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U.S. Citizenship  
and Immigration  
Services

DATE: **AUG 01 2014** 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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.

## I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a twenty-one employee financial services and financial education company<sup>1</sup> established in 2012. In order to employ the beneficiary in what it designates as a full-time business development specialist position at an annual salary of \$48,000,<sup>2</sup> 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, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

## II. LAW

As noted, the director denied the petition, concluding that the evidence of record does not establish that the proffered position is a specialty occupation. To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 523999, "Miscellaneous Financial Investment Activities." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "523999 Miscellaneous Financial Investment Activities," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 15, 2014).

<sup>2</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Market Research Analysts and Marketing Specialists" occupational classification, SOC (O\*NET/OES) Code 13-1161, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

- (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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the 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 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 rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

### III. ANALYSIS

We will now address the director's finding that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

In a letter dated June 24, 2013 submitted in response to the director's RFE, the petitioner stated that the duties of the proffered position would be as follows:

- Perform daily performance reports for different pay-per-click marketing campaigns and sales activities[;]
- Prepare background studies on the company and evaluate its strengths and weaknesses and research, prepare intensive industry studies that covers competitor's analyzing demand-supply projections for the industry segments [sic][;]

- Develop marketing strategies based on analysis of reports and feasibility to optimize lead generation[;]
- Design related and necessary metrics and analysis to identify cause-effect relationships between marketing actions and financial performance for new market opportunities and potential success[;]
- Assist in the strategic and tactics in the analysis [*sic*][;]
- Lead and manage E-mail campaign and run analysis to improve open rates and increase brand awareness[;]
- Perform ad hoc marketing reports based on needs and objectives[;]
- Support field-based business development activities and preparations for new and follow-on projects, including review of internal and external evaluations of projects.

The petitioner provided estimates of the percentages of time the beneficiary would spend performing these tasks. The petitioner emphasized that the duties of the proffered position require the ability to analyze and interpret rates, data, and trends, specifically with regard to "debt data and financial analysis," and require an "understanding of the specialized market." The petitioner then asserted that these duties are "clearly complex in nature" and "most definitely require a person with a minimum of a Bachelor's degree in Business Administration, Marketing, or related field to effectively meet the specialized requirements." On appeal, the petitioner emphasizes that the proffered duties involve "business analytics and market metrics," and submits examples of various business recommendations and reports the beneficiary has made to the petitioner in the course of her duties.

In the November 26, 2013 letter submitted on appeal, the petitioner states the following:

[The beneficiary's] duties include reporting on business data, analyzing the data and making recommendations for our business. [The beneficiary] is extremely detail oriented and makes excellent business recommendations using data with minimal supervision.

Before proceeding further, we should note for the record that, upon consideration of the totality of all of the petitioner's duty descriptions, position descriptions, explanations, and assertions, as well as the complete complement of documents submitted in support of the petitioner's specialty occupation claim, we find that the evidence in the record of proceeding does not establish the depth, complexity, or level of specialization, or substantial aspects of the matters in which the petitioner says that the beneficiary will engage. Rather, the proposed duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties. Further, while the petitioner has submitted examples of the beneficiary's recommendations and reports to the petitioner, the petitioner did not submit any explanation as to why this work represents the practical and theoretical application of highly specialized knowledge in a specific specialty, and why this work requires the knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty. For instance, the petitioner did not submit information explaining what highly specialized knowledge in

what specific specialty is needed to perform these recommendations and reports, and what type of detailed course of study leading to a specialty degree is required to perform such work.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.

Nevertheless, assuming, *arguendo*, that the proffered duties as described by the petitioner would in fact be the duties to be performed by the beneficiary, we will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

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

We recognize 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 it addresses.<sup>3</sup> The petitioner also recognizes the *Handbook* as an authoritative source, as on appeal it provides a copy of the *Handbook's* description of duties for Market Research Analysts, and asserts that the *Handbook* "clearly shows" that the position qualifies as a specialty occupation." As noted previously, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Market Research Analysts" occupational category.

In relevant part, the *Handbook* summarizes the duties typically performed by positions falling within the "Market Research Analysts" occupational category as follows:

Market research analysts typically do the following:

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The references to the *Handbook* are from the 2014-15 edition available online.

- 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited July 30, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

\* \* \*

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, and computer science. Others have backgrounds in business administration, 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.

Some 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 and marketing, and/or earn a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

*Id.* at <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4> (last visited July 30, 2014).

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.<sup>4</sup> Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's or higher degree is "typically" required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. The *Handbook's* recognition that bachelor's degrees in a wide variety of fields of study, such as statistics, computer science, and communications, are sufficient for entry into the occupation and, further, that degrees in these fields are "typically" but not exclusively mandated by employers, strongly suggests that a bachelor's degree in a specific specialty, or the equivalent, is not a normal, minimum entry requirement for this occupation.

Additionally, the *Handbook's* recognition that unspecified "backgrounds" in business administration and social sciences would provide adequate preparation for a career in this field is further evidence that a bachelor's degree in a specific specialty, or the equivalent, is not required for this position. Although a general-purpose bachelor's degree, such as a degree in business administration or social sciences, may be a legitimate prerequisite for a particular position, requiring such a degree, without

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<sup>4</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. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. 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 explained above, 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. USCIS has consistently stated that, 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 139, 147.

Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner did not submit evidence from any other relevant authoritative source establishing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry for the proffered position.

Finally, it is noted that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.<sup>5</sup>

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<sup>5</sup> The *Prevailing Wage Determination Policy Guidance* (available 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) (last visited July 30, 2014)) issued by DOL states the following with regard to Level I wage rates:

**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 [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level is appropriate for a proffered

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the evidence of record does not satisfy the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here, and as already discussed, the record does not establish that the 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 response to the director's RFE for evidence that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of the following advertisements for business development specialist positions: (1) [REDACTED], an insurance company, listing the necessary qualifications as including a bachelor's degree; (2) [REDACTED], a management consulting services company, listing the necessary qualifications as including a bachelor's degree and at least five to seven years of experience; (3) [REDACTED], a law firm, listing the necessary qualifications as including a bachelor's degree; (4) at an unknown company; and (5) [REDACTED], a brokerage and investment company, listing the necessary qualifications as including a "4 Year College Degree."

The above job-vacancy announcements do not satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, these advertisements are discounted because the evidence of record

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position that is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level I wage rate, the petitioner effectively attests that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring 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.

does not establish that they conduct business within the petitioner's industry, as would be required if those submissions were to be within this prong's zone of consideration. Again, the language of this prong limits the range of relevant evidence to the petitioner's pertinent industry's practices (stating "[t]he degree requirement" as one that would be "common to the industry" as well as "in parallel positions among similar organizations"). Moreover, none of the positions advertised require a bachelor's degree in a specific specialty, or the equivalent.<sup>6</sup> In addition, there is no evidence that the posted positions are "parallel" to the proffered position.<sup>7</sup> There is also no evidence that the advertised positions were located in organizations that are "similar" to the petitioner. Finally, the petitioner did not submit any explanation or evidence regarding how these advertisements are representative of the industry's usual recruiting and hiring practices with regard to the positions advertised; as just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner submitted job announcements for marketing research analyst positions from: (1) U.S. Bank, listing the necessary qualifications as including a bachelor's degree and at least five years of experience in financial or quantitative analysis; (2) [REDACTED] listing the necessary qualifications as including a bachelor's degree in business or finance; (3) [REDACTED] listing the necessary qualifications as including a bachelor's degree in "Mathematics, Statistics, Business, Marketing or related field" and at least four to six years of related; (4) [REDACTED] listing the necessary qualifications as including a college degree; (5) [REDACTED] listing the necessary qualifications as including "a Bachelor's degree from an accredited institution"; (6) [REDACTED] listing the necessary qualifications as including a bachelor's from an accredited university; (7) [REDACTED], a health care company, listing the necessary qualifications as including "a Bachelor's degree with an emphasis in Business Administration, Finance, Marketing or related field"; (8) [REDACTED] a retail branding and sourcing company, listing the necessary qualifications as including a bachelor's degree; (8) [REDACTED] listing the listing the necessary qualifications as including a master's degree in planning, economics, business, geography, real estate, or other related disciplines, or a bachelor's degree and commensurate experience; and (9) [REDACTED], an executive search services, staffing, and safety training services company in the mining industry, listing the necessary qualifications as including a "4 Year Degree."

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<sup>6</sup> Although the advertised positions all require a bachelor's degree, none of them mandate that the degree be in a specific specialty.

<sup>7</sup> We also note that the advertisement from [REDACTED] requires the candidate to have at least five to seven years of experience. However, the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. It is therefore difficult to envision how these positions could be considered "parallel" to the proffered position.

Again, the above job-vacancy announcements do not satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). These advertisements are discounted as the majority of them are from unrelated industries.<sup>8</sup> Of the advertisements from companies that could arguably be considered to be in a related industry as the petitioner, none of them require a bachelor's degree in a specific specialty, or the equivalent. Further, there is no evidence to establish that the advertised positions are located in organizations that are similar to the petitioner.<sup>9</sup> Finally, the petitioner did not explain how these advertisements are representative of the industry's usual recruiting and hiring practices with regard to the positions advertised; as just discussed, the majority of the job advertisements are from companies in unrelated industries. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.<sup>10</sup> *Id.*

Therefore, the evidence of record does not satisfy the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty or its equivalent that is common (1) to the petitioner's industry and (2) for positions in that industry that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

Next, we find that the evidence of record does not satisfy 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."

In this particular case, the record does not credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

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<sup>8</sup> The record contains no evidence identifying the industry or industries to which [REDACTED] and [REDACTED] belong, nor is it evident from the names of the companies alone.

<sup>9</sup> We also note that the advertisement from [REDACTED] require the candidate to have several years of experience. However, the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. It is therefore difficult to envision how this position could be considered "parallel" to the proffered position.

<sup>10</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

As reflected in this decision's earlier comments and findings regarding the absence of evidence establishing the substantive nature and substantive knowledge requirements of the proffered position and its constituent duties, the record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform that position. Rather, the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic market-research-analysis work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

The statements of the petitioner and counsel with regard to the claimed "sophisticated" and "complex" nature of the proffered position are acknowledged. However, those assertions are undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. We incorporate here by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the analysis of the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy.

Accordingly, given the *Handbook's* indication that typical positions located within the "Market Research Analysts" occupational category do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement.

The evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

A review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.<sup>11</sup>

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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

As evidence under this criterion, the petitioner submitted the résumé of [REDACTED] Affiliate Manager, whom the petitioner characterizes as "the Beneficiary's closest colleague in the Business Development Team." The petitioner also submitted the company's organizational chart, depicting the beneficiary as the sole business development specialist within the company. The beneficiary is depicted as being immediately overseen by [REDACTED] Director of [REDACTED] [REDACTED], who in turn is directly overseen by [REDACTED] the Vice President. Ms. [REDACTED] is depicted on the organizational chart as being directly overseen by Mr. [REDACTED]. No further evidence or explanation was provided.

The submitted evidence fails to demonstrate that the petitioner normally requires a bachelor's degree in a specific specialty or its equivalent for the position. It is not readily apparent how the résumé of an individual holding a different position is relevant to establishing that the petitioner normally requires a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>12</sup>

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<sup>11</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the same occupation.

<sup>12</sup> The record does not contain any information to indicate that Ms. [REDACTED] claimed position of "Affiliate Manager" is even similar to the proffered position, much less the same as the proffered position. Specifically, Ms. [REDACTED] resume lists her objective as to seek "a position in the capacity of Administrative

Furthermore, the petitioner has neither claimed nor provided any evidence to indicate that it has a history of requiring a degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position, if the position previously existed. Thus, it appears that the beneficiary is a first-time hiring for the proffered position.<sup>13</sup> While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

As reflected in this decision's earlier comments and findings regarding the relatively abstract and generalized level at which the proposed duties and the position that they comprise are presented in this record of proceeding, the petitioner has not presented the proposed duties in sufficiently specific and substantive details to establish any level of relative specialization and complexity as an aspect of their nature. The petitioner's assertion that the duties of the proffered position are "clearly complex in nature" because they require "the ability to analyze and interpret rates, data and trends" with respect to "debt data and financial analysis" is too vague to provide any meaningful explanation as to the specific and substantive nature of the duties. Therefore, there is no evidentiary basis to find therein the requisite specialization and complexity to satisfy this criterion.<sup>14</sup>

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Support," and does not list any employment with the petitioner. Moreover, while the petitioner characterizes Ms. [REDACTED] as "the Beneficiary's closest colleague in the Business Development Team," the petitioner's organizational chart does not depict any "Business Development Team." Regardless, even if we were to consider the résumé, it reflects Ms. [REDACTED] education as a bachelor's degree in business administration, which is a general-purpose degree, as well as studies in comparative literature (with a minor in political science), for which no degree was specified. The evidence of record, therefore, does not establish that Ms. [REDACTED] position requires a bachelor's degree in a specific specialty, or the equivalent.

<sup>13</sup> In the RFE, the director specifically instructed the petitioner to submit information and evidence establishing the number of individuals previously employed in the proffered position, the level of education held by each individual, and the field of study in which the degree was earned. In response to the RFE, the petitioner stated that "business needs necessitate the hiring of a qualified Business Development Specialist." The petitioner submitted the afore-mentioned résumé and organizational chart on appeal.

<sup>14</sup> As earlier mentioned, we incorporate into the present analysis, and into the analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), this decision's earlier comments and findings with regard to the evidentiary deficiencies of the petitioner's statements and documentary submissions about the proposed duties.

On appeal, the petitioner supplements the record with examples of the beneficiary's business recommendations and reports to illustrate how they "directly impact business decisions" and "directly affect the Petitioner's profitability."<sup>15</sup> However, the petitioner does not explain how the impact of the beneficiary's work on the petitioner's business is relevant to establishing that the proffered position's duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent. On appeal the petitioner also submits documentation demonstrating its business growth in the form of a contract sales summary and a profit and loss statement, in order to demonstrate its necessity of hiring a qualified business development specialist. Again, the relevance of this documentation to this criterion is not readily apparent.

Finally, there is the countervailing weight of the wage-level of the LCA. Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of a basic degree of complexity requiring the exercise of only a limited degree of judgment by the beneficiary.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

**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 [emphasis in original].

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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited July 14, 2014).

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level

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<sup>15</sup> Although the petitioner submitted this evidence under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), we find them more relevant to the discussion of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

*Id.*

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of the petitioner's Level I wage-rate designation.

Further, we note the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

*Id.*

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

*Id.*

Here we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

#### IV. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.

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.