



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: SEP 25 2013

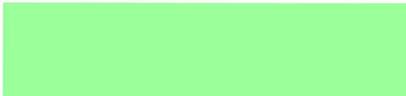
OFFICE: VERMONT SERVICE CENTER

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,

for
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 petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a "Wholesale General Merchandise/Wholesale of Nondurable Goods" firm with six employees. In order to employ the beneficiary in what it designates as a management analyst position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens

who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a management analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1111, Management Analysts from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor of commerce degree from [REDACTED], India. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration.

Counsel also submitted a letter, dated April 1, 2012, from the petitioner's president, which states:

In this position [the beneficiary's] responsibilities consist of: (i) analyzing procedures to devise most efficient methods of accomplishing company goals; (ii) studying financial planning, organizational change and cost analysis of the organization; (iii) gathering and organize information on problems or procedures including present operating procedures; (iv) designing systems and procedures for work simplifications and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively; (v) analyzing data gathered, develop information and proposes available solutions or alternate methods of proceedings to management; (vi) organizing and document findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals; (vii) interact with other managers and executives to assure smooth functioning of newly implemented systems and procedures; (viii) preparing cost estimate reports to determine accurate and competitive pricing of products and services; (ix) producing and analyzing monthly budgets and activity

reports; (x) reviewing market trends and competition in the wholesale industry; and (xi) preparing reports and graphic illustrations of findings.

[Errors in the original.]

The petitioner's president also stated: "The [proffered position requires] a [minimum of] a Bachelor's degree in Business Administration, or a related field."

On July 30, 2012, the service center issued an RFE in this matter. The service center requested evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted: (1) job vacancy announcements; (2) a letter, dated September 20, 2012, from the petitioner's president; and (3) counsel's own letter, dated October 10, 2012.

In his September 20, 2012 letter, the petitioner's president provided the following amended description of the duties of the proffered position:

[The beneficiary's] detailed job duties include: (i) planning, coordinating and managing daily operational activities[]; (ii) analyzing past and present buying trends of customers, sales records, prices, as well as conducting research for new products availability and accordingly implement effective sales strategies; (iii) monitoring trends that indicate the need for new products and services; (iv) organizing and document [sic] findings of studies conducted and make appropriate recommendations on implementation of new systems, procedural changes and company goals that will positively impact operational effectiveness; (v) financial planning, organizational change & cost analysis of the organization; (vi) analyzing sales statistics congregated by staff and determine sales potential and inventory requirements; (vii) determining the demand for products and services offered by the firm and its competitors and identify potential customers; (viii) monitoring the preferences of new customers and developing strategies for retaining current customers as well as expanding current customer base; (ix) devising pricing strategies with the goal of maximizing the firm's profits; (x) analyzing procedures and relevant data to devise most efficient methods of accomplishing company goals, to increase efficiency and worker productivity and to control costs; and (xi) interacting with other employees to assure smooth functioning of newly implemented systems and procedures.

The petitioner's president also provided the following breakdown of some of the duties originally listed in his April 1, 2012 letter.

Analyze procedures to devise most efficient methods of accomplishing company goals. (20%)

[The beneficiary] will have overall responsibility for analyzing and proposing ways to improve organization's structure, efficiency, and profits of [the petitioner]. [The beneficiary's] responsibilities primarily include increasing service quality, workforce efficiency and to control costs. [The beneficiary] would be spending majority of his time preparing, reviewing, and evaluating company operations, implementing cost management techniques, [the petitioner's] internal management operations to ensure integration on systems and operations, managing wide range of commercial contracts to ensure quality performance and recommending improvements that contribute to financial success of [the petitioner].

Study financial planning, organizational change & cost analysis of the organization (15%)

[The beneficiary] will be interacting with management regarding investigating and evaluating procedures and marketing products and making recommendations. [The beneficiary] will also be reporting to the Vice President on the management and operational progress of the [petitioner].

[The beneficiary] will be continuously updating all operating procedures, implementing systems on new training methodology, and formulating and implement new procedures on enhancing efficiency of [the petitioner] so to be able to surpass company's benchmarks which would lead to growth opportunities.

Gather and organize information on problems or procedures including present operating procedures. Analyze data gathered, develop information and proposes available solutions or alternate methods of proceedings to management (30%)

[The beneficiary] will gather and organize information on problems or procedures. Analyze data gathered and develop solutions or alternative methods of proceeding. Meet with personnel concerned to ensure successful functioning of newly implemented systems or procedures. Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program. Review forms and reports and discuss with management and users about format, distribution, and purpose, and to identify problems and improvements. Interview personnel and conduct on-site observation to ascertain unit functions, work performed, and methods, equipment, and personnel used. Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes[.]

Organize and document findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals. (15%)

[The beneficiary] will provide analysis on marketing problems based on the current marketing manager's recommendations keeping up with requirements and procedures to Upper Management and Marketing Manager. He will analyze [the petitioner] in key performance areas as compare to industry standards.

Organize and document findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals. (15%)

[The beneficiary] will be responsible to update operational manuals for [the petitioner] in use of training employees and staff. He will ensure that proper training procedures are put into place for area managers and retail managers so they can be trained in minimizing wastage and shrinkage and reducing employee theft. He will be implementing procedures for area managers on monitoring and analyzing Point-of-Sale reports.

Interact with other managers and executives to assure smooth functioning of newly implemented systems and procedures (20%)

[The beneficiary] will be working with area managers on operating each location efficiently and more effectively. He will also be advising area managers and sales managers on the requirements of the industry and how to implement these organizational requirements and policies. He will be interacting with each area managers to ensure compliance with company policies.

[Errors in the original.]

On the visa petition, the petitioner reported that it has six employees. In that list of duties, however, the petitioner's president spoke of a vice president, upper management, a marketing manager, area managers, retail managers, and sales managers, as well as employees and staff. The number of employees with whom the beneficiary would interact appears to exceed the number of employees the petitioner stated that it has.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

The petitioner's president also reiterated that the proffered position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Business Administration or a related area, or the equivalent."

In his own letter, counsel also reiterated that the proffered position requires a minimum of a bachelor's degree in business administration or a related field or the equivalent. Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, the O*NET website, and the vacancy announcements provided as evidence that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. Counsel also observed that various individual management positions, positions entitled general manager, business manager, and president, for example, have, in other cases, been found to be specialty occupation positions.

The director denied the petition on December 4, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, counsel asserted that the petitioner has "about six employees," but did not provide any reconciliation of that estimate with the petitioner's president's implication in his September 20, 2012 letter, that the petitioner employs a president, a vice president, upper management, a marketing manager, some area managers, some retail managers, and some sales managers, as well as some employees and staff.

Counsel also reiterated the petitioner's claim that the proffered position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Business Administration, or a related area, or the equivalent." Counsel again cited the *Handbook* for the proposition that the proffered position qualifies as a specialty occupation position.

Counsel also stated: "[The petitioner] has always employed individuals that had education and experience equivalent to a U.S. Bachelor's degree in Business, or a related degree for the [proffered position]" However, counsel did not identify anyone whom the petitioner had previously employed in the proffered position or what their educational qualifications for the position were. Counsel also did not state his basis for the assertion that the petitioner has always hired people with such educational credentials for the proffered position.

The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

As a preliminary matter, the petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that

the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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 139, 147 (1st Cir. 2007).¹

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, the AAO first turned to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an

¹ 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.

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

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-1111, Management Analysts from O*NET. The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Management Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of management analysts:

What Management Analysts Do

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

Duties

Management analysts typically do the following:

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

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

- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Management Analysts," <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (last visited Sept. 18, 2013).

Most of the duties the petitioner's president attributed to the proffered position are consistent with the duties of management analysts as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a management analyst position as described in the *Handbook*.

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

How to Become a Management Analyst:

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

Education

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

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

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

Certification

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

Work Experience

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

Advancement

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

consulting company often move to senior management positions at non-consulting organizations.

Important Qualities

Analytical skills. Management analysts must be able to interpret a wide range of information and use their findings to make proposals.

Communication skills. Management analysts must be able to communicate clearly and precisely in both writing and speaking. Successful analysts also need good listening skills to understand the organization's problems and propose appropriate solutions.

Interpersonal skills. Management analysts must work with managers and other employees of the organizations where they provide consulting services. They should work as a team toward achieving the organization's goals.

Problem-solving skills. Management analysts must be able to think creatively to solve clients' problems. Although some aspects of different clients' problems may be similar, each situation is likely to present unique challenges for the analyst to solve.

Self-confidence. Management analysts work under fairly high pressure. They should be confident and self-motivated when working with clients.

Time-management skills. Management analysts often work under tight deadlines and must use their time efficiently to complete projects on time.

Id. at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited Sept. 18, 2013).

The *Handbook* makes clear that management analyst positions do not require a minimum of a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, as it indicates that a general degree in business is sufficient for entry into a management analyst position. As was explained above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf Matter of Michael Hertz Associates, supra.* The requirement of such a degree is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the *Handbook* indicates that a degree in management, accounting, marketing, economics, statistics, computer and information science, or engineering may be a sufficient educational qualification for a management analyst position. That wide array of fields does not delineate a

specific specialty. A requirement of any degree from such a wide array is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, engineering, like business administration, is too general to delineate a specific specialty. The field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. 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 engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates, supra.* That the *Handbook* indicates that an otherwise unspecified degree in engineering may be a sufficient educational qualification for a management analyst position is yet another way in which the *Handbook* falls short of indicating that management analyst positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. That a degree in any field of engineering may be a sufficient educational qualification for a management analyst position is another indication that management analyst positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some management analyst positions do not require such a degree.

Additionally, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of business management, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

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

both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of advertisements. The advertisements, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree in a *specific specialty* or its equivalent. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry.

As noted above, in the Form I-129, the petitioner stated that it is a "Wholesale General Merchandise/Wholesale of Nondurable Goods" business with six employees. The petitioner further stated that it was established in 1996 and has an approximate gross annual income of \$1.4 million and an approximate net annual income of \$52,000. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 424990.³ The AAO notes that this NAICS code is designated for "Other Miscellaneous Nondurable Goods Merchant Wholesalers." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating that this "industry comprises establishments primarily engaged in the merchant wholesale distribution of nondurable goods (except printing and writing paper; stationery and office supplies; industrial and personal service paper; drugs and druggists' sundries; apparel, piece goods, and notions; grocery and related products; farm product raw materials; chemical and allied products; petroleum and petroleum products; beer, wine, and distilled alcoholic beverages; farm supplies; books, periodicals and newspapers; flower, nursery stock and florists' supplies; tobacco and tobacco

³ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited Sept. 18, 2013).

products; and paint, varnishes, wallpaper, and supplies)." See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 424990 - Other Miscellaneous Nondurable Goods Merchant Wholesalers, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Sept. 18, 2013). The website further states the following:

Illustrative Examples:

- Artists' supplies merchant wholesalers
- Pet supplies (except pet food) merchant wholesalers
- Burlap merchant wholesalers
- Statuary goods (except religious) merchant wholesalers
- Christmas trees merchant wholesalers
- Textile bags merchant wholesalers
- Industrial yarn merchant wholesalers

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered).

The AAO notes that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employers' recruiting histories for the type of jobs advertised. As the advertisements are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Upon review of the documentation, the petitioner fails 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.

For instance, some of the advertisements require a bachelor's or master's degree in business or business administration. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. See *Matter of Michael Hertz Associates, supra*. As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Those vacancy announcements do not state that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, even if they were shown to be positions parallel to the proffered position with similar companies in the petitioner's industry, they would not support the proposition that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to such positions.

Other advertisements state that a degree in any of several subjects, one of which is business administration, would be a sufficient educational qualification for the position announced. Again, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Those vacancy announcements do not state that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent. Again, even if they were shown to be positions parallel to the proffered position with similar companies in the petitioner's industry, they would not show that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to such positions.

Several of the advertisements do not clearly indicate that a bachelor's degree in a specific specialty is required. It appears that some of them may prefer bachelor's degrees; however, the AAO observes, that a preference for a degree in a specific specialty would not be a minimum requirement.

Many of the advertisements state that the educational requirement of the positions they announce could be satisfied by a bachelor's degree in an unspecified subject. Clearly, they do not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Other advertisements indicate that some amount of experience could be substituted for the degree that is otherwise required or preferred for the positions they announce. They do not make clear, however, the type and amount of experience that the hiring authority would accept as equivalent to the required or preferred degrees. For this additional reason, those vacancy announcements do not indicate that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the advertisements states that the minimum education required for the position announced is a high school diploma. That vacancy announcement manifestly does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In addition, although many of the vacancy announcements contain descriptions of the duties of the announced position, none are sufficiently detailed to show that the positions offered in those vacancy announcements are positions parallel to the proffered position.

Further still, the petitioner stated, in the LCA, that the proffered position is a Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. However, nearly all of the vacancy announcements provided state that the positions they announce require experience. More than half of the advertised positions require three or more years of experience and several require five or more years. Some of those vacancy announcements are also very specific about the type of experience they require. The great

majority of those vacancy announcements are not for entry-level positions and are not, therefore, for positions parallel to the proffered position.

Yet further, none of the vacancy announcements have been shown to be for positions with companies similar to the petitioner and in the petitioner's industry, and many are clearly not for positions in the petitioner's industry.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from the submitted announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

Thus, based upon a complete review of the record, the petitioner has not established 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).⁵

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or

⁴ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements 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 position of management analyst for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that 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.

⁵ The AAO reviewed all of the advertisements submitted by the petitioner. As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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

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

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁶

Counsel asserted that the petitioner has always hired management analysts with education and experience equivalent to a bachelor's degree in business or a related degree for the proffered

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a 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").

position. That assertion, even if amply supported, would not demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent because, as was explained above, an otherwise undifferentiated degree in business is not a degree in a specific specialty. The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, or, if it has, that such person or people had a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Although the petitioner has provided long lists of duties, none have been described concretely enough to show that they are more specialized and complex than the duties of other management analyst positions.

Those duties include, for instance, planning, coordinating, and managing daily operational activities; analyzing procedures to devise most efficient methods of accomplishing company goals; analyzing past and present buying trends; monitoring trends that indicate the need for new products and services; devising pricing strategies; organizing and documenting findings of studies; recommending implementation of new systems, procedural changes, and company goals; and interacting with other managers and executives to assure the smooth functioning of newly implemented systems and procedures. Even with the additional detail included in the petitioner's president's September 20, 2012 letter, those duties are so abstractly described that their level of specialization and complexity cannot be determined.

As described, the duties appear to be generic to management analyst positions. They have not been shown to be so specialized and complex that they require a minimum of a bachelor's degree in a specific specialty or its equivalent. This is especially so because, as was noted above, the petitioner filed the instant visa petition for a Level I management analyst position, a position for a beginning level employee with only a basic understanding of management analysis. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to management analysis, especially as the *Handbook* indicates that some management analyst positions require no such degree.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition. As was noted above, the beneficiary has a foreign bachelor of commerce degree that an evaluation found to be equivalent to a U.S. bachelor's degree in business administration.

As was explained above, an otherwise undifferentiated bachelor's degree in business is not a degree in a specific specialty and is an insufficient educational qualification for any specialty occupation position.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree in a specific specialty, or its equivalent, and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not discuss 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.