



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: SEP 25 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:

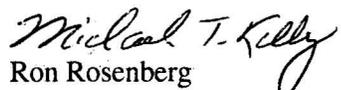
INSTRUCTIONS:

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,

*for*   
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner, through counsel, submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on May 30, 2012. On the Form I-129 visa petition, the petitioner describes itself as a home and wellness products business with an undisclosed number of employees<sup>1</sup>, established in 2009. In order to employ the beneficiary in what it designates as a "Market Research Analyst, Tech Editorial Division" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on January 24, 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. The petitioner, through counsel, submitted an appeal of the decision on February 22, 2013. On appeal, counsel for the petitioner states that the director's basis for denial of the petition on the specialty occupation issue was erroneous.

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 petitioner's response to the RFE; (4) the director's notice denying the petition; and (5) the petitioner's Form I-290B. 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 decision 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.

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

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<sup>1</sup> The AAO notes that in counsel's response to the director's request for evidence, dated December 7, 2012, counsel never specifically answered how many employees the petitioner employs. Rather, counsel stated that the petitioner was enclosing an "[o]rganization [c]hart showing the number of independent contractors working for the petitioning company." (Emphasis added.) Upon review of such chart, it appears that the petitioning company has a president (that appears to be the owner of the business), a director of operations, and several independent contractors.

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.

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a market research analyst to work on a full-time basis at a salary of \$35,700 per year.

In its support letter, dated May 15, 2012, the petitioner provided the following description of the proffered position:

- Ensure that relationship with clients is maintained through effective and up-to-date marketing plan such as online and social marketing, email marketing techniques;
- Organization of events (trade shows and fairs): responsible for preparing the appropriate marketing and communication tools, as well as results' reporting to Management;
- Plan, design and program the technical editorial material to market with appropriate technical and marketing material for each distributed product, range of products and brand;
- Direct and plan the design and production of communication material to reinforce the company's image;
- Identify, develop, and evaluate market research strategies based on knowledge of established objectives according to specific market characteristics (competitor, cost, price and markup factors); as well as controlling the quality of services rendered besides the products;
- Study market trends as well as niche segments and sales forecasts for the company's clients. Define niche with a focus on how to develop a strategy accordingly in order to a [sic] business differentiate from the competition;

- Be in charge of developing marketing strategies and business solutions, balancing the clients' objectives and forecasts as well as risks factors and competitors;
- Supervise key employees in areas related to sales, marketing and technical editorial writing;
- Implement branding approach and sales strategy for characterizing the distributed products and brands on targeted markets as well as maximize sales.

The petitioner stated that "[t]he nature of the specific duties of a Market research analyst is so specialized and complex that the knowledge required to perform the duties is associated with a Bachelor's Degree." In addition, the petitioner stated that "[the beneficiary] earned the equivalent of a U.S. Bachelor of Arts." The AAO finds that these assertions are tantamount to an admission that the proffered position is not in fact an H-1B specialty occupation as defined by section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), because, as earlier explained in this decision, in consonance with that statutory and regulatory framework, 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.

This is not to say that a proffered position is necessarily precluded from specialty occupation recognition because its educational requirements may be satisfied by bachelor's or higher degrees, or the equivalent, attained from a range of specialties. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added). Such, however, does not appear to be the case here, as reflected by the aforementioned statements of the petitioner. Because those assertions are tantamount to an admission that the proffered position is not in fact a specialty occupation, the instant petition could not be approved for this additional reason, even if the substantive nature of the work had been established.

The petitioner submitted a credential evaluation by [REDACTED] dated March 13, 2012, equating the beneficiary's foreign credentials to a Bachelor of Arts degree in English. The AAO notes that copies of the beneficiary's diplomas and transcripts were not submitted into the record of proceeding.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Market Research Analysts and Marketing Specialists" –

SOC (ONET/OES) Code 13-1161.00, at a Level I wage.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on October 11, 2012. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On January 3, 2013, counsel for the petitioner responded to the RFE and submitted the petitioner's response letter and additional evidence. In the letter submitted in response to the RFE, dated November 15, 2012, the petitioner provided the following revised and more detailed description of the duties of the proffered position:

Time devoted to the duty: 35%

Educational Requirement: Bachelor[']s Degree

- Research, gather, analyze and interpret market conditions, data statistics, target clients' behavior[,] etc.
- Perform technical analysis to determine present and future performances, as well as operating forecasts.
- Study market trends as well as niche segments and sales forecasts. Define niche with a focus on how to develop a strategy accordingly in order to a [sic] business differentiate from the competition.
- Identify, develop, and evaluate market research strategies based on knowledge of established objectives according to specific market characteristics (competitor, cost, price and markup factors); as well as controlling the quality of services rendered besides the products.
- Establish appropriate research methodology according to the company's targets and clients' needs and report to the Management the results, the offered solutions, the future market trends forecast, the summarized recommendation for improvement[,] etc.
- Be in charge of developing marketing strategies and business solutions, balancing the clients' objectives and forecasts as well as risks factors and competitors[.]

Time devoted to the duty: 35%

Educational Requirement: Bachelor[']s Degree

- Supervise key employees in areas related to marketing, sales, design/photo, technical editorial writing.
- Prepare a variety of written technical materials for the purpose of documenting activities, informing and training the staff, legal and administrative requirements.
- Evaluate and make recommendations to the Management for corporate material / branding.
- Design and update the company's marketing literature and materials into both a paper and digital format[.]

- Adapt all the marketing literature and materials to new market trends to meet the interests and expectations of the clients in the North American market.
- Plan and coordinate the implementation of the latest techniques and methods in the market research and marketing fields according to the company's goals and industry.
- Monitor and analyze market trends and competitors to adapt, readjust editorial and marketing material.
- Plan, design and program the technical editorial material to market with appropriate technical and marketing material for each distributed product, range of products and brands.
- Direct and plan the design and production of marketing material to reinforce the represented brands.
- Implement branding approach and sales strategy for characterizing the distributed products and brands on targeted markets in order to maximize sales.

Time devoted to the duty: 30%

Educational Requirement: Bachelor[']s Degree

- Monitor customer satisfaction and maintain the highest level of data integrity and customer service while seeking ways to improve processes and procedures.
- Ensure that relationship with clients is maintained through effective and up-to-date marketing plan such as online and social marketing, email marketing techniques.
- In charge of the organization of events (trade shows and fairs): responsible for preparing the appropriate marketing and communication tools, establishing the budget, hire, train and supervise the employees as well as results' reporting to Management.

At this juncture, the AAO notes its finding that, upon consideration of the totality of all of the evidence and information submitted by the petitioner with regard to the proffered position and its constituent duties, the evidence of record does not address any aspects of the proffered position or its duties in sufficient detail to establish the substantive nature and the associated educational requirements of the actual work in which the beneficiary would engage if this petition were approved.<sup>2</sup>

Rather, the AAO finds that the proposed duties and the proffered position itself are presented in

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<sup>2</sup> In reaching this determination, the AAO has taken into account the full extent of the evidence and information presented in support of the petition, including, but not limited to, the record's descriptions of the petitioner's operations, of the proffered position, and of the constituent duties; the documentary evidence of the types of goods the petitioner markets and of the types of materials used to promote their sale; and all of the relevant assertions, whether made in the initial filing, in response to the director's RFE, or on appeal.

terms of numerous but relatively generalized and abstractly described functions. As such, the record of proceeding lacks details about either the position or its constituent duties that would be sufficiently specific and substantial to convey the substantive nature and associated educational demands of the actual work that would engage the beneficiary on a day-to-day basis in actually performing the generalized functions that the petitioner ascribes to the proffered position. As a few illustrative examples of this evidentiary deficiency, the AAO notes that the petitioner asserts that the beneficiary would “[p]erform technical analysis to determine present and future performances, as well as operating forecasts,” but fails to substantiate the nature of that claimed “technical analysis” and the referenced “performances” upon which the analysis would be applied; and that while the petitioner attests that the beneficiary would have to “[i]mplement branding approach and sales strategy for characterizing the distributed products and brands on targeted markets in order to maximize sales,” the petitioner provides no substantive information with regard to any methodologies or specialized applications such implementation would involve.

Further, the AAO finds, that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work’s associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

The AAO also finds that, as numerous as the listed duties may be, they are not described with sufficient substantive detail to develop them or the proffered position as being particularly complex, unique, and/or specialized, let alone as either constituting a position so complex or unique as to require the services of a person with at least a bachelor’s degree in a specific specialty or as involving duties whose nature is so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor’s degree level of knowledge in a specific specialty.

(It should be noted that, for efficiency’s sake, the AAO here incorporates the above comments and findings into this decision’s later analysis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).)

On January 24, 2013, the director denied the petition. 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. Counsel for the petitioner submitted a timely 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 would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

As a preliminary matter, the AAO notes a distinct inconsistency in the fact that, while the petitioner initially asserted that the beneficiary would “[s]upervise key employees in areas

related to marketing, sales, design/photo, technical editorial writing," the organization chart and accompanying list of people associated with the petitioner appear to indicate that the petitioner's only organic staff are a president (who appears to be the owner of the business) and a director of operations, and that these two management-level persons direct what the organization chart identifies as "Independent Contractors."

Thus, it appears to the AAO that the petitioner's implying that it had a set of "key employees" who would be subject to the beneficiary's supervision was not accurate. The AAO also finds that this apparent inconsistency is not inconsequential, in that the organization chart identifies no organic staff or group of employees for the beneficiary to supervise at all, and in that, if the "Independent Contractors" were to be the entities subject to the beneficiary's supervision, the record lacks any documentation indicating the substantive extent of supervision the beneficiary would have within the context of whatever terms and conditions and lines of directive authority may appear in the governing contracts. As such, this apparent inconsistency further highlights this record's lack of persuasive evidence.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO 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 that is the subject of the petition.

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. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered 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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Market Research Analysts and Marketing Specialists."<sup>1</sup> The AAO notes that this occupational category is called "Market

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

Research Analysts" in the *Handbook*. The director found that the duties as described in the record of proceeding are comparable to those of a "Retail Sales Worker."

The AAO reviewed the information in the *Handbook* regarding the occupational categories "Market Research Analysts"<sup>4</sup> and Retail Sales Workers,<sup>5</sup> including the sections regarding the typical duties and requirements for these occupational categories. The AAO notes that the *Handbook* does not support a conclusion that either occupational group normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry.

At the outset, however, the AAO does not agree with the director's assessment that that "[the] duties as described in the record are comparable to those of a Retail Sales Worker" as described in the *Handbook*: The correctness of this AAO determination is clear upon comparing the *Handbook's* statement of the general duties of the Retail Sales Workers occupational category and the duty descriptions that this decision earlier quoted from the record of proceeding. In pertinent part, the *Handbook's* chapter on Retail Sales Workers states:

### **What Retail Sales Workers Do**

Retail sales workers maintain knowledge of current sales and promotions.

Retail sales workers include both those who sell retail merchandise, such as clothing, furniture, and cars, (called retail salespersons) and those who sell spare and replacement parts and equipment, especially car parts, (called parts salespersons).

Both groups help customers find the products they want and process customers' payments.

### **Duties**

Retail sales workers generally do the following:

- Greet customers and determine what each customer wants or needs
- Recommend merchandise based on customers' wants and needs
- Explain the use and benefit of merchandise to customers
- Answer customers' questions
- Show how merchandise works, if applicable

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<sup>4</sup> For additional information regarding the occupational category "Market Research Analysts," see 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-1> (last visited August 19, 2013).

<sup>5</sup> For additional information regarding the occupational category "Retail Sales Workers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Retail Sales Workers," on the Internet at <http://www.bls.gov/ooh/sales/retail-sales-workers.htm#tab-1> (last visited August 19, 2013).

- Add up customers' total purchases and accept payment
- Know about current sales and promotions, policies about payments and exchanges, and security practices

The following are the types of retail sales workers

**Retail salespersons** work in stores where they sell goods, such as books, cars, clothing, cosmetics, electronics, furniture, lumber, plants, shoes, and many other types of merchandise.

In addition to helping customers find and select items to buy, many retail salespersons process the payment for the sale. This involves operating cash registers.

After taking payment for the purchases, retail salespersons may bag or package the purchases.

Depending on the hours they work, retail salespersons may have to open or close cash registers. This includes counting the money in the register and separating charge slips, coupons, and exchange vouchers. They may also make deposits at a cash office.

For information about other workers who receive and disburse money, see the profile on cashiers.

In addition, retail salespersons may help stock shelves or racks, arrange for mailing or delivery of purchases, mark price tags, take inventory, and prepare displays.

For some retail sales jobs, particularly those involving expensive and complex items, retail sales workers need special knowledge or skills. For example, those who sell cars must be able to explain the features of various models, the manufacturers' specifications, the types of options on the car and financing available, and the details of associated warranties.

In addition, retail sales workers must recognize security risks and thefts and understand their organization's procedures for handling thefts—procedures that may include notifying security guards or calling police.

**Parts salespersons** sell spare and replacement parts and equipment. Most deal with car parts, by working in either automotive parts stores or automobile dealerships. They take customers' orders, inform customers of part availability and price, and take inventory.

Accordingly, the AAO hereby withdraws the director's finding that the record's descriptions of the proffered position comport with general duties that the *Handbook* ascribes to the Retail Sales Workers occupational group.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Retail Sales Worker" states the following about this occupational category:

Typically, retail sales workers do not need a formal education. However, some employers prefer applicants who have a high school diploma or its equivalent.

### **Education**

Although retail or parts sales positions usually have no formal education requirements, some employers prefer applicants who have a high school diploma or equivalent, especially those who sell technical products or "big-ticket" items, such as electronics or cars.

### **Training**

Most retail sales workers receive on-the-job training, which usually lasts a few days to a few months. In small stores, newly hired workers often are trained by an experienced employee. In large stores, training programs are more formal and generally are conducted over several days.

Topics often include customer service, security, the store's policies and procedures, and how to operate the cash register.

Depending on the type of product they are selling, employees may be given additional specialized training. For example, salespersons working in cosmetics get instruction on the types of products the store offers and for whom the cosmetics would be most beneficial. Likewise, those who sell computers may be instructed on the technical differences between computer products.

Because providing exceptional service to customers is a priority for many employers, employees often get periodic training to update and refine their skills.

### **Advancement**

Retail sales workers typically have opportunities to advance to managerial positions. Some employers want candidates for managerial positions to have a college degree.

As sales workers gain experience and seniority, they often move into positions that have greater responsibility and may be given their choice of departments in which to work. This opportunity often means moving to positions with higher potential earnings and commissions. The highest earnings potential usually lies in selling "big-ticket" items—such as cars, jewelry, furniture, and electronics. These

positions often require workers with extensive knowledge of the product and an excellent talent for persuasion.

### **Important Qualities**

**Customer-service skills.** Retail sales workers must be responsive to the wants and needs of customers. They should explain the product options available to customers and make appropriate recommendations.

**People skills.** A friendly and outgoing personality is important for these workers because the job requires almost constant interaction with people.

**Persistence.** A large number of attempted sales may not be successful, so sales workers should not be discouraged easily. They must start each new sales attempt with a positive attitude.

**Selling skills.** Retail sales workers must be persuasive when interacting with customers. They must clearly and effectively explain the benefits of merchandise.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Retail Sales Workers," available on the Internet at <http://www.bls.gov/ooh/sales/retail-sales-workers.htm#tab-4> (last visited September 9, 2013).

The AAO will now analyze the proffered position as if it were within the Market Research Analysts occupational group, as the petitioner claims. The AAO does so, however, subject to this decision's earlier comments and findings with regard to both the generalized and relatively abstract level to which the petitioner limits its descriptions of duties of the proffered position and also with regard to the lack of supplemental documentary evidence substantiating what theoretical and practical applications, if any, that actual performance of the proffered position would require from any particular educational level of a body of highly specialized knowledge in any specialty. In short, the petitioner has not succeeded in establishing either the substantive nature of the work that the beneficiary would perform or that a particular educational level of a body of highly specialized knowledge in any particular specialty would be required to perform that work.

The following passages appear in the *Handbook's* chapter on the Market Research Analysts occupational group:

### **What Market Research Analysts Do**

Market research analysts gather and analyze data on consumers and competitors. Market research analysts study market conditions in local, regional, or national areas to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.

### **Duties**

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management
- Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Market Research Analysts," available on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2> (last visited September 9, 2013).

The "How to Become a Market Research Analyst" subsection in the *Handbook's* "Market Research Analysts" chapter includes the following information pertinent to the educational requirements for entry in the occupational group:

Market research analysts need strong math and analytical skills. Most market research analysts need at least a bachelor's degree, and top research positions often require a master's degree.

## Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, or computer science. Others have a background in business administration, one of the social sciences, or communications. Courses in statistics, research methods, and marketing are essential for these workers; courses in communications and social sciences—such as economics, psychology, and sociology—are also important.

Many market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics, marketing, or a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

## Work Experience

Most market research analysts benefit from internships or work experience in business, marketing, or sales. Experience in other positions that require analyzing data, writing reports, or surveying or collecting data can also be helpful in finding a market research position.

## Certification

The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts. Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. Candidates qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research. To keep their certification valid, market research analysts must take continuing education courses and apply for renewal every 2 years.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Market Research Analysts," available on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited September 9, 2013).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the prevailing wage for the proffered position as wage for a Level I (entry level) position on the LCA.<sup>6</sup> This designation is indicative of a comparatively low, entry-level position relative to

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<sup>6</sup> Wage levels should be determined only after selecting the most relevant Occupational Information Network (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.

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.

others within the occupation.<sup>7</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

The *Handbook* does not report that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the proffered position. 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.

The AAO again notes that, 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)

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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 occupational 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.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (Rev. Nov. 2009), available on the Internet at: [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>7</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes 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.

*Id.*

of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty."<sup>8</sup> Section 214(i)(1)(B) (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is "typically" required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that entry into the Market Research Analysts occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered

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<sup>8</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret 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.

position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition 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 first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This first alternative prong 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)).

The petitioner and counsel submitted (1) a copy of a letter, dated December 14, 2012, by [REDACTED], addressed To Whom it May Concern, and (2) copies of two job vacancy announcements, to support their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

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 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. There is however the aforementioned letter from the president of [REDACTED] presented as an attestation from a firm in the petitioner's industry, the petitioner's industry, which will be discussed below.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a home and wellness products business with a president (who appears to be the owner of the business) and a director of operations. Thus, the record is devoid of sufficient information regarding the two advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, advertisements 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 another organization share the same general characteristics, 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) may be considered. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

The AAO reviewed the job advertisements submitted by the petitioner. The petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Upon review of the documents, the AAO finds that they do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

For instance, the advertisements include positions with the [REDACTED] which provides "industry defining branding solution[s] including name creation, market research, regulatory and design services" and "services to the biggest names in pharmaceuticals and consumer products worldwide," and with the [REDACTED] which "provide[s] market information and advisory services to help companies make better business decisions" and has "over 2000 clients worldwide." Without further information, the advertisements appear to be for positions in different industries and in dissimilar organizations to the petitioner and thus, they cannot be found to be for parallel positions. Consequently, the record is devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Moreover, the advertisement for the [REDACTED] which requires 2-5 years of market research or category management experience, appears to be for a more senior position and does not appear to be for a parallel position. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position.

Additionally, contrary to the purpose for which the advertisements were submitted, they do not constitute evidence that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the advertised positions. For example, the advertisement for the [REDACTED] states that a bachelor's degree is required and that several specialties (marketing, advertising, statistics or other related field) are acceptable, including a general-purpose bachelor's degree in business. In addition, the advertisement for the [REDACTED] states that a bachelor's degree is required, but it does not state that a bachelor's degree in a *specific specialty*, or its equivalent, is required for the advertised position. As previously discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the position. See 214(i)(1)(b) of the Act and 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 position.<sup>9</sup>

<sup>9</sup> 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 just two job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies.

Finally, the AAO finds that the letter from the president of [REDACTED] does not establish that similar firms or individuals in the industry "routinely employ and recruit only degreed individuals." The letter states that "[a]ccording to our knowledge and expertise, it is a correct fact that in our distribution industry, a Bachelor's degree is required (or its equivalent), due to the complex duties involved." However, the letter (1) does not indicate that a Bachelor's degree or its equivalent in a *specific specialty* is required for positions similar to the proffered position; (2) does not describe the duties of a Market Research Analyst (if any) at [REDACTED]; (3) does not describe [REDACTED] business and how it is similar to the petitioner's business; (4) does not provide an explanation of the substantive observations, research, industry information, or other factual bases for the letter's opinion; and (5) does not establish by any objective standard that the bachelor-degree equivalents to which it refers are in fact just that. Thus, contrary to the reason for which this letter was submitted, this letter neither establishes, nor constitutes probative evidence, that similar firms or individuals in the industry "routinely employ and recruit only degreed individuals."

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, 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.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the market research analyst duties described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

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*See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of market research analyst at a home and wellness products business 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.

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 a wage level based upon the occupational classification "Market Research Analysts" at a Level I (entry level) wage. This wage level designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of 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; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

Further, as noted earlier in this decision, the AAO incorporates by reference this decision's earlier comments and findings with regard to the deficiencies in the evidence presented regarding the proffered position and its constituent duties, as those parts of this decision indicate the record of proceeding's lack of sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupational group that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other market research analyst positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent for the position.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Counsel contends that "the petitioner as a start-up company in full expansion is being penalized as a new company without a history of employment." The AAO disagrees. The petitioner is not being penalized for being a start-up company. The petitioner simply has not met the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails demonstrating that the petitioner

routinely hired specialty-degreed individuals for the proffered position.<sup>10</sup> However, the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) are still available avenues for a petitioner that does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) to pursue.

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 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.

However, in this record of proceeding there is insufficient evidence to establish that the duties of the market research analyst position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

The AAO finds that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's 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, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

As noted earlier in this decision, the AAO also here incorporates by reference this decision's earlier comments and findings with regard to the deficiencies in the evidence presented regarding the proper position and its constituent duties.

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. That is, the petitioner has not established that the nature of the duties of the position is so specialized and complex that knowledge required to perform the duties is usually associated with

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<sup>10</sup> While a petitioner may assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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.

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

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

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