



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **OCT 03 2014** OFFICE: CALIFORNIA 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,

Michael T. Kelly
ce Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner states it is a “research and development organization” established in 2004 and currently employs two people. The petitioner states it wishes to hire the beneficiary as a nonimmigrant “market research analyst”¹ and classify that position as 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 petitioner states it will pay the beneficiary a salary of \$67,725 per year. At the time of filing, the petitioner’s gross annual income was \$53,386.

The director denied the petition, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO 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, the AAO finds that the evidence of record supports the director’s decision to deny the petition for its failure to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. ANALYTICAL FRAMEWORK

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment that 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:

- (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:

¹ 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 Analyst and Marketing Specialist” occupational classification, SOC (O*NET/OES) Code 13-1161.

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 illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered

position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not 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.

II. ANALYSIS

Before evaluating the evidence of record under the supplemental criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we must note that the evidence of record is materially deficient of substantive information about specific duties that the beneficiary would perform and about the actual work in which she would engage performing them. In fact, the evidence of record does not provide a sufficient factual basis for us to even reasonably find that the beneficiary would be engaged in a position within the Market Research Analysts occupational group, which the petitioner’s Labor Condition Application identified as the occupational group in which the beneficiary would serve and which was the occupational group used for determining the particular prevailing-wage level that would be the lowest-possible permissible wage for that type of position in the pertinent time period and geographical area.

As noted above, the petitioner stated that it is a “research and development organization.” Counsel’s September 18, 2013 letter of support, filed with the Form I-129, includes the following information the petitioner’s counsel states the petitioner “supports Research and Development for Science and Technology, Work Force Development and STEM education based opportunities.”

The director issued an RFE, seeking evidence about the duties required in the proffered job and the positions classification as a specialty occupation. In her letter replying to the RFE, counsel provided a broad description of the petitioner and its activities. However, there we see no information about marketing, or marketing research activities, or any aspects of the petitioner’s business activities that would indicate the need for a market research analyst (the type of position for which the petition was filed). In pertinent part, counsel’s letter reads:

[T]his governmentally-affiliated research and development organization has a principal place of business located in ██████████ Pennsylvania. . . . As described in its promotional materials, which are attached herewith, [the petitioner] is a Not For Profit company that executes the vision of the Congressional Caucus and States by working with the Caucus, Federal Executive Branch HQs, International Allies, State Executive and Legislative Branches, Academia, Industry, Government, Laboratories/Field Agencies and Professional Associations, throughout the region, nation and the world. [The petitioner] supports Research and Development for Science and Technology, Work Force Development, and STEM education[-]based opportunities for economic expansion and intellectual vigor in the four[-]state region. The organization also acts as a Grant Applicant for all public and private funding sources.

In the copy of the IRS Form 990 that the petitioner filed for 2010, entry at Part 1, item 1 (for a brief description of the organization's mission or most significant activities) reads:

To promote collaboration for research & development for the benefit of the regional scientific and technological communities, government agencies and the general public.

The petitioner maintains that a bachelor's degree is necessary for the position to maintain credibility when meeting and liaising with various offices; but the petitioner does not articulate a substantive correlation between such relatively abstract requirements and a need for a bachelor's or higher degree level of a body of highly specialized knowledge in a specific specialty.

The entry at item 1 of Section 1 of the petition's Form I-129 Supplement H (for "[d]escribing the proposed duties") reads "SEE ATTACHED NOTICE." We see no such notice attached directly to the Form I-129 itself, but, following counsel's September 18, 2013 letter introducing the Form I-129, there is a statement of duties, bearing the title "DUTIES OF THE MARKET RESEARCH ANALYST," which consists of a paragraph of four-phrases, which we repeat below in "bullet" format:

- DIRECT AND COORDINATE INTERNATIONAL RESEARCH PROJECTS.
- ASSIST IN PROVIDING RESEARCH IN THE AREA OF INTERNATIONAL PROJECTS FOR EXPANDING THE ALTERNATIVE FUEL BUSINESS IN EUROPE AND AFRICA.
- ASSIST GRANT ADMINISTRATOR WITH GRANT APPLICATIONS, GRANT MANAGEMENT, AND BUDGETING.
- ACT AS LIASON BETWEEN THE ORGANIZATION AND THE EXISTING AND FUTURE INTERNATIONAL PARTNERSHIPS WITH

PARTICULAR REFERENCE TO FRENCH SPEAKING COUNTRIES
AND ITALY.

As clearly reflected in all of the above phrases, the record of proceeding presents the proffered position and its constituent duties in relatively abstract terms of generalized functions. As so limited, the descriptions convey neither the substantive nature of the work in which the beneficiary would engage nor any specific correlation between such work and a need for at least a bachelor's degree, or the equivalent, in a specific specialty. Likewise the generalized level of the descriptions the evidence of 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 which do not relate substantial details about either the position or its constituent duties. Further, we find that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

Further, we also find that neither the above descriptions nor any evidence in the record of proceeding develops the proposed duties, or the position that they are said to comprise, in terms of relative specialization, complexity, and/or uniqueness. In this regard, we note that the evidence of record does not document or apply any objective standard by which the proffered position or its proposed duties would measure as so complex, specialized, and/or unique as to distinguish the proffered position or its duties from positions and associated duties in the Market Research Analysts occupational group that do not require either (a) the services of a person with at least a bachelor's degree in a specific specialty or (b) the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty. (As this discussion and findings have particular applicability to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A) and to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), we hereby incorporate them by reference into our later discussions of those criteria.)

More fundamentally, as we noted above, the evidence of record does not establish that the proffered position is actually that of a market research analyst – the type of position claimed in the petition and its LCA. This becomes abundantly clear upon comparing (a) the "Duties of the Market Research Analyst" which we quoted above, with (b) the following summary of general duties usually associated with market research analysts, excerpted from the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*:

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends

- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
- Gather data about consumers, competitors, and market conditions
- Analyze data using statistical software
- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Market Research Analysts," <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-2> (last visited October 1, 2014).

For this reason alone the appeal must be dismissed and the petition must be denied: an inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also* 8 C.F.R. § 103.2(b)(1). Also, the appeal must be dismissed because the credibility of the petition's specialty occupation claim is fatally undermined by the failure to establish that the beneficiary would actually be employed in the type of position that the petition claimed as its basis at its filing. Our consideration of the totality of the evidence of record leads us to materially doubt that the beneficiary would serve in the position specified in the petition when filed. Doubt cast on any aspect of the petitioner's proof may, of

course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Next, as yet another independent ground for dismissing the appeal, we conclude that, because of the generalized and abstract terms to which the petitioner limited its descriptions of the proffered position and its constituent duties, there is an insufficient factual basis for determining that the beneficiary would actually be employed in a specialty occupation position if this petition were approved. 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.

We have already identified several separate and independent grounds for dismissing the appeal for the petition's failure to establish the proffered position as a specialty occupation, and, as noted above, the appeal will be dismissed on each of those grounds.

However, in the interests of providing a more comprehensive and informative decision for the petitioner's benefit, we will now discuss additional evidentiary deficiencies that would also preclude a favorable decision on this appeal even if the evidence of record had established the proffered position as a specialty occupation as claimed – which, of course, is not the case. In this context 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.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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.

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

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

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

social sciences—such as economics, psychology, and sociology—are also important.

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

Id. at <http://www.bls.gov/ooh/Business-and-Financial/Market-research-analysts.htm#tab-4>.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the “degree in the specific specialty” requirement of section 214(i)(1)(B) of the Act. In such a case, the required “body of highly specialized knowledge” would essentially be the same. Since there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be “in *the* specific specialty,” unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.² 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. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that “others have a background in business administration.” Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty “background” in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that the Marketing Research Analyst occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry, it does not support the proffered position as satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

² 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.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone Four designation (the one assigned to Market Research Analysts) makes no mention of the specific field of study from which a degree must come.³ As was noted previously, the AAO 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 proposed position.

We note that the record does not establish that the petitioner has products to market. The petitioner has not provided evidence establishing how the beneficiary would act as a market research analyst or how the position would require a bachelor's degree.

The record of proceeding does not contain any persuasive documentary evidence from any relevant authoritative source establishing that the proffered position's inclusion in the Market Research Analysts occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree, or its equivalent, in a specific specialty 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 at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively 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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from

³ See the Job Zone section of the O*NET Summary Report for Market Research Analysts and Marketing Specialists, on the Internet at <http://www.onetonline.org/link/summary/13-1161.00> (visited August 18, 2014).

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.

The director issued an RFE to the petitioner which in part requested that the petitioner submit evidence that a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered. The petitioner did not provide responsive evidence.

Thus, the record contains 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. Nor does the petitioner submit any other evidence 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.

Therefore, the petitioner has not satisfied 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 as 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.

Next, the AAO finds that the petitioner did 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 petitioner has failed to 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, or the equivalent, in a specific specialty.

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.

The petitioner therefore has not established 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.

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, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns 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, or the equivalent, in a specific specialty for the position.

The AAO's 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. 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. In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a 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 proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific

specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In any event, the record contains no evidence of past employment of market research analyst. Consequently, the petitioner has no evidence to present that would relate to this criterion.

As the record of proceeding does not present a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied 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 specialty.

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 AAO finds that 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, and, therefore, there is no evidentiary basis for the AAO to find therein the requisite specialization and complexity to satisfy this criterion.⁴

For 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 petitioner has not satisfied 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.

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.

⁴ As earlier mentioned, the AAO incorporates 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.