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



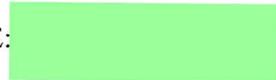
U.S. Citizenship
and Immigration
Services



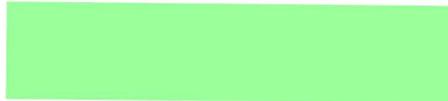
DATE: JUN 06 2014

OFFICE: VERMONT SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink that reads "Elizabeth McCormack".

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 is a company engaged in the sale and distribution of chef's uniforms and apparel. It seeks to employ the beneficiary as a market research analyst and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 petition and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials.

LAW AND REGULATIONS

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

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides further details to the definition:

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must 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.

FACTUAL AND PROCEDURAL HISTORY

In the Form I-129 the petitioner stated that it was established in 1984, has 20 U.S. employees, and has gross annual income of \$5,650,000. The petitioner proposes to hire the beneficiary as a market research analyst for three years at an annual salary of \$48,000. In a letter accompanying the Form I-129 the petitioner's secretary described the proffered position as follows:

[The petitioner] is internationally known for high quality chef coats and uniforms

The duties of the position will be to examine and analyze statistical data and develop projections forecasting future trends in our target markets and prepare reports and graphs illustrating those findings. [The beneficiary] will establish the research methodology to be utilized and design the format for data gathering. He will collect data and analyze price, sales, marketing techniques and distribution methods of our competitors and will make recommendations for revision of procedures. [The beneficiary] will utilize his knowledge of market segmentation and marketing strategy to develop marketing and sales policy plans, evaluating the socio-demographic, economic and cultural characteristics of our primary markets.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in marketing, trade, or management, or a master's degree in business administration (MBA). As evidence that the beneficiary meets this requirement a copy of the beneficiary's academic record was submitted, which shows that he graduated from a French Grande Ecole program with an "ESCP Europe Grade de Master" on September 28, 2012, after four years of study with a concentration in business, management, and marketing courses. According to an "Evaluation Report" from the [redacted] Inc., dated March 21, 2013, the beneficiary's degree is equivalent to a bachelor's degree in business administration as well as an MBA from an accredited university in the United States. This evaluation accords with the credential advice in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which USCIS considers to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

The director issued an RFE on April 22, 2013, requesting additional evidence that the proffered position is a specialty occupation requiring at least a bachelor's degree in a specific field of study. In response the petitioner's owner submitted a letter providing further details about the

duties of the market research analyst. Supplementing the prior description of the position, the petitioner stated that 60% of the beneficiary's time would be spent on the following duties:

- Establishing research methodology and design data gathering formats.
- Analyzing competitor's prices and calculating profitable and attractive prices of our product lines within the American market.
- Conducting research of market conditions in local, regional, and national areas of the American market to identify new markets and determine potential sales of products.
- Conducting research to find, identify and document statistics/sales concept/ideas needed for product and sales brochures.
- Managing new and stronger brand positioning research data.

In addition, 40% of the beneficiary's time would be spent on the following duties:

- Managing consumer information, transforming market research data into clear marketing recommendations and reports and graphs, including recommendations for revision of procedures and developing marketing and sales policy plans.
- Examining and analyzing statistical data to forecast future marketing trends.
- Collecting and analyzing data in order to strengthen the network and brand recognition.
- Analyzing cost effectiveness of the different marketing and advertising services.

The petitioner also submitted company brochures and a power point presentation, online job postings for market research analysts by other companies, and the beneficiary's academic transcripts (already in the record).

In her denial decision the director confirmed that the duties of the proffered position are comparable to those of a market research analyst, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director quoted from the *Handbook* regarding the educational and training requirements for this occupation – which stated that “[m]ost market research analysts need at least a bachelor's degree”¹ -- and concluded that based on the *Handbook* a bachelor's degree in a specific field of study is not a minimum educational requirement for entry into a position of market research analyst. The director determined, therefore, that the evidence of record did not show that the proffered position qualifies as a

¹ In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, USCIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). USCIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). As for the second criterion under the regulations, the director stated that the job postings from other companies for market research analysts did not involve companies that were comparable to the petitioner, and thus did not establish that the petitioner's industry required an individual with at least a bachelor's degree in a specific specialty to perform the duties of a market research analyst. Nor did the petitioner submit any evidence that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Accordingly, the evidence of record did not show that the proffered position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). With regard to the third criterion, the director noted that the petitioner had not provided any evidence that it normally requires a degree or its equivalent for the proffered position. Thus, the record did not establish that the position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Finally, with regard to the fourth criterion, the director noted that the duties of the market research analyst, as described by the petitioner, did not appear to be so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Therefore, the evidence of record did not show that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). In accordance with the foregoing analysis, the director concluded that the petitioner had failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) were misapplied in the director's decision. The Form I-290B is supplemented by a brief from counsel and three letters from other companies in the petitioner's line of business addressing the educational requirement for market research analysts in the industry. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

LEGAL ANALYSIS

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), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R.

§ 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

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

With respect to the first regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), counsel emphasizes in the appeal brief the DOL's recognition, both in its *Handbook* and in its associated *O*NET (Occupational Information Network)* entry for market research analysts, that a bachelor's degree is the minimum educational requirement for most market research analyst positions. As previously noted, the AAO recognizes DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² While counsel may be correct insofar as most market research analysts require at least a bachelor's degree, neither the *Handbook* nor *O*NET* indicate that a bachelor's degree *in a specific specialty*, or its equivalent, is the minimum educational requirement for entry into the occupation in the United States, as required by the Act and its implementing regulations to constitute a specialty occupation.

² All of the AAO's references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

The subchapter of the *Handbook* entitled “How to Become a Market Research Analyst” states the following about this occupational category:

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.

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 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.

U.S. Dep’t of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, 2014-25 ed., Market Research Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited May 8, 2014).

Thus, the *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. As the foregoing passage from the *Handbook* indicates, market research analysts have degrees and academic backgrounds in a wide variety of disparate fields.

In general, provided the specialties are closely related – e.g., chemistry and biochemistry – a minimum requirement of a bachelor’s degree or higher 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 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) of the Act (emphasis added).

In this case, although the *Handbook* indicates that a bachelor’s degree is typically needed for market research analyst positions, it also indicates that baccalaureate degrees in various fields are

acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields and backgrounds (such as social sciences and computer science) as acceptable for entry into this occupation, the *Handbook* also states that "others have backgrounds in business administration." As previously discussed, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. The *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

When reviewing the *Handbook*, we also note that the petitioner designated the wage level of the proffered position as a Level I position on the Labor Condition Application (LCA) certified by the DOL.³ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. The petitioner has not established that the beneficiary will serve in a top-research position, a high-level or leadership position, or a position that performs more technical research.

As previously stated, USCIS does not simply rely on a position's title to determine whether a particular position qualifies as a specialty occupation. Rather, USCIS considers the duties of a proffered position, the nature of the petitioning entity's business operations, and all other relevant factors to make its determination. Again, the critical element is not the title of the

³ The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL 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.

position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

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

Counsel asserts that because the director did not dispute or question the job duties of the proffered position, the director's finding that the proffered position did not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) was an abuse of discretion. Counsel cites a U.S. District Court decision, *Residential Finance Corporation v. USCIS*, 2012 U.S. Dist. LEXIS 32220, which also involved a market research analyst, in which the court determined that the denial of the petition by USCIS was arbitrary and capricious because USCIS failed to properly consider the evidence of record that the beneficiary of that petition would actually be performing the duties of the proffered position. Counsel's citation of this case is off the mark. In the instant proceeding the director did not refuse to consider evidence that the beneficiary would be performing the duties of a market research analyst position, as described by the petitioner. Rather, the director cited the DOL *Handbook* as evidence that market research analyst positions do not generally require a baccalaureate degree in a specific specialty, as required to qualify as a specialty occupation. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the evidence contained in the petitioner's record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). For the reasons previously discussed, the record in this proceeding does not establish that the petitioner's market research analyst position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

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

Counsel asserts that the previously submitted job postings of other companies for market research analysts document the necessity of a bachelor's degree in a specific specialty as the standard minimum requirement for market research analysts. As discussed in the director's decision, however, none of the companies was in the same line of business as the petitioner. Moreover, it cannot be determined from the job postings whether any of the companies was comparable to the petitioner in size or scale of operations. Thus, it cannot be determined whether the petitioner's market research analyst position is parallel in any way to the jobs of the advertising companies. Accordingly, the job postings do not show that a bachelor's degree requirement is common to the petitioner's industry in parallel positions among similar organizations, as required to satisfy the first prong of 8 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

On appeal the petitioner has submitted letters from three companies in its industry – including: (1) [REDACTED] Inc. of Sunrise, Florida; (2) [REDACTED] Louisiana; and (3) [REDACTED] of Boca Raton, Florida – whose employee totals range from four to fifteen and whose gross annual sales range from \$900,000 to \$10 million (thus roughly comparable to the petitioner). The letters from [REDACTED] and [REDACTED] are identical, and state the following with regard to market research analysts and their educational requirements:

It is the practice, in both our company and our industry, to require that market research analysts have, at a minimum, a bachelor's degree in marketing, trade or management (or an MBA).

. . . . We require a bachelor's degree in one of the listed areas because the knowledge and theory necessary to perform those duties is provided only in one of the enumerated programs.

The letter from [REDACTED] is worded a little differently, and reads, in pertinent part, as follows:

Industry standards regarding the use of market analysis require professionals in the field to have a minimum of a bachelor's degree in marketing or an MBA.

. . . . A bachelor's degree or MBA is necessary to ensure the appropriate knowledge and understanding necessary to develop the results and perform the duties we require.

None of these letters indicates that the individual companies actually hired market research analysts. None of the companies has submitted documentary evidence of a market research analyst on its payroll with baccalaureate or higher level of education. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Accordingly, the letters of the petitioner's three competitors do not show that a bachelor's degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not submitted any other documentary evidence of an industry standard, either to employ a market research analyst or to require a baccalaureate degree in a specific specialty, among sellers and distributors of food service apparel. The evidence of record, therefore, fails to establish that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. The typical duties of market research analysts are described in the *Handbook, 2014-15 Edition*, as follows:

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, and 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 and 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, and other visual aids to present the results of their research.

<http://www.bls.gov/ooh/business-and-financial/print/market-research-analysts.htm> (accessed April 15, 2004). The job duties described in the *Handbook* are closely aligned with the job duties of the proffered position as described in the letters from the petitioner that were filed with the petition and in response to the RFE. In short, the duties of the petitioner's market research analyst are not unique, and do not appear to be any more complex than a typical market research analyst, an occupation for which a bachelor's degree in a specific specialty is not a minimum requirement for entry into every job.

Furthermore, as previously discussed, the wage level of the proffered position was designated by the petitioner on the Labor Condition Application (LCA) certified by the DOL as Level I (entry level) for the occupational classification "Market Research Analysts and Marketing Specialists." The wage-level of the proffered position indicates that, relative to others within the occupation, the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Thus, the petitioner has not shown that its particular position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to satisfy the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Accordingly, the petitioner has not established that the proffered position qualifies as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) requires an employer to demonstrate that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.

While a petitioner may assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified, and if the proffered position does not in fact require such a specialty degree or its

equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement cannot mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner has submitted no evidence on appeal, such as job postings for market research analysts and its employment and educational records for previously hired market research analysts, to show that it normally requires a bachelor's degree in a specific specialty or its equivalent for the proffered position. Thus, the petitioner has not established a prior history of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty, or its equivalent, for the position of market research analyst. Accordingly, the record does not establish that the proffered position qualifies as a specialty position under the third regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Counsel claims that the proffered position meets this criterion based on the specific duties of the job and the DOL's recognition in its *Handbook* that most market research analyst positions require a bachelor's degree and some require a master's degree. The job duties recapitulated by counsel, however, are well within the scope of the job duties described in the *Handbook* for market research analysts generally. There is nothing in the record that distinguishes the nature of the proffered position's duties from those of other market research analysts. The evidence of record does not demonstrate that the specific duties of the proffered position are so specialized and complex in their nature that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty.

As previously discussed, the petitioner has designated the market research analyst as a Level I position on the certified Labor Condition Application (LCA), with an offered wage of \$48,000 per year, which indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Department of Labor, Employment & Training Administration, *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (revised Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.⁴ The DOL's Foreign Labor Certification Data Center Online Wage Library indicates that for market research analysts and marketing specialists in the New York-White Plains-Wayne, NY-NJ Metropolitan Division the average annual Level I Wage is \$45,448, the average Level II Wage is \$60,445, the average Level III Wage is \$75,442, and the average Level IV Wage is \$90,438. See <http://www.flcdatacenter.com> (accessed April 14, 2014). Thus, the petitioner's offered wage of \$48,000 per year for its market research analyst position is consistent with an entry level position for an employee who has only basic understanding of the occupation. The entry level wage offer is also consistent with the finding that the proffered position does not require a baccalaureate or higher degree in a specific specialty.

Thus, the petitioner has not established that the proffered position qualifies as a specialty occupation under the fourth regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

CONCLUSION

For the reasons discussed above, the AAO determines that the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Accordingly, the record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. See section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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

⁴ As explained in the Guidance, Wage Level I positions require a basic understanding of the occupation and the performance of routine tasks. Wage Level II positions require a good understanding of the occupation and the performance of moderately complex tasks. Wage Level III positions require a sound understanding of the occupation and the performance of tasks that require the exercise of judgment. Wage Level IV positions require full competency in the occupation, advanced skills and diversified knowledge, and the performance of management and supervisory responsibilities. *Id.* at 7.