



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 11 2013

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 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 petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on April 3, 2012. In the Form I-129 visa petition and supporting documentation, the petitioner describes itself as a company engaged in construction and masonry that was established in 1989. 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 on January 8, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. In support of this assertion, counsel submitted a brief and additional evidence.

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

For the reasons that will be discussed below, the AAO agrees with the director's ultimate conclusion 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, and the petition will be denied.

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a market research analyst to work on a full-time basis at a rate of pay of \$43,000 per year. In a support letter dated March 28, 2012, the petitioner stated that the proffered position involves the following duties:

- Develop creative techniques and strategies for the introduction of new projects and sales promotions within the construction industry;
- Evaluate potential areas of business opportunities;
- Conduct research on customer opinions and marketing strategies, collaborating with marketing professionals, statisticians;
- Review and develop promotional materials and deliver recommendations to the management;
- Identify market opportunities and gather data on competitors and analyze their prices, sales, and method of marketing and distribution;

- Measure the effectiveness of marketing, advertising and communications programs and strategies;
- Develop and implement marketing and sales plans on specific ethnic market;
- Monitor industry statistics and follow trends in trade literature;
- Prepare reports of findings, illustrate data graphically and translate complex findings into written text to the management;
- Forecast and track marketing and sales trends, by analyzing collected data;
- Execute all marketing tactics in accordance with goals and strategies such as print advertisement, TV, direct mail, public relations, direct sales, client education, literature, and others;
- Responsible for forecasting sales volumes and budget estimates;
- Monitor contract negotiations activities;
- Conduct market and competitive research and measure customer satisfaction;
- Research competitive products and evaluate competitor's strength and weaknesses;
- Collect and analyze data on consumer preferences, needs, and identify potential markets and factors affecting service demand;
- Manage business/client relationships to ensure clients have clear expectations and understanding;
- Produce quarterly reports to track costs and show progress[.]

In the instant case, the AAO observes that the duties of the proffered position as described by the petitioner in support of the Form I-129 petition have been stated in generic terms that fail to convey the actual tasks the beneficiary will perform on a day-to-day basis. The AAO further observes that many of the duties provided in the letter of support are from the description of "Market Research Analysts and Marketing Specialists" in the Occupational Information Network (O*NET) Code Connector OnLine Summary Report and other sources that are widely available on the Internet. That is, the petitioner has recited, virtually verbatim, duties from this occupational category and attributed them to the proffered position. For instance, the O*NET Code Connector Summary Report for the occupational category "Market Research Analysts and Marketing Specialists" states that the following "tasks" are related to this occupation:

- Collect and analyze data on customer demographics, preferences, needs, and buying habits to identify potential markets and factors affecting product demand.
- Conduct research on consumer opinions and marketing strategies, collaborating with marketing professionals, statisticians, pollsters, and other professionals.
- Develop and implement procedures for identifying advertising needs.
- Forecast and track marketing and sales trends, analyzing collected data.
- Gather data on competitors and analyze their prices, sales, and method of marketing and distribution.
- Measure and assess customer and employee satisfaction.
- Monitor industry statistics and follow trends in trade literature.
- Prepare reports of findings, illustrating data graphically and translating complex findings into written text.

U.S. Department of Labor, Employment & Training Administration, O*NET OnLine Code Connector, Market Research Analysts and Marketing Specialists – Code 13-1161.00 on the Internet at <http://www.onetcodeconnector.org/ccreport/13-1161.00?redir=19-3021.00> (last visited September 10, 2013).

In its letter of support accompanying the initial Form I-129 petition, the petitioner stated the minimum education requirement for the proffered position as "a Bachelor's degree in Marketing, Management or Business Administration." The petitioner claimed that "[t]hese requirements are consistent with our professional staff requirements for this and similar positions with our company in the United States and worldwide." However, the petitioner did not provide any further information regarding the "similar positions" with the petitioning company which it claims are located "in the United States and worldwide."¹

The petitioner indicated that the beneficiary is qualified to provide services in the proffered position by virtue of his foreign education. The petitioner provided an evaluation of the beneficiary's credentials prepared by [REDACTED] indicating the beneficiary "has attained the equivalent of a Bachelor of Science Degree, with a major in Economics, Finance, and Accounting, from an accredited college or university in the United States." In support of this conclusion, the

¹ The AAO observes that the petitioner stated in the Form I-129 petition that it has six employees. However, the petitioner did not provide any information regarding the roles and responsibilities of these employees. The petitioner provided its Schedule C, Profit or Loss From Business, which indicates under "Expenses" that it paid a total of \$70,786 in wages in 2010. The petitioner stated in the Form I-129 petition and supporting documents that it will pay the beneficiary \$43,000 per year. The petitioner's business location (as indicated on the Form I-129 petition) is a single-family dwelling.

petitioner submitted a copy of the beneficiary's Polish diploma.

The AAO notes that the petitioner claims that the proffered position requires a degree in marketing, management or business administration. Notably, the petitioner does not assert that the beneficiary possesses a degree in one of these disciplines. Thus, under the petitioner's own standards, the beneficiary does not possess the necessary academic qualifications to serve in the proffered position.

With the H-1B petition, the petitioner submitted a Labor Condition Application (LCA). The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Market Research Analysts and Marketing Specialists" - SOC (ONET/OES Code) 13-1161, at a Level I (entry level) wage.

The petitioner also provided documents regarding its business operations, including a 2010 Schedule C; a brochure for the petitioner; a one-page printout from the petitioner's website; copies of six estimates and invoices (2010, 2011 and 2012); and the first page of an agreement with an effective date of November 14, 2011.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on August 31, 2012. In the RFE, the director notified the petitioner that additional evidence was needed to establish eligibility for the benefit sought. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary and that the beneficiary is qualified to perform services in the proffered position. The director outlined the evidence to be submitted.

On November 17, 2012, the petitioner responded to the director's RFE by providing a letter and additional evidence. The petitioner's submission included the following: (1) additional estimates and invoices for its products and services; (2) a copy and translation of the beneficiary's university transcript (indicating that the period of study was three years); (3) documents related to the petitioner's future locale; (4) Form W-2, Wage and Tax Statements, and pay statements issued by the petitioner to the beneficiary's spouse; (5) a letter from [REDACTED]; (6) documents related to the petitioner's current premises (a single family dwelling); (7) an additional printout from the petitioner's website; (7) photos of its business operations and premises; (8) copies of previously submitted documents; and (9) additional documentation regarding its business operations.

In response to the RFE, the petitioner provided a revised description of the proffered position. Specifically, the job description states the following:

- Provide, analyze, predict and improve business operations with current & new clients;
- Develop creative techniques & strategies for the introduction of the new projects and sales promotions within the decorative concrete stone construction industry;
- Research & evaluate potential sales of products and services to other areas;
- Collect and analyze statistical data on past sales to predict future sales;

- Evaluate current business strategies and provide cost savings solutions for continuous business growth. This information is vital to maintaining a competitive cost structure;
- Analyze consumer satisfaction and gather data on competitors;
- Identify market opportunities and gather data on competitors and analyze their prices, sales, & method of marketing and distribution;
- Review and analyze financial statements, sales and activity reports to maximize business operations;
 - **Time required 40% of total duties**

- Explore and create new business contracts in Rhode Island & surrounding states;
- Analyze prices, sales and methods of marketing and distribution;
- Design surveys to assess consumer preferences;
- Collaborate with key customers;
- Monitor contract negotiations activities;
- Directly interact with clients and executives to define the client's requirements;
 - **Time required 40% of total duties**

- Make recommendations on the advisability of adding new products;
- Conduct research on customer opinions and marketing strategies;
- Produce quarterly reports to track cost and show progress[.]
 - **Time required 20% of total duties**

Although the director requested the petitioner submit a detailed description of the proffered position to include approximate percentages of time for each duty the beneficiary will perform, the petitioner elected to group the duties together. Thus, upon review of the duties, the AAO notes that the description fails to convey sufficient information to determine the order of importance and/or frequency of occurrence with which the beneficiary will perform each of the functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not sufficiently establish the primary and essential functions of the proffered position.

In its letter submitted in response to the RFE, the petitioner made various claims regarding the requirements of the proffered position. Specifically, the petitioner stated the requirements for the proffered position as the following:

- (1) a baccalaureate degree in Business Administration, Economics, Management or a related field;
- (2) training received in a baccalaureate program in business administration, management, economics, or a related field;
- (3) at least a Bachelor's degree in Business Administration, Economics, or related field; and
- (4) at least a Bachelor Degree in Management of Business Administration or

closely related discipline or foreign equivalent.

No explanation was provided by the petitioner for the varying requirements.²

The director reviewed the information in the record of proceeding. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on January 8, 2013. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO will make some preliminary findings that are material to the determination of the merits of this appeal.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, U.S. Citizenship and Immigration Services (USCIS) looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has sufficiently described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through attainment of at least a baccalaureate degree in a specific discipline. The AAO finds that the petitioner has not done so.

In the instant case, the AAO observes that the director advised the petitioner in the RFE that the "duties and responsibilities [it] has described are vague." Moreover, the AAO notes that many of the duties were recited verbatim from O*NET Code Connector and other Internet sources.

In response to the RFE, the petitioner provided a revised description of the proffered position. Notably, the duties and requirements for the market research analyst position, provided in response

² In the original H-1B submission, the petitioner claimed that a degree in marketing, management or business administration was required for the proffered position. In response to the RFE, the petitioner removed marketing as an acceptable field of study and claimed (inconsistently) that a degree in economics was sufficient to perform the duties of the position.

to the RFE, are materially different than those originally provided.³ For example, the petitioner originally indicated that the beneficiary would "[d]evelop and implement marketing and sales plans on specific ethnic market." In response to the RFE, the petitioner did not clarify which ethnic market it was targeting or what specific tasks the duty entails, but rather eliminated the duty from the position description. Similarly, in the original description of the proffered position, the petitioner stated that the beneficiary would "[e]xecute all marketing tactics in accordance with goals and strategies such as print advertisement, TV, direct mail, public relations, direct sales, client education, literature, and others." However, in response to the RFE, instead of providing further information regarding the print, television, and direct mail advertisements the beneficiary would be expected to "execute" in the proffered position, the petitioner removed this duty entirely. No explanation was provided.

The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "[c]ollaborate with key customers." The petitioner provides no explanation as to what tasks this duty entails, or for what purpose the beneficiary will "collaborate" with customers. The phrase could cover a range of activities, and without further information, does not provide any insight into the beneficiary's day-to-day work. Further, the petitioner indicated that the beneficiary will "[m]onitor contract negotiations activities," but failed to identify any purpose for "monitor[ing]" such negotiations, or what tasks "monitor[ing]" will entail. The statement does not delineate the actual work the beneficiary will perform. In addition, the petitioner has failed to differentiate between seemingly repetitive duties. For example, the petitioner has indicated that the beneficiary will "[a]nalyze consumer satisfaction and gather data on competitors"; "[i]dentify market opportunities and gather data on competitors and analyze their prices, sales, & method of marketing and distribution"; "[a]nalyze prices, sales and methods of marketing and distribution"; and "[c]onduct research on customer opinions and marketing strategies." The petitioner did not identify any specific tasks related to these duties that would clarify why the same generically stated duties appear to be listed multiple times in different sections of the description of the proffered position. The petitioner's description of the proffered position fails to illuminate the substantive application of knowledge involved in the proposed duties or any particular educational attainment associated with such application.

While the petitioner has identified its proffered position as that of a market research analyst, the description of the beneficiary's duties, as provided by the petitioner, lacks the specificity and detail necessary to support the petitioner's contention that the position is a specialty occupation. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and

³ The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary or materially change a position's job responsibilities and/or the requirements for the position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties and altered the requirements for the position.

responsibilities to be performed by a beneficiary in the context of the petitioner's business operations, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. In the instant case, it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, the AAO finds the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position. The job description fails to communicate (1) the actual work that the beneficiary would perform on a day-to-day basis; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

Upon review of the record of proceeding, the AAO finds that the overall responsibilities for the proffered position contain insufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their daily performance. Furthermore, although the petitioner submitted general documentation regarding its business operations, the petitioner did not provide sufficient documentation to establish and substantiate the actual job duties and responsibilities of the proffered position. That is, the petitioner submitted documents regarding its business operations (including excerpts from tax returns; a brochure; printouts from its website; photos; documents relating to its future locate; and copies of estimates and invoices). However, the petitioner did not submit probative evidence to establish the actual duties that the beneficiary will perform and the petitioner failed to establish the beneficiary's specific role within its business operations.

Moreover, the AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's operations are relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. Here, the petitioner stated on the Form I-129 that it employs six people. The petitioner has not provided information regarding the duties and responsibilities of the other staff members such that the AAO can ascertain how the beneficiary would be relieved from performing non-qualifying duties.

Furthermore, the AAO observes that the petitioner's various statements regarding the minimum

education requirements for the proffered position are inadequate to establish that the position qualifies as a specialty occupation. Specifically, in its letter dated March 28, 2012, the petitioner described the minimum education requirements of the proffered position as "a Bachelor's degree in Marketing, Management or Business Administration." In the RFE, the director observed that the petitioner did not provide evidence to establish that the beneficiary held any of these degrees. In response to the RFE, the petitioner submitted a letter with various statements regarding the minimum education required to perform duties in the proffered position. Specifically, the petitioner stated the following requirements: (1) "a baccalaureate degree in Business Administration, Economics, Management or a related field"; (2) "training received in a baccalaureate program in business administration, management, economics, or a related field"; (3) "at least a Bachelor's degree in Business Administration, Economics, or related field"; and (4) "at least a Bachelor Degree in Management of Business Administration or closely related discipline or foreign equivalent."

The petitioner did not provide an explanation for the discrepancies in the requirements for the position. However, the AAO notes that all of the petitioner's varying statements indicate that the duties of the proffered position can be performed with a bachelor's degree in business administration. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree (or 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 previously mentioned, to demonstrate 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. 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 (including a degree in business administration) may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).⁴

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting 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.

Again, the petitioner in this matter has provided inconsistent information as to the requirements for the proffered position of market research analyst. However, the petitioner has consistently stated that the duties of the proffered position can be performed by an individual who possesses a bachelor's degree in business administration. Thus, petitioner's assertions are tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis, the AAO will now discuss in detail the applicable statutory and regulatory provisions for determining whether the proffered position qualifies as a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director's ultimate conclusion that the evidence fails to establish that the position as described constitutes a specialty occupation.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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), 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 at 147 (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 make its determination whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty

or its equivalent is normally the minimum requirement for entry into the particular position. With respect to the director's analysis of the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the AAO notes that it agrees with the director's ultimate conclusion that the proffered position does not qualify as a specialty occupation under this criterion; however, the AAO does not agree with all of the director's statements in this portion of his decision and hereby withdraws the director's analysis regarding this criterion.

The petitioner stated that the beneficiary would be employed in a market research analyst position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally* *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Market Research Analysts and Marketing Specialists."

The AAO reviewed the chapter of the *Handbook* entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Market Research Analysts" comprise an occupational group for which at least a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" 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

⁵ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited September 10, 2013).

When reviewing the *Handbook*, the AAO notes that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.⁶ The wage levels are defined in the U.S. Department of Labor (DOL) "Prevailing Wage Determination Policy Guidance."⁷ A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

⁶ Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

⁷ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Thus, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role or in a top research or technical research position. As noted above, according to DOL guidance, a statement that the job offer is for a research fellow, worker in training or an internship is indicative that a Level I wage should be considered.

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. The *Handbook* states that employees typically need a bachelor's degree in market research or a related field, but the *Handbook* continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have a background in fields such as business administration, one of the social sciences, or communications. The *Handbook* notes that various courses are essential to this occupation, including statistics, research methods, and marketing. The *Handbook* states that courses in communications and social sciences (such as economics, psychology, and sociology) are also important.

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 disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.⁸ Section 214(i)(1)(B) of the Act (emphasis added).

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

Here, although the *Handbook* indicates that an advanced degree is typically needed for these positions, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields and backgrounds (i.e., social science and computer science) as acceptable for entry into this occupation, the *Handbook* also states that "others have a background in business administration." As previously discussed, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. As noted *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. 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. 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 normally the 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 qualifying as a specialty occupation.

In response to the RFE, the petitioner references the Occupational Information Network (O*NET) in relation to the occupational category "Market Research Analysts" to support the assertion that the proffered position qualifies as a specialty occupation. Specifically, the petitioner indicates that the occupation's Job Zone rating qualifies the position as a specialty occupation. The AAO reviewed the O*NET Summary Report for "Market Research Analysts and Marketing Specialists" - SOC (ONET/OES Code) 13-1161 but finds that the petitioner's reliance on the Job Zone rating is misplaced. That is, O*NET assigns this occupation a Job Zone Four rating, which groups it among occupations that are described as follows: "[m]ost of these occupations require a four-year bachelor's degree, but *some do not* (emphasis added)." See O*NET Summary Report for "Market Research Analysts and Marketing Specialists" - SOC (ONET/OES Code) 13-1161, available on the Internet at <http://www.onetonline.org/link/summary/13-1161.00> (last visited September 10, 2013). O*NET does not report that for those occupations with an academic degree requirement, that such a degree must be in a *specific specialty* directly related to the occupation. As previously discussed, 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 duties and responsibilities of the position. Further, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).⁹ Notably, O*NET indicates that some of these occupations do not require a four-year bachelor's degree.

⁹ The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of such positions

The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding, particularly in light of the Level I wage designation on the LCA, do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In support of the petitioner's assertion that the proffered position is a specialty occupation position, the record of proceeding contains an opinion letter from architect and real estate developer [REDACTED], who attests to the quality of the petitioner's work. This letter does not attest to a standard industry requirement of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not submitted evidence to establish that a requirement for at least a bachelor's degree in a

require a four-year bachelor's degree, it could be said that "most" of the 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, which as previously noted has been designated on the LCA as a Level I (entry) position. 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.

specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO acknowledges that the petitioner and its counsel may believe that the proffered position qualifies as specialty occupation under this criterion of the regulations. In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its business operations. For example, the petitioner submitted printouts of the petitioner's website, a brochure of the petitioner's products and services; photographs of the petitioner's locale and business operations; a 2010 federal tax document; copies of estimates and invoices; and documentation regarding its future locale. The petitioner also submitted a letter from ██████████ noted above, attesting to the quality of the petitioner's work. However, upon review of the record, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of market research analyst.

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis 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 its equivalent. Additionally, the AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the AAO incorporates by reference and reiterates its earlier discussion that the LCA indicates that the position is a low-level, entry position relative to others within the occupation. Based upon the Level I wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, the wage rate indicates that the beneficiary will perform routine tasks that require limited, if any, exercise of independent judgment; his work will be closely supervised and monitored; he will receive specific instructions on required tasks and expected results; and his work will be reviewed for accuracy.

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁰

¹⁰ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't &

The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position. Specifically, the petitioner fails to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational background will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. 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 third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. Although the AAO agrees with the director's ultimate conclusion that the petitioner has not established that the proffered position

qualifies as a specialty occupation under this criterion of the regulation, the AAO hereby withdraws the director's analysis regarding 8 C.F.R. § 214.2(h)(4)(ii)(A)(3).

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show 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 as the minimum for entry into the occupation as required by the Act. To interpret the regulations 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 a 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.

In response to the RFE, the petitioner indicated that the proffered position is a new position. Thus, the petitioner did not submit any documentation regarding employees who have previously held the position. In addition, the petitioner did not submit any documentation regarding its recruiting and hiring practices. The record is devoid of information to satisfy this criterion of the regulations.

Upon review of the record, the petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish 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, or its equivalent.

The AAO acknowledges that the petitioner and counsel may believe 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, or its equivalent. The AAO reviewed the documentation submitted by the petitioner regarding the proffered position and its business operations (including printouts of the petitioner's website, a brochure of the petitioner's products and services; photographs of the petitioner's locale and business operations; a 2010 federal tax document; copies of estimates and invoices; and the industry letter attesting to the quality of the petitioner's work), but finds that it fails to establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Furthermore, the AAO also reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Market Research Analysts," and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

A 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 has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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.