



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 26 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.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an 11-employee "Manufacturer[] of residential chandeliers" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Market Research Analyst" position at an annual salary of \$37,086, the petitioner seeks 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends 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 the petitioner's submissions on appeal.

I. PROCEDURAL AND FACTUAL BACKGROUND

As noted above, the petitioner describes itself as an 11-employee "Manufacturer[] of residential chandeliers" established in [REDACTED]. The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Market Research Analyst 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 I, entry-level, position.

With the visa petition, the petitioner submitted evidence that the beneficiary was awarded a bachelor's in technology by the [REDACTED] and a higher technician diploma in business by the [REDACTED]. An evaluation in the record, prepared by [REDACTED] states that the beneficiary's education is equivalent to a "U.S. Associate's degree (two-year program)."

The petitioner also provided evidence pertinent to the beneficiary's employment experience. An evaluation in the record, prepared by Dr. [REDACTED] states that the beneficiary's education and employment experience, considered together, are equivalent to a U.S. bachelor's degree in business administration with a concentration in marketing. In a letter provided with that evaluation, Dr. [REDACTED] stated:

I review transcripts and other documentation of applicants to [REDACTED] (an accredited university) and have advisory authority to grant college-level credit for training and/or experience in the field of business administration.

The petitioner also submitted letters, dated January 31, 2014 and March 20, 2014, from [REDACTED] signing as the petitioner's president.

In his January 31, 2014 letter, Mr. [REDACTED] identified himself as the petitioner's president and identified the petitioner as [REDACTED]

In the March 20, 2014 letter, Mr. [REDACTED] again identified himself as the petitioner's president and [REDACTED] as the petitioner. He also stated, "[REDACTED] operates stores under the name [REDACTED]"¹ Mr. [REDACTED] stated the following about the duties of the proffered position:²

[The beneficiary] will collect and analyze data and customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting demand for purchasing the type of lighting and furniture products in which our company specializes. He will develop pricing strategies, balancing the company's objectives and customer satisfaction. He will identify, develop and evaluate marketing strategy based on knowledge of objectives and market characteristics; evaluating the financial aspects of development such as budgets, expenditures, research and development appropriations and return-on-investment and profit-loss projections; formulating, directing and coordinating marketing activities and policies to promote the company's lighting and furniture products. He will prepare reports of market research findings to the management teams. He will measure and assess customer satisfaction and the forecasting and tracking of sales trends in the lighting and furniture industry. He will also conduct research on consumer opinions and marketing strategies, working with outside marketing and advertising firms. He will gather data on competitors and analyze their prices, sales and methods of marketing and distribution.

[The beneficiary] will also prepare budgets and submit estimates for program costs as part of an advertising development, planning and preparing advertising and promotional material, assisting with annual marketing and advertising budget

¹ Although Mr. [REDACTED] indicates that [REDACTED] is a fictitious name used by the petitioner, a website maintained by the Florida Department of State Division of Corporations indicates that [REDACTED] of the same address as the petitioner, is an individual entity, separate and distinct from the petitioner.

² We note that Mr. [REDACTED] did not then assert any educational requirement of the proffered position.

development, inspecting layouts and advertising copy, preparing and negotiating advertising contracts, identifying and developing contacts for promotional campaigns that meet identified buyer targets and gathering and organizing information to plan advertising campaigns. He will also oversee the company's website content with respect to its marketing, and recommend changes and additions to the website content providers.

On May 7, 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: (1) a copy of a vacancy announcement placed by [REDACTED] with the Florida Department of Workforce Development; (2) a copy of a vacancy announcement placed by [REDACTED] on its website; (3) a printout of other content from the website of [REDACTED] (4) copies of three vacancy announcements placed by other companies; (5) a copy of the petitioner's organizational chart; and (6) a letter, dated June 10, 2014, from Mr. [REDACTED]

The vacancy announcement placed with the Florida Department of Workforce Development by [REDACTED] is for a market research analyst position and contains a duty description that is substantially identical to that contained in Mr. [REDACTED] March 20, 2014 letter. As to the educational requirements of the position, it states, "Bachelor's degree in business or marketing or the equivalent required." The announcement also states a job requirement of 24 months of experience. The vacancy announcement placed on [REDACTED] website is substantially identical to the announcement placed with the Florida Department of Workforce Development.

The printout of other content of the website of [REDACTED] shows, *inter alia*, that [REDACTED] rather than the petitioner, presently employs the beneficiary as a Marketing Trainee and employs [REDACTED] as its Marketing Manager. The petitioner's organizational chart shows, *inter alia*, that it, rather than [REDACTED], employs the beneficiary as a Trainee and employs [REDACTED] as its System Administrator.

Mr. [REDACTED] June 10, 2014 letter acknowledged that the petitioner had not previously employed a market research analyst but asserted that is irrelevant. That letter contains the following revised list of the duties of the proffered position:

- Examine and analyze statistical data to forecast future market trends and technology solutions in the lighting and furniture industry. To conduct this task one must possess skills that only a person with a bachelor's degree in business or equivalent work experience has, including the ability to answer complex questions about the management operations of the company, the ability to provide will-written reports to management and the ability to resolve complex problems

discovered. It also involves the knowledge of the principles and methodologies of market research, organizational behavior, as well as teaching and instruction of individuals and groups. This task is learned by taking courses in subjects such as research methods, marketing management, and financial analysis or having the corresponding training and/or work experience.8%

- Gather data on competitors and analyze prices, sales and methods of marketing and distribution. This involves the dissemination of complex information to highly educated individuals and the ability to import this information in a clear, concise and easy-to-follow format. The task is learned by taking courses in strategic marketing methods, statistics, sales development and financial analysis or having the corresponding training and experience. 8%
- Collect data on customer preferences habits and trends in the lighting and furniture industry. Utilize market research to assist the company in developing short-term and long-term strategic plans for business expansion. This involves the design of research formulas and stimuli for both quantitative and qualitative projects, establishing screening and recruiting criteria so satisfy a project's research objectives. This task is learned by taking courses or undergoing training and work experience in managerial economics, research methods and statistics.10%
- Utilize contacts in the field to facilitate data collection on marketing practices in various industries. This involves the dissemination of complex information to highly educated individuals in the lighting and furniture industry and the ability to import this information in a clear, concise and easy-to-follow format. This task is learned by taking undergraduate and graduate level courses, or having training and work experience in marketing and research methods. 5%
- Develop pricing strategies, balancing the company's objectives and customer satisfaction. This involves the knowledge or pricing structures and strategies, economics, accounting and price and cost controls . This involves extensive knowledge of finance and economics, accounts payable, accounts receivable, balance sheets and taxation. This task is learned by taking graduate and undergraduate level courses or having training and work experience in financial analysis, financial analysis and strategic marketing methods.7%
- Identify, develop, and evaluate marketing strategy, based on knowledge of establishment objectives, lighting and furniture industry market characteristics, and cost and insurance industry factors. This involves extensive knowledge of finance and economics, accounts payable, accounts receivable, balance sheets and taxation. This task is learned by taking graduate and undergraduate level courses or having training and work experience in financial accounting, financial analysis,

strategic marketing methods and marketing management or having the corresponding work experience and/or training. 4%

- Evaluate financial aspects of the development of lighting and furniture industry retail outlets, such as budgets, expenditures, research and development appropriations, and return-on-investment and profit-loss projections. This task is learned by taking graduate and undergraduate-level courses in financial analysis, financial accounting and sales development or having the corresponding work experience and/or training. 5%
- Formulate, direct and coordinate marketing activities and policies to promote the company's services, working with advertising and promotion companies. This involves the presentation of complex findings to other highly educated professionals in a variety of industries. This task is learned by taking graduate and undergraduate-level courses in principles of marketing and sales development or having the equivalent work or training experience. 3%
- Negotiate contracts with vendors and distributors to manage product distribution, establishing distribution networks and developing distribution strategies. This involves strategic planning, and the ability to read, understand and negotiate complex contractual agreements. This task is learned by taking graduate and undergraduate-level courses in legal environments of business, marketing management and sales management or having the corresponding work/training. 4%
- Consult with product development personnel on product specifications such as website design, and other promotional packaging. This involves computer and internet savvy, knowledge of consumer tastes, advertising promotions and public relations strategy. This task is learned by taking graduate and undergraduate-level courses in strategic marketing methods, marketing management and sales management or having the corresponding work experience and/or training. 4%
- Compile lists describing product and service offerings. This involves knowledge of the lighting and furniture industry and the ability to work with stores and vendors and the ability to disseminate technical and scientific material into easily-understandable text. 8%
- Use sales forecasting and strategic planning to ensure the sale and profitability of lighting and furniture products and procedures, analyzing business developments and monitoring market trends. This involves designing high quality survey instruments from scratch, organizing survey questions and recommending methodologies to meet the client's needs and research objectives. 8%

- Review reports, and confer with management and users about format, distribution, and purpose, and to identify problems and improvements within the company. 4%
- Develop and implement a records management program for filing, protection, and retrieval of records, and assure compliance with program. This task is learned by taking graduate and undergraduate-level courses in financial management, financial analysis and strategic business management. 2%
- Interview personnel and conduct on-site observations at stores to ascertain store functions, work performed, and methods, equipment, and personnel used. This task is learned by taking courses in research methods, business policy and statistics. 7%
- Research market conditions in local and regional markets in the lighting and furniture retail industry in South Florida and New York to ascertain the best avenues of expansion to our business. This involves knowledge of statistics, research methods and the ability to analyze markets and customer preferences. 8%
- Establish research methodology and design format for data gathering, such as surveys and questionnaires. This involves knowledge and coursework in statistics and economics and the ability to disseminate complex material into easy-to-understand text. 3%

[Verbatim.]

As to the educational requirement of the proffered position, Mr. [REDACTED] stated:

Please be advised that each of the above duties also require someone who has a course of study or had training and/or work experience involving marketing, market research, research methods, statistics, financial analysis and economics. These skills invariably require a person with a bachelor's degree in a business-related field with the aforementioned coursework.

Mr. [REDACTED] cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that a bachelor's degree in business or a related field is a minimum requirement for entry into a market research analyst position. He cited the O*NET for the proposition that 100% of employers require a bachelor's degree or higher for the position of "business development manager."³ He cited the petitioner's vacancy announcement with Florida Department of Workforce

³ The petitioner uses the job titles "market research analyst" and "business development manager" in its submissions.

Development for the proposition that the proffered position requires a degree in business or equivalent work experience.

The director denied the petition on July 11, 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). In the decision of denial, the director also noted that the evaluation of the beneficiary's qualifications was based, in part, on the beneficiary's employment experience, and did not meet the regulatory requirements applicable to such evaluations.

In the appeal brief, the petitioner, again citing the *Handbook* as well as other evidence, asserted that the evidence in the record is sufficient to show that the proffered position is a specialty occupation position.

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. SPECIALTY OCCUPATION ANALYSIS

Initially, we observe that the vacancy announcement the petitioner placed with the Florida Department of Workforce Development states that the proffered position requires a "Bachelor's degree in business or marketing or the equivalent." Mr. [REDACTED] June 10, 2014 letter states that the proffered position requires "a bachelor's degree in a business-related field with [coursework in marketing, market research, research methods, statistics, financial analysis and economics." Both of those statements of the educational requirements of the proffered position are consistent with the proffered position requiring an otherwise unspecified bachelor's degree in business.

A degree with a generalized title, such as business, 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 unspecified bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business, 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 139, 147 (1st Cir. 2007).⁴

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the 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.⁵

The job title of the proffered position is "Market Research Analyst" and 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. We reviewed the chapter of the *Handbook* 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:

Id.

⁵ 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.

Market Research Analysts

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. 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 Mar. 19, 2015).

Although Mr. [REDACTED] submitted two different descriptions of the duties of the proffered position, most of the duties described are consistent with the duties of Market Research Analysts as described in the *Handbook*. On the balance, we find that the proffered position is a market research analyst position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of market research analyst positions:

How to Become a Market Research Analyst

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, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

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

Other Experience

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

Licenses, Certifications, and Registrations

Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts. Candidates

qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research.

Important Qualities

Analytical skills. Market research analysts must be able to understand large amounts of data and information.

Communication skills. Market research analysts need strong communication skills when gathering information, interpreting data, and presenting results to clients.

Critical-thinking skills. Market research analysts must assess all available information to determine what marketing strategy would work best for a company.

Detail oriented. Market research analysts must be detail oriented because they often do precise data analysis.

Id. at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited Mar. 19, 2015).

When reviewing the *Handbook*, we again note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.⁶ 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

⁶ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described 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.

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. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an intern. This designation suggests that the beneficiary will not serve in a high-level or leadership position relative to others within the same occupational category.

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. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. While the *Handbook* states that employees typically need a bachelor's degree in market research or a related field, it continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have a background in fields such as business administration, social sciences, or communications.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum requirement of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in 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).⁷

In addition to recognizing degrees in disparate fields, e.g., the social sciences, math, and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." As noted *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty

⁷ 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, we do 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.

occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm'r 1988). 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 normally the minimum requirement for entry into this occupation. Accordingly, as the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation, it does not support the particular position proffered here as qualifying as a specialty occupation.

The petitioner also relied on O*NET. O*NET does not indicate that market research analysts must have a minimum of a bachelor's degree or its equivalent *in any specific specialty nor even in any array of closely-related specialties*. Rather, O*NET assigns Market Research Analysts and Marketing Specialists a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

Further, we find that the petitioner has provided inconsistent information regarding the requirements for the position. The petitioner states in its Florida Department of Workforce Development vacancy announcement that the proffered position requires a minimum of two years of experience; however, the petitioner assigned the position a Level I, entry-level wage which, again, is the appropriate wage level for an entry-level position. Moreover, in its June 10, 2014 letter, the petitioner indicated that the proffered position requires "a bachelor's degree in a business-related field" with coursework in marketing, market research, research methods, statistics, financial analysis, and economics. However, in the Florida Department of Workforce Development announcement, the petitioner states a requirement of a "[b]achelor's degree in business or equivalent in work experience and/or training." In its vacancy announcement placed on its website, the petitioner stated a requirement of a "[b]achelor's degree in business or marketing or the equivalent." The petitioner did not explain the variance in the claimed requirements for the position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Furthermore, 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 indicate a need for a range of knowledge of market research analysis but 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 attain such knowledge.

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.

The petitioner did submit three vacancy announcements in support of its assertion that the degree requirement is common to positions in the petitioner's industry in parallel positions among similar organizations. Those vacancy announcements are for positions entitled "Marketing Manager," "LED Product Manager," and "Business Development Manager."

The petitioner has not submitted sufficient evidence that those advertised positions are parallel to the proffered position. Marketing manager positions, for instance, are described in the *Handbook* chapter entitled Advertising, Promotions, and Marketing Managers, and have different duties and job requirements from Market Research Analysts. Similarly, the job titles "LED Product Manager" and "Business Development Manager" do not suggest a position parallel to the proffered position. Although all of those vacancy announcements have a duty description, none are sufficiently detailed to demonstrate that the positions announced are parallel to the proffered position.

Further, again, the petitioner stated on the LCA that the proffered position is a Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I market research analyst positions, entry-level positions requiring only a basic understanding of market research analysis, require a minimum of a bachelor's degree in a specific specialty or its

equivalent. However, all three of the vacancy announcements state an experience requirement, which suggests that they are not Level I positions and not, therefore, positions parallel to the proffered position.

Further still, as will be explained below, none of the vacancy announcements provided states a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One of the vacancy announcements states that it requires a bachelor's degree, and that a degree in marketing is "preferred." Obviously, a preference is not a minimum requirement. The other two vacancy announcements indicate that an otherwise undifferentiated bachelor's degree in business would be a sufficient educational qualification for the positions they announce. As was explained above, an otherwise undifferentiated degree in business is not a degree in a specific specialty, and a requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Neither of those vacancy announcements contains a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all three vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from three announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁸

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

⁸ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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 a few 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.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I market research analyst, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of market research analysis. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree.

The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has 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.⁹

⁹ 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").

Mr. [REDACTED] concedes that the petitioner has never hired anyone to fill the proffered position, but characterizes that fact as irrelevant. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never hired for the position is precluded, obviously, from demonstrating that it has previously filled the proffered position only with candidates with a minimum of a bachelor's degree in a specific specialty or its equivalent.

Instead, however, the petitioner seeks to rely on the educational requirement stated in the vacancy announcement the petitioner filed with the Florida Department of Workforce Development. That vacancy announcement states that the proffered position requires a "Bachelor's degree in business or equivalent in work experience and/or training."

However, as was explained above, a requirement of an otherwise undifferentiated bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner's vacancy announcement does not indicate that the petitioner requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

The record contains insufficient evidence to demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The evidence does not, therefore, satisfy 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 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.

The petitioner provided information regarding the proffered position and its business operations. While the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position 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.

In the instant case, we note that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (out of four assignable wage-levels) relative to others within the same occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously noted, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner failed to 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.

IV. ADDITIONAL BASIS

The decision of denial mentions an additional issue that was not relied upon as a basis for the director's decision, but that also precludes approval of this visa petition.¹⁰

The beneficiary does not have a bachelor's or higher degree. In order to show that the beneficiary has *the equivalent* of a bachelor's or higher degree, the petitioner seeks to rely on an evaluation of the beneficiary's education and his employment experience, considered together. That evaluation states that, based on his education and employment experience, the beneficiary has the equivalent of a U.S. bachelor's degree in business administration with a concentration in marketing and management. The evaluation was accompanied by a separate letter from the evaluator, which states that the evaluator has "advisory authority to grant college-level credit for training and/or experience in the field of business administration."

If a petitioner seeks to rely, even in part, on a beneficiary's employment experience, or training, or both, to show that the beneficiary has the equivalent of a degree, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires:

An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

USCIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience.

¹⁰ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r. 1988). Because the authority of the evaluator is self-certified, we accord the evaluation very little evidentiary weight. The evaluator's self-certification would be insufficient to demonstrate that the evaluator has authority to award credit for training and/or experience, even if the self-certification stated that he had that authority.

Further, however, the self-certification of the evaluator's authority indicates that authority is merely "advisory." This suggests that the evaluator does not have the authority, per se, to award credit, but merely to provide an advisory opinion that a student's training and/or experience should be considered to qualify for such an award of credit, which advisory opinion is presumably taken into consideration by those with the actual authority to award credit.

For both reasons explained above, we find that the evaluation provided does not demonstrate that the evaluator has the authority to grant college-level credit for training and/or experience at a college or university which has a program for granting such credit based on an individual's training and/or work experience. It is not competent evidence, therefore, for the proposition that the beneficiary has a bachelor's degree or the equivalent.

Because the beneficiary has not been shown to possess a minimum of a bachelor's degree in any specific specialty or its equivalent, he has not been shown to be qualified to work in any specialty occupation position. The visa petition will be denied for this additional reason.

V. CONCLUSION

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.