 20 percent.
- Test various marketing promotions to gauge customer responsiveness. Collecting and analyzing data on client preferences and habits – 20 percent.
- Preparing cost estimate reports to determine accurate and competitive pricing of services. Producing and analyzing monthly budgets and marketing reports – 10 percent.
- Reviewing market trends and competition in the wholesale industry. Wholesale industry and market attractiveness analysis, portfolio matrix assessment and resources and capabilities evaluation. Interact with strategic management group in order to gather market intelligence and discuss future growth initiative. – 25 percent.

[Bullet points added.]

The petitioner also included additional generic information regarding the duties of the occupation of a market research analyst, noting that the proffered position also consists of these duties. The petitioner added that the beneficiary's responsibilities primarily include: "formulating policies for potential sales of products" and "gathering statistical data on competitors and examining prices, sales, and methods of marketing and distribution." The petitioner indicated further that the beneficiary "will devise methods and procedures for obtaining the sales data, directing staffing, coordinating sales and promotions and distribution, advising dealers and clients, analyzing sales data and recommending solutions for improvements." The petitioner claimed that these responsibilities require comprehensive knowledge of the product, sales statistics, demographic measurement and analysis, and promotional campaign activities. The petitioner reiterated:

¹ See Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

To develop and maintain [a] successful market research plan and campaign, an individual must have the sophisticated level of knowledge of business functions and marketing concepts that is gained through completion of a bachelor's degree in Business Administration, or a closely related field, or equivalent work experience.

The petitioner also stated that the proffered position requires a "Bachelor's Degree in Marketing, Business Administration, or related area, or the equivalent."

The petitioner provided excerpts from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and the Occupational Information Network (O*NET), as well as over 25 job advertisements for various marketing or marketing research positions. Nine of the job advertisements indicated that a bachelor's degree or a bachelor's degree in business administration is required to perform the duties of the advertised position. Six advertisements are either illegible or do not list any degree requirement. One advertisement requires a master's of business administration degree, one requires a bachelor's degree in either business or industrial engineering, and the remaining advertisements list a preference for a master's degree in a variety of disciplines.

The petitioner also submitted a March 9, 2012 opinion prepared by Dr. [REDACTED] Professor of Operations Management and Management Science at the [REDACTED] School of Business, regarding the academic degree requirements for the proffered position. Dr. [REDACTED] repeated the petitioner's initial description of the proffered position and offered his opinion that the "nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a Bachelor's degree." Dr. [REDACTED] concluded that positions such as the petitioner's market research analyst position require a minimum of a "Bachelor's Degree in Marketing, Business Administration, or a related area."

Based upon the evidence of the record, the director determined that the proposed position did not qualify for classification as a specialty occupation as defined in section 214(i)(1) of the Act.

On appeal, counsel for the petitioner recites excerpts from the *Handbook's* chapter on market research analysts and asserts that the specific duties of the market research analyst are comprehensive, specialized and complex. Counsel contends that the petitioner's requirement that its market research analyst must have a bachelor's degree to perform the specified duties is supported by authoritative guidance in the *Handbook*. Counsel takes issue with the director's determination that the proffered position most closely corresponds to that of a wholesale and manufacturing sales representative and not a market research analyst. Counsel also avers that the director failed to consider the position evaluation submitted by Dr. [REDACTED] without explanation. Counsel further claims that the petitioner has demonstrated, with the description of specific duties of the proffered position coupled with the petitioner's size, that the petitioner's market research analyst position is a specialty occupation. Counsel contends that the petitioner has established by much more than a preponderance of the evidence that the proffered position is a specialty occupation.

Analysis

In this matter, the petitioner seeks to continue the beneficiary's employment as a "market research analyst" SOC (ONET/OES) Code 13-1161.00, at a Level I (entry-level) wage for the specified period of three years. Preliminarily, we find that the petitioner's generic, non-specific description of the proffered position corresponds generally to the overview of a market research analyst as reported in the *Handbook*. Although the proffered position may have some duties that overlap with that of a wholesale and manufacturing sales representative, the majority of the broadly stated duties corresponds to that of a market research analyst position.

The AAO also finds that the petitioner has made contradictory claims regarding the minimum requirements necessary to perform the duties of the proffered position. Specifically, the petitioner initially stated that it required its market research analyst to have at least a "Bachelor's of Science, Business, or related field." In response to the director's RFE, the petitioner stated that the proffered position requires a "bachelor's degree in Business Administration, or a closely related field, or equivalent work experience" while also stating that the proffered position requires a "Bachelor's Degree in Marketing, Business Administration, or related area, or the equivalent." The petitioner did not state its educational requirement of a bachelor's degree in marketing for the proffered position when it filed the petition despite the necessity for the petitioner to establish at the time of filing that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent.² See § 214(i)(1)(B) of the Act; 8 C.F.R. § 103.2(b)(1).

This discrepancy aside, the petitioner's requirement of a bachelor's degree in business or business administration, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).³

² 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).

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate

(b)(6)

The petitioner's assertions that its minimum requirements for the proffered position are a "Bachelor's of Science, Business, or related field," are tantamount to an admission that the proffered position is not in fact a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Even if considering the petitioner's addition of a bachelor's degree in marketing in response to the RFE, the petitioner's continued acknowledgment that the proffered position may also be performed by an individual with only a business degree, without specialization, precludes the position from consideration as a specialty occupation.

Similarly, Dr. [REDACTED]'s opinion that the industry requires a "Bachelor's Degree in Marketing, Business Administration, or a related area, or similar preparation" as a minimum requirement for entry into the occupation is inadequate to establish that the proposed position qualifies as a specialty occupation. 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. In the March 9, 2012 opinion prepared by Dr. [REDACTED] we note that Dr. [REDACTED] repeated the petitioner's initial description of the proffered position and offered his opinion that the "nature of these specific responsibilities and knowledge is so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of a Bachelor's degree." Dr. [REDACTED] did not identify how the generally described duties are specialized and complex and did not indicate that the duties required study at the baccalaureate level in a specific discipline in order to perform them. Rather, Dr. [REDACTED] opined that the petitioner's market research analyst position is professional in nature and requires preparation only at the bachelor's degree level at a minimum. Thus, the petitioner's own expert finds that an individual with a general bachelor's degree alone is competent to perform the duties of its market research analyst.

Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R.

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

Id.

§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁴ As noted above, the petitioner identifies the proffered position as a market research analyst. Counsel on appeal also acknowledges the *Handbook* as an authoritative source on the occupations it addresses, asserting that the duties of a market research analyst position require a bachelor's degree. The *Handbook* provides the following description of the duties of a market research analyst, in pertinent part:

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

⁴ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2012-13 edition available online.

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited Sept. 30, 2013).

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

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited Sept. 30, 2013). Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, a minimum entry requirement of a degree in two disparate fields, such as psychology and computer science to name two of the accepted disciplines for this occupation, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties.⁵ Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is typically required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in various fields, i.e., a math and sociology to name two additional fields of study that are acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, although a general-purpose bachelor's degree, such as a degree in business or 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 normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation. The opinion of Dr. [REDACTED] submitted by the petitioner also finds that the duties of a market research analyst only require a general bachelor's degree. Based upon the record of proceeding, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement;

⁵ 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. 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.

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)).

As discussed *supra*, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The job vacancy announcements submitted by the petitioner also do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petitioner has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to it. Although a handwritten note appears on a few of the advertisements stating that the advertisers are "similar to [the] petitioner," the petitioner has submitted insufficient evidence to establish that these advertisers conduct business in the petitioner's industry and that they are also similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Nor does the petitioner submit any evidence regarding how representative these advertisements are of the advertisers usual recruiting and hiring practices. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Second, the majority of the advertisements submitted confirm that an unspecified bachelor's degree or a bachelor's degree in a general field such as business administration is sufficient to perform the duties of a market research analyst. Again, the acceptance of a general or a non-specific degree to perform the duties of the occupation does not establish the occupation as a specialty occupation.

For these reasons, the petitioner has failed to satisfy the first alternative prong described of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).⁶

Next, the AAO finds that the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that the proposed position is

⁶ 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 the 25 or so vacancy announcements it submits with regard to determining the common educational requirements for entry into parallel positions in similar organizations. 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 job of a market research analyst for a ten-employee wholesaler and distributor of cigarettes and tobacco products 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 appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree *in a specific specialty* for entry into the occupation in the United States.

"so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specific discipline.

In this particular matter the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis collectively constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or the equivalent. For example, on the LCA the petitioner classified the proposed position as a low-level, entry position relative to others within the occupation. The wage rate for which the LCA is certified is indicative of a position requiring only a basic understanding of the occupation and involving routine tasks that require limited, if any, exercise of independent judgment. Further, the AAO finds that, as reflected in the list of duties quoted earlier in this decision from the record of proceeding, while the petitioner ascribes numerous duties to the proffered position, they are described in generalized terms and generic functions that, as such, do not develop relative complexity or uniqueness as attributes of either themselves or of the position that they comprise.

Thus, based upon the record of proceeding, the petitioner has not established that the proposed position is so complex or unique that it can only be performed by a person who has completed a baccalaureate program in a specific discipline that directly relates to the proposed position. Consequently, 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 AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that, for the proffered position, it normally requires at least a bachelor's degree in a specific specialty, or the equivalent.

In considering this criterion, the AAO normally reviews the petitioner's past recruiting and hiring practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner in this matter claims that its manager previously performed the duties of the market research analyst and that this individual has an education and experience equivalent to a U.S. bachelor's degree in business. The petitioner, however, does not describe the duties its manager previously performed and whether these duties included all or similar duties of the proffered position. More importantly, the petitioner did not provide documentary evidence of the education and experience of this individual so that USCIS could ascertain whether the individual had obtained the equivalent of a bachelor's degree in business in the United States. Again, going on record without documentary evidence will not establish the petitioner's burden of proof. *Matter of Soffici, supra*. Most importantly however, as observed above, a bachelor's degree in a general field such as business, without specialization, is not considered a specific degree when determining whether a bachelor's degree in a specific discipline is required.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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"). Here, the petitioner has failed to establish that the duties of its proffered position require the theoretical and practical application of a body of highly specialized knowledge and the 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. Upon review of the evidence of record, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) is satisfied if the petitioner establishes 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.

The petitioner's designation of the proposed position on the LCA as a low-level, entry position relative to others within the occupation undermines the petitioner's claim that the nature of the specific duties of this position is specialized and complex. A position that includes specialized and complex duties would likely be classified at a higher-level, requiring a significantly higher prevailing wage. Moreover, the AAO finds that the petitioner has provided a broad overview of the occupation of a market research analyst and has provided little detail establishing the specific tasks the beneficiary in this matter would be required to perform, especially as those tasks relate to the petitioner's business. Consequently, the record of proceeding lacks evidence fundamentally required for establishing the knowledge and degree-attainment association required to satisfy this criterion.

Counsel's assertion on appeal that the petitioner's description of duties and the petitioner's size demonstrate that the proffered position is a specialty occupation is not persuasive. The record does not include documentary evidence establishing the petitioner's number of employees or its income. Again, going on record without documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Moreover, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence in the record of proceeding has not established that the duties of the position are 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. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent the determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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