



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 19 2015

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,

Ron Rosenberg

Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 31-employee "Import/Export – Stationery Products" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Marketing Specialist" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

II. THE LAW

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human

endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

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

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

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Marketing Specialist" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1161, Market Research Analysts and Marketing Specialists, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel submitted evidence pertinent to the beneficiary's employment experience and an evaluation that states that the beneficiary, through that employment experience, has the equivalent of a U.S. bachelor's degree in business.

Counsel also submitted a letter, dated January 31, 2014, from [REDACTED] signing as the petitioner's President/CEO. In it, she stated:

As a Marketing Specialist, [the beneficiary] will be responsible for the following duties:

- Develop branding strategies for the international market.
- Attend international trade shows.
- Seek out distributors/chain store customers in Europe, Africa, and Latin America.

- Advise our distributors in various countries on advertising/promotion to protect our brand.
- Attend conferences of national organizations for women and minority owned businesses to develop relationships with supplier-diversity companies for future procurement business.
- Establish/promote social media and other online digital presence in all international markets.
- Serve as industry liason [sic] -- media communicator – PR ambassador for our company.
- Source products/designs internationally and negotiate contracts and license agreements.
- Responsible for special government/customs requirements compliance in each country.

As to the educational requirement of the proffered position, Ms. [REDACTED] stated: "The standard requirement of our company and our field at large for comparable positions is a Bachelor's degree in Business or the equivalent."

On February 21, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*, a letter, dated March 10, 2014, from Ms. [REDACTED] who stated: "In the 20+ years since I founded the company, I have handled all marketing operations - my MBA diploma and W-2 for 2013 are enclosed." Those documents were, in fact, enclosed.

Ms. [REDACTED] also provided the following amended description of the duties of the proffered position:

- | | |
|-----------|--|
| 15 hrs/wk | Marketing, sourcing and purchasing <ul style="list-style-type: none">a) Develop branding strategies for the international marketb) Attend international trade showsc) Advise our distributors in various countries on advertising/promotion to protect our brandd) Establish/promote social media and other online digital presence in international marketse) Serve as our industry liaison, media communicator and PR ambassador |
| 5 hrs/wk | Business Development and needs analysis of new markets, seeking out distributors/chain store customers in Europe, Africa and Latin America |

- 5 hrs/wk Administration and legal – responsible for special government/customs requirements compliance in each country
- 10 hrs/wk Networking – Attend conferences, trade shows, etc. including national organizations for women and minority owned businesses to develop relationships with supplier-diversity companies for future procurement business.
- 5 hrs/wk Train staff

As to the educational requirements of the proffered position, Ms. [REDACTED] stated:

The duties of this position are intrinsically sophisticated and could not be performed by someone who did not have baccalaureate-level education in international markets or the equivalent through extensive experience.

The director denied the petition on March 24, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner asserts that the evidence provided demonstrates that the proffered position qualifies as a specialty occupation position. The petitioner cites the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter on Market Research Analysts and a U.S. District Court decision for the proposition that the proffered position qualifies as a specialty occupation position.

IV. ANALYSIS

We will first address whether the Federal District Court decision cited by the petitioner has precedential value in this proceeding. In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

As an additional preliminary matter, we observe that Ms. [REDACTED] stated, in her January 31, 2014 letter, that an otherwise unspecified bachelor's degree in business or its equivalent would be a sufficient educational qualification for the proffered position. In her March 10, 2014 letter, however, Ms. [REDACTED] stated that the proffered position's duties could not be performed by someone who does not have a bachelor's degree in International Marketing or the equivalent. This requirement is in contrast to the

petitioner's assertion in a previous letter that an otherwise unspecified bachelor's degree in business would be a sufficient educational preparation for the proffered position.

A petitioner cannot, in response to an RFE, change the educational requirement of the proffered position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits approval of the visa petition. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Thus, the change in the educational requirement from an otherwise undifferentiated bachelor's degree in business, or its equivalent, to a degree in international marketing or its equivalent, will not be considered.

Further, a degree with a generalized title, such as business or business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business or business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertion that an otherwise unspecified bachelor's degree in business would be a sufficient educational qualification for the proffered position is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and that, therefore, the proffered position does not qualify as a specialty occupation position. The appeal must be dismissed and the visa petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular

position. We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-1161, Market Research Analysts and Marketing Specialists from O*NET. On appeal, the petitioner implies that the proffered position is a Market Research Analyst position as described in the *Handbook*. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of market research analysts:

What Market Research Analysts Do

Market research analysts study market conditions to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.

Duties

Market research analysts typically do the following:

- Monitor and forecast marketing and sales trends
- Measure the effectiveness of marketing programs and strategies
- Devise and evaluate methods for collecting data, such as surveys, questionnaires, 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.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

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.

Workers who design and conduct surveys are known as survey researchers.

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 Feb. 18, 2015).

The duties attributed to the proffered position do not appear to include performing market research and gathering data pertinent to marketing. The claimed duties include developing branding strategies, attending trade shows, seeking distributors in foreign countries, networking, training staff, and other duties. While the petitioner's amended duty description states "Business development and needs analysis of new markets" as a job duty, there is insufficient explanation of what that duty entails. It cannot be determined from that bare assertion and the evidence in the record that the beneficiary will perform the duties of a market research analyst such as "study[ing] market conditions to examine potential sales of a product or service." *See id.* There is insufficient documentary evidence demonstrating that the proffered position is a market research analyst position. The record is simply devoid of documentary evidence of the type of work that the petitioner will assign to the beneficiary. The lists of duties provided by the petitioner, therefore, cannot be found to be market research analyst duties.²

² Some of the duties of the proffered position are so abstractly described that their substantive nature cannot be determined. That the beneficiary will "[a]ttend international trade shows," without further description and supporting evidence, does not demonstrate the beneficiary's actual duties. Advising distributors on advertising and promotion is similarly unclear. The type of advice the beneficiary would provide is unknown. Whether she would design advertising or recommend specific media is not stated. Developing branding strategies, depending on what precisely it is taken to mean, may be a duty of a graphic designer or of an advertising, promotions, or marketing manager. Establishing and promoting social media and digital presence may be the job of an advertising, promotions, or marketing manager. Numerous positions might "train staff," depending on the subject matter, the nature, and the complexity of the training.

Other duties described are so varied that they do not point to any specific position. Serving as industry liaison, media communicator, and public relations ambassador points to a position in public relations. Seeking distributors appears to be a sales manager duty. Sourcing products internationally appears to be a purchasing manager duty, but may be a logistician duty, as is arranging to meet foreign customs requirements. Negotiating contracts and licensing production of the petitioner's products overseas is a duty that might be performed by a company's top executives, by its attorneys, or by some other personnel.

Even if the petitioner had demonstrated that the proffered position is a market research analyst position, the *Handbook* does not support a conclusion that market research analyst positions, as a category, require a minimum of a bachelor's degree in a specific specialty, or its equivalent. Although the *Handbook* indicates that a bachelor's or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. *See id.* at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Feb. 18, 2015).

In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted above, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, 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 particular position proffered here as being a specialty occupation.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in some occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position, in addition to failing to establish the

occupational category that includes the proffered position, do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to work in the proffered position.

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

Next, we find 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of 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.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner. The evidence does not, therefore, satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or

unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here. Therefore, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

In her March 10, 2014 letter, Ms. [REDACTED] asserted that throughout the petitioner's history of more than 20 years, she has performed the duties of the proffered position. The evidence shows that Ms. [REDACTED] has a master's degree in business administration. The record contains no indication that her degree is in any more narrow concentration or specialization.

As was explained above, a degree in business administration, absent any concentration or specialization, is not a degree in a specific specialty. The record does not show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, provided sufficient evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and

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

complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as developing branding strategies, attending trade shows and conferences, establishing an online presence in foreign markets, serving as the petitioner's public relations liaison, assuring compliance with foreign customs requirements, networking, training staff, etc., contain no indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent, and the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

V. ADDITIONAL BASIS

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion*

model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

[Italics added.]

In the instant case, the LCA submitted is for a position classified at SOC code and title 13-1161, Market Research Analysts and Marketing Specialists. As was noted above, however, the duties attributed to the proffered position do not demonstrate that the proffered position is such a position. As such, the LCA has not been shown to correspond to the instant visa petition. The petition must be denied for this additional reason.

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

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

In the instant case, however, the beneficiary has not been shown to be qualified to work in *any* specialty occupation position, as she has not been shown to possess a minimum of a bachelor's degree *in any specific specialty* or its equivalent.

The beneficiary does not possess a bachelor's degree. Rather, to show that she has the equivalent of a bachelor's degree in a specific specialty, the petitioner relies on an evaluation of the beneficiary's employment experience. That evaluation states:

On the basis of at least sixteen years of work experience and professional training in Business, and related areas, [the beneficiary] has attained the equivalent of a Bachelor's Degree in Business from an accredited institution of higher education in the United States.

That evaluation states that the beneficiary has the equivalent of a bachelor's degree in business. It does not indicate that the beneficiary has the equivalent of a degree in any major course of study, specialization, or concentration within the general field of business. As was explained above, a bachelor's degree in business, absent any specific specialization or concentration, *is not a degree in*

any specific specialty. As such, even if the evaluation provided were considered competent and authoritative evidence of the equivalence of the beneficiary's employment experience in terms of a U.S. education and degree, it would not be evidence that the beneficiary has a degree in any specific specialty. As a specialty occupation position is one that requires a minimum of a bachelor's degree in a specific specialty or its equivalent, the evaluation would not, even if taken as authoritative, have demonstrated that the beneficiary is qualified to work in any specialty occupation.

VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.