



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **MAR 31 2015**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

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 denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a food services business<sup>1</sup> that was established in [REDACTED]. In order to employ the beneficiary in what it designates as a business analyst position, 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, concluding that the evidence of record does not establish that the proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel for the petitioner subsequently filed an appeal. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

After conducting an initial review of the documentation, we found that the signatures of the petitioner and counsel were visibly different throughout the record and issued a request for evidence (RFE) regarding the matter on September 25, 2014. The petitioner responded to our RFE on October 10, 2014. The petitioner's response addressed our concerns, and the appeal will be adjudicated on its merits.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's RFE; (3) counsel's response to the RFE; (4) the notice of decision; (5) the Form I-290B, Notice of Appeal or Motion; (6) our RFE; and (7) counsel's response to our RFE. We reviewed the record in its entirety before issuing our decision.<sup>2</sup>

For the reasons that will be discussed below, we agree with the director's decision that the evidence of record does not establish the petitioner's eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

## I. FACTURAL AND PROCEDURAL HISTORY

<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 722110, "Full Service Restaurants." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2007 NAICS Definition, "722110 Full Service Restaurants," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited March 27, 2015).

<sup>2</sup> We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In the Form I-129 petition, the petitioner indicated that it is seeking the beneficiary's services as a business analyst on a full-time basis. In the letter of support, the petitioner stated that the beneficiary's job duties will include the following:

In the position of Business Analyst, [the beneficiary] will be responsible for the following:

- Conduct economic impact analyses.
- Analyze and research market trends, interpreting data concerning expenditure, price and future trends through daily reports.
- Conduct operation research to recommend improvements of operations.
- Compile information to keep informed on price trends and customer needs and preference.
- Prepare analysis reports on market conditions.
- Developing and maintaining new and existing client relationships through the establishment of new networks and referrals from customer service.

[The beneficiary] will also research and analyze service/product costs and classifications to minimize costs and maximize customer satisfaction. He will be authorized to create these instruments and [will be] responsible for implementing their use. He will also advise management on the strength of competition, and changes in customer activities. This involves performing detailed analysis of profitability to recommend effective actions; analyze market trends and competitor data to forecast pricing models; provide insight on the impact of price changes on growth rates and profitability and the impact of price changes to the business. This information will assist the company in determining which changes should be made within the company in order to remain at the top of the industry.

Additional responsibilities of the Business analyst position include:

- Conduct ongoing economic research in order to identify business opportunities.
- Examine current structure of business operations, diagnose areas of inefficiencies, and deliver solutions to the issue presented.
- Communicate effectively with internal and external customers in order to identify, define, and validate the internal changes required to achieve the company's goals.
- Analyze major property and equipment procurement.
- Review business proposals, and analyze options, risks, and costs.
- Collect, review, and analyze data in order to aid directors the preparation and presentation of business proposals[.]
- Prepare budgets for approval, including those for funding and implementation of programs.

- Provide assistance with special projects that require data mining, analysis or reporting.

Other responsibilities may include:

- Prepare and present reports to executives[;]
- Participate in all team meetings and company sponsored sales events as sanctioned by the management team[;]
- Take ambiguous and complex business problems and using research and business assessment capabilities, define the problem, drive innovative ideas, define the opportunity set, and recommend actionable next steps;
- Analyze as-is and to-be business processes and translate into use cases, identifying risks and impacts on existing systems and processes;
- Determine how to measure business results, modeling current/future business processes, gathering business requirements, and identifying the organizational changes required to successfully realize the benefits of the solutions;
- Develop and apply conceptual frameworks and analytical approaches[;]
- Scrutinize customer trends in order to understand the environment in which client's [sic] are operating, and develop strategies to adapt the client's operations to the consumers' needs;
- Take part of the creation, improvement and development of presentations to clients or potential clients; and
- Examine new business opportunities that could increase the company's share in the market[.]

This position requires knowledge of economic and financial analysis, typically acquired in a bachelor's degree program in business administration, economics and finance or a related discipline.

With the initial petition, the petitioner submitted copies of the beneficiary's foreign diploma and transcript, as well as a credential evaluation from [REDACTED]. The credential evaluation indicates that the beneficiary's foreign education is equivalent "of at least a Bachelor's degree in Business Administration at an accredited institution in the United States."

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Management Analysts" - SOC (ONET/OES Code) [REDACTED], at a Level I (entry level) wage. In addition, the petitioner submitted job vacancy announcements.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director outlined the specific evidence to be submitted. Counsel responded with a brief and additional evidence.<sup>3</sup>

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on February 12, 2014. Counsel submitted an appeal of the denial of the H-1B petition.

## II. SPECIALTY OCCUPATION

As noted above, the director determined that the evidence of record does not establish that the position proffered here is a specialty occupation. Accordingly, the issue on appeal is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

### A. The Law

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.

<sup>3</sup> We observe that in the brief, counsel provided the approximate percentages of time allocated to each duty listed in the petitioner's letter of support. However, counsel's brief was not signed by or otherwise endorsed by the petitioner. The record of proceeding does not indicate the source of the percentages of time allocated to each duty that counsel attributes to the proffered position.

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position fairly

represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

#### B. Analysis

As a preliminary matter, the petitioner stated that the proffered position requires a bachelor's degree "in business administration, economics and finance or a related discipline." It must be noted that the petitioner's claim that a bachelor's degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To demonstrate 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 will be discussed in more detail below, 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 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 139, 147 (1st Cir. 2007).<sup>4</sup>

<sup>4</sup> 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:

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 administration. Without more, this assertion indicates that the proffered position is not in fact a specialty occupation.

Further, upon review of the petitioner's description of the duties of the proffered position, we note that the evidence of record does not include any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. Thus, the evidence of record does not specify which tasks are major functions of the proffered position and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the evidence of record does not establish the primary and essential functions of the proffered position.

Moreover, we find that the petitioner, in its support letter, described the proposed duties in terms of generalized and generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion the beneficiary will "[c]onduct economic impact analyses." However, the statement does not provide any insight into the beneficiary's actual duties, nor does it include any information regarding the specific tasks that the beneficiary will perform.

In addition, the petitioner claimed that the beneficiary will "[a]nalyze and research market trends, interpreting data concerning expenditure, price and future trends through daily reports" and "[a]nalyze major property and equipment procurement." Notably, the evidence of record does not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The petitioner further claimed the beneficiary will "[p]repare budgets for approval, including those for funding and implementation of programs" and "[d]evelop and apply conceptual frameworks and analytical approaches." The petitioner's statements fail to convey any pertinent details as to the actual work involved in these tasks. The petitioner does not explain the beneficiary's specific role and how his work will be conducted and/or applied within the scope of the petitioner's business operations. Furthermore, the evidence of record does not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform these tasks. Thus, the overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations.

---

elsewise, 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.

*Id.*

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. We also observe, therefore, that it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described by the petitioner, we find, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

Furthermore, the evidence of record does not include sufficient documentation to substantiate the job duties and responsibilities of the proffered position. The petitioner did not submit any documentation to substantiate the beneficiary's work product, nor did the petitioner submit any financial documentation regarding the company's business operations. The record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

That is, for H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

The evidence of record does not contain sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not credibly supported by the job descriptions or substantive evidence. That the petitioner has also referred to

the position as a “controller” as well as a “market research analyst” during the pendency of the petition detracts further from the petitioner’s credibility.

Furthermore, we note that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. In the instant case, the director specifically noted this issue in the RFE; however, the petitioner and counsel elected not to address or provide probative documentation as to how the beneficiary will be relieved from performing non-qualifying duties.

Nevertheless, we will address each criterion of the regulations for the purpose of providing a comprehensive discussion on the specialty occupation issue. We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>5</sup> As previously discussed, the petitioner attested in the LCA that the proffered position falls under the occupational category "Management Analysts."

The *Handbook* states the following with regard to the duties of positions falling within the "Management Analysts" occupational category:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.

#### **Duties**

Management analysts typically do the following:

---

<sup>5</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are from the 2014-15 edition available online.

- Gather and organize information about the problem to be solved or the procedure to be improved
  - Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
  - Analyze financial and other data, including revenue, expenditure, and employment reports
  - Develop solutions or alternative practices
  - Recommend new systems, procedures, or organizational changes
  - Make recommendations to management through presentations or written reports
  - Confer with managers to ensure that the changes are working
- Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

The *Handbook* states the following with regard to the educational requirements necessary for entrance into positions within this occupational category:

Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.

### **Education**

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA).

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

### **Licenses, Certifications, and Registrations**

The Institute of Management Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

### **Work Experience in a Related Occupation**

Many analysts enter the occupation with several years of work experience. Organizations that specialize in certain fields typically try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Management Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited March 27, 2015).

The *Handbook* reports that management analysts are not required to obtain certification, but that it may give jobseekers a competitive advantage. According to the *Handbook*, the Institute of Management Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. We note that there is no indication that the petitioner requires the beneficiary to have obtained the CMC designation or any other professional designation to serve in the proffered position.

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that many fields of study provide a suitable education for management analysts. The *Handbook's* narrative indicates that common fields of study include business, management,

economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English. According to the *Handbook*, a range of programs can help people prepare for jobs in this occupation. The *Handbook* states that many analysts enter the occupation with several years of work experience, and that typical work backgrounds include management, human resources, and information technology. The *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a *specific specialty*, or its equivalent.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields (such as business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English) would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>5</sup> Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," 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. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Also, the *Handbook* indicates a baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields (i.e., business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English), the *Handbook* states that a degree in business is acceptable. As previously discussed, 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 at 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business 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.

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. This designation is indicative of a comparatively low,

entry-level position relative to others within the occupation.<sup>6</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation should be considered for positions in which the employee will serve as a research fellow, worker in training, or an intern.

In the instant case, the evidence of record does not establish that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether

---

<sup>6</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes 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.

letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the evidence of record does not establish that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The petitioner and counsel submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the petitioner and counsel's reliance on the job announcements is misplaced.

For the petitioner to establish that an organization located within the same industry is also similar to it, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is both similar and located within the same industry without providing a legitimate basis for such an assertion.

In this matter, the petitioner and counsel submitted advertisements for organizations that do not appear to be similar to the petitioner. More specifically, the advertisements include positions with [REDACTED] (a company in the computer/information technology services industry), and [REDACTED]. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Furthermore, the petitioner and counsel submitted a job posting placed by a staffing firm ([REDACTED]) for which little or no information regarding the employer is provided. Consequently, the record is devoid of sufficient information regarding these advertising employers to conduct a legitimate comparison of the organizations to the petitioner. The petitioner did not supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. Again, the petitioner must demonstrate the degree requirement is common to the industry in parallel positions among similar organizations within the industry.

Furthermore, the evidence of record does not establish that the advertisements are for parallel positions. For instance, the petitioner and counsel provided a posting for [REDACTED] which requires a candidate to possess a degree and "at least five years of business analyst experience." Another submission is for [REDACTED] which requires a candidate to possess a degree and a "[m]inimum of 5-7 years of FP/A experience." In addition, the petitioner and counsel provided a posting for [REDACTED], which requires a candidate to possess a degree and "more than ten years of experience with a proved record of successful, large scale project implementations." However, as previously discussed, the petitioner designated its proffered position as a wage level I (entry level) on the LCA. The advertised positions appear to be for more senior positions than the proffered position. More importantly, the evidence of record does not sufficiently establish that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, the postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, three of the postings (specifically, the [REDACTED], [REDACTED], and [REDACTED] postings) state that a bachelor's degree is required, but they do not provide any further specification. We reiterate that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree in any field, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. The petitioner and counsel also submitted a posting for [REDACTED] indicating that a bachelor's degree in business administration is acceptable.<sup>7</sup>

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.<sup>8</sup>

<sup>7</sup> As previously discussed, 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 at 147.

<sup>8</sup> Although the size of the relevant study population is unknown, the evidence of record does not demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Further, without more, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor

In support of the assertion that the proffered position is a specialty occupation under this criterion of the regulations, the petitioner and counsel also submitted a letter from [REDACTED] of [REDACTED] ("the writer").<sup>9</sup> We reviewed the letter in its entirety. However, contrary to the purpose for which the letter was submitted, it is not persuasive in establishing the proffered position as a specialty occupation position under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The letter does not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the position. For instance, the letter indicates that a degree in a wide variety of disciplines is acceptable.<sup>10</sup> Specifically, in the letter, Ms. [REDACTED] states that "a degree in *business*, accounting, marketing or economics, is common to the industry for a Business Analyst position among companies engaged in food services (emphasis added)." Again, while 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 at 147 (1st Cir. 2007).

Furthermore, the writer failed to provide any specific job duties and day-to-day responsibilities for the position claimed to require a bachelor's degree. There is no information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, there is insufficient information regarding the duties and responsibilities of the writer's organization's position to determine whether the position is the same or parallel to the proffered position. Moreover, although the writer provided the foreign diploma and payroll summary of its business analyst, [REDACTED], she did not submit the academic credential evaluation for Mr. [REDACTED] to establish that his foreign education is equivalent to a U.S. bachelor's degree in a specific specialty.<sup>11</sup> The writer has failed to submit any

---

Statistics that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

<sup>9</sup> Notably, the letter was prepared on the same letterhead as that used for the petitioner's letter of support.

<sup>10</sup> As previously discussed, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

<sup>11</sup> It must be noted for the record that it is unclear whether Mr. [REDACTED] is an employee of the petitioner or [REDACTED]. While the letter from Ms. [REDACTED] and the payroll summary indicate that he is an employee of [REDACTED], counsel claims, in response to the director's RFE and on appeal, that he is an employee of the petitioner. No explanation for this discrepancy is provided.

probative evidence of its recruitment and hiring practices. Thus, the letter does not establish that the proffered position qualifies as a specialty occupation.

Thus, based upon a complete review of the record, 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 the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the evidence of record does not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation under this criterion, the petitioner submitted a letter of support with the initial submission in this matter, and menus and photos of ██████████ in response to the director's RFE. No additional supporting evidence regarding the proffered position and the petitioner's business operations was provided.

Upon review, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. 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 it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the evidence of record does not establish 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 proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.<sup>12</sup>

The petitioner has indicated that the beneficiary's educational background will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. In the instant case, the evidence of record does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be

---

<sup>12</sup> Again, we note that the petitioner designated the proffered position on the LCA at a Level I wage level. This designation indicates that the proffered position is a low-level, entry position relative to others within the occupational category "Management Analysts." Such a designation is inconsistent with a claim that the duties of the position are complex and unique 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 significantly higher prevailing wage.

distinguishable from those of similar but non-degreed or non-specialty degreed employment. The evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.<sup>13</sup> In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree that opinion alone without corroborating evidence cannot establish the position qualifies as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has 24 employees and was established in [REDACTED] (approximately five years prior to the filing of the H-1B petition). As previously noted, it is unclear whether Mr. [REDACTED] is an employee of the petitioner or [REDACTED]. The petitioner did not provide any documentary evidence to support that this individual was ever employed by the petitioner in the position of business analyst. The record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review of the record, we find that the petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its

<sup>13</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

equivalent, for the proffered position. Thus, the evidence of record does not satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Upon review of the record of the proceeding, we note that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

Furthermore, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is not credible that the petitioner's 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 significantly higher prevailing wage. For instance, 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." The evidence of record does not satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In addition, counsel referred to unpublished decisions in which we determined that the positions in those matters qualified as specialty occupation positions.<sup>14</sup> However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for the benefit. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190. Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

<sup>14</sup> We observe that counsel incorrectly claimed that the decisions are our precedent decisions.

Accordingly, the USCIS was not required to request and/or obtain a copy of the unpublished decisions cited by counsel.

If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant case, the evidence of record does not include copies of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c) provides our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

For the reasons related in the preceding discussion, the evidence of record does not satisfy 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.

### III. CONCLUSION AND ORDER

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 at 145 (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 1037, *aff'd*, 345 F.3d 683; *see also BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.<sup>15</sup> In visa petition proceedings, it

<sup>15</sup> As these issues preclude approval of the petition, we will not discuss any of the remaining deficiencies we have observed in the record of proceeding, except to note that, if the petitioner is able to overcome them, USCIS must explore the following issues before the petition could be approved: (1) whether the LCA submitted in support of this petition corresponds to and supports it; and (2) whether the beneficiary is qualified to perform the duties of a specialty occupation, taking into account *Matter of Ling*, 13 I&N Dec. 35

(b)(6)

*NON-PRECEDENT DECISION*

Page 22

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.

---

(Reg. Comm'r 1968).