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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 01 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:

[Redacted]

INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a two-employee financial consulting business¹ established in [REDACTED]. In order to employ the beneficiary in what it designates as a full-time business development specialist position at a salary of \$33,280 per year,² 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 demonstrate that the proffered position qualifies for classification as a specialty occupation.³

The record of proceeding before us contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, we find that the evidence of record does not overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

II. LAW

As noted, the director's sole basis for denying this petition was her determination that the proffered position is not a specialty occupation. To meet its burden of proof in establishing the proffered

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 523999, "Miscellaneous Financial Investment Activities." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "523999 Miscellaneous Financial Investment Activities," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Apr. 28, 2015).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Market Research Analysts and Marketing Specialists" occupational classification, SOC (O*NET/OES) Code 13-1161, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

³ The director also found that the beneficiary is not eligible for a change of status. We do not have jurisdiction over the denial of an application to change status. As provided by 8 C.F.R. § 248.3(g), the denial of an application to change nonimmigrant status may not be appealed. Accordingly, this issue will not be further addressed.

position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of*

W-F-, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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.⁴

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

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

III. SPECIALTY OCCUPATION

We will now address the director's finding that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record does not establish that the position as described constitutes a specialty occupation.

⁴ For all of these reasons, counsel's arguments that the bachelor's degree or equivalent need not be in a specific specialty are not persuasive.

In its March 17, 2014 H-1B support letter, the petitioner stated that the duties of the proffered position would include the following tasks:

- At least one day before a client, prospect or COI meeting prepare a Meeting Agenda listing each account &/or policy to be reviewed with the client, or detailing presentation to be made.
- Transcribe dictations emailed from Copy Talk to client File Notes or other document. Provide [REDACTED] with a list of files worked on daily for review.
- Document any follow ups or future opportunities noted in dictations to calendar[.]
- Keep the President informed of personal events in client's life (birth, death in family, including of pet, surgery, wedding anniversary, etc.) prep & mail Card.

Client Support:

- Perform all file related & follow up tasks
 - Process New Business, confirming all required forms are for proper state & client signature spots identified. Scan & email completed applications when acceptable, if not overnight to [REDACTED] after copying
 - Update client redweld tab index as new accounts are established
 - Create client Personal Financial Organizer
 - Prepare all contracts & policies for delivery to client
- Handle client initiated requests, reviewing with President when necessary, including:
 - Reviewing contract specific features and benefits
 - eMoney data entry (including vault)
 - Answer client questions regarding functionality of [REDACTED] website
 - Beneficiary changes, email changes, address changes & bank account changes

Administrative Support:

- Filing vendor statements confirming contract step ups, & address & beneficiary changes

- Assist with various "Special Projects"-i.e., MS Office Excel & Word spreadsheet construction, standardizing of abbreviations in File Notes, etc.
- Perform database management & updates for eRelationship & Constant Contact
- Obtain compliance approval for all advertising & sales materials, Update Daily Blotter as needed

In its July 15, 2014 response to the director's RFE, the petitioner stated that the duties of the proffered position would include the following tasks:

Essential functions: (50% of Beneficiary's time will be spent on these duties)

- Manage the process of introducing and transitioning new clients to [REDACTED]
- Serve as client liaison, working closely with each client to gather, exchange, and process information for our unique [REDACTED]
- Perform a broad range of client services, including daily update of client records, ensuring timely quality care, service, and follow up.
- Be responsible for case management and an array of essential client support services.
- Serve as the [REDACTED] liaison with other financial institutions we work with on behalf of our clients.
- Take personal ownership and responsibility for resolving client questions on a timely basis.
- Anticipate client needs and concerns, and maintains knowledge of problems and issues facing the client.
- Assist advisor in analyzing clients' financial circumstances in light of various factors.
- Assist advisor in positioning suitable products based on each client's current needs and long term financial strategy[.]
- Place high priority on client satisfaction, builds and cultivates long term relationships[.]
- Apply knowledge of products/services, customer needs, and technology to support advisor[.]
- Understand [REDACTED] business model, and use that knowledge to optimize the relationship between the company and the client[.]

- Stay current with financial industry and market trends[.]
- Convey information clearly and effectively in both individual and group settings[.]
- Listen well and is adaptable to the open expression of ideas and opinions[.]
- Has a comprehensive understanding of clients, and is able to adapt approach and style effectively to achieve communication goals[.]
- Build positive relationships with peers, business partners, and colleagues while working effectively with others to accomplish organizational goals[.]
- Work and interact within the team environment in a manner that respects the needs and contributions of others[.]

Client Support: (35% of Beneficiary's time will be spent on these duties)

- Process New Business, confirming all required forms are proper state & client signature spots identified. Scan & email completed applications when acceptable, if not overnight to Broker/Dealer after copying
- Help create client Personal Financial Organizers
- Prepare all contracts & policies for delivery to clients
- Handle client initiated requests, reviewing with advisor when necessary, including:
 - Reviewing contract specific features & benefits
 - Software data entry

Administrative Support: (15% of Beneficiary's time will be spent on these duties)

- Filing vendor statements confirming contract step ups, address & beneficiary changes
- Assist with Special Projects using MS Office Excel & Word spreadsheets construction
- Perform database management & updates for software programs
- Obtain compliance approval for all advertising & sales materials
- Update Transaction Blotter as necessary

Additional requirements:

- Excellent interpersonal and organizational skills
- Ability to work in a highly autonomous environment while meeting all sales/service demands
- Possess advanced analytical skills with the ability to prioritize complex tasks
- Demonstrated ability to work well in fast-paced situations
- Displays the confidence, skill and professionalism demanded to resolve critical issues in a manner that strengthens the client relationship
- Maintain a sense of urgency, ability to multi-task, excellent organizational skills, and strong prioritization skills
- Ability to use good judgment in line with [REDACTED] policies and procedures when helping to manage client relationships
- Perform duties with minimal supervision and sound judgment
- Possess excellent oral and written communication skills
- Meet with company owner as needed throughout each business day

In its October 7, 2014 letter in support of the appeal, the petitioner stated that the duties of the proffered position would include the following tasks:

Essential functions: (50% of Beneficiary's time will be spent on these duties)

- Manage the process of introducing and transitioning new clients to [REDACTED]
- **Serve as client liaison, working closely with each client to gather, exchange, and process information for our unique [REDACTED]**
- **Perform a broad range of client services, including daily update of client records, ensuring timely quality care, service, and follow up.**
- **Be responsible for case management and an array of essential client support services.**
- **Serve as the [REDACTED] liaison with other financial institutions and insurance companies we work with on behalf of our clients.**

- Take personal ownership and responsibility for resolving client questions on a timely basis.
- Identify, execute and follow-up on all opportunities to establish customer relationships including prospecting and lead utilization
- Anticipate client needs and concerns, and maintains knowledge of problems and issues facing the client
- Analyze and interpret customers' financial circumstances and investment objectives in light of various factors. Outline advantages and disadvantages of various insurance products
- Review with company owner appropriate and suitable products for each client's current needs and long term financial strategy
- Place high priority on client satisfaction, building and cultivating long term relationships
- Provide and demonstrate solid planning skills and comprehensive industry knowledge
- **Apply knowledge of products and services, customer needs, and technology to opportunities**
- **Understand the [REDACTED] business model, and uses that knowledge to optimize the relationship between [REDACTED] and the client**
- **Stay current with financial industry and market trends**
- Convey information clearly and effectively in both individual and group settings
- Listen[s] well and is adaptable to the open expression of ideas and opinions
- Has a comprehensive understanding of customers, and is able to adapt approach and style effectively to achieve communication goals and convey key messages
- Build positive relationships with peers, business partners, and colleagues while working effectively with others to accomplish organizational goals
- Work and interact within the team environment in a manner that respects the needs and contributions of others

Client Support: (35% of Beneficiary's time will be spent on these duties)

- **Update client redwald tab indexes as new accounts are established**

- **Create client Personal Financial Organizers for clients with sections for each client policy and/or contract, for each family member**
- **Prepare all contracts & policies for delivery to clients**
- **Handle client initiated requests, reviewing with Owner when necessary**
- **Obtain and prepare applications and other ancillary forms as necessary to prepare company Owner for client calls, and in office meetings**
- **Review and compare contract specific clauses, features and benefits**
- **eMoney Advisor data entry, including uploading client data to their online vaults**

Administrative Support: (15% of Beneficiary's time will be spent on these duties)

- Filing insurance company statements, and confirming time sensitive contract step ups, client address & beneficiary changes
- Assist with various "Special Projects"-i.e., MS Office Excel & Word spreadsheet construction, and standardizing of abbreviations in client File Notes.
- Perform database management and updates for eRelationship & Constant Contact
- Obtain compliance approval from Broker/Dealer prior to any use of any advertising or sales materials, Update Daily Blotter as needed

Additional requirements:

- Excellent interpersonal and organizational skills
- Ability to work in a highly autonomous environment while meeting all sales/service demands
- Possess advanced analytical skills with the ability to prioritize complex tasks
- Demonstrated ability to work well in high pressure, fast-paced situations
- Displays the confidence, skill and professionalism demanded to resolve critical issues in a manner that strengthens the client relationship and mitigates risk for the firm
- Must have a sense of urgency, ability to multi-task, excellent organizational skills, and strong prioritization skills

- Ability to use good judgment in line with [REDACTED] policies and procedures when managing relationships
- Perform duties with minimal supervision and sound judgment
- Possess excellent oral and written communication skills

The petitioner states that "[a]ny administrative duties that are associated with the position are strictly incidental to the essential functions of a Business Development Specialist with [REDACTED]"

We will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner states in its March 17, 2014 and July 15, 2014 letters that it needs the candidate to have at a minimum a Bachelor's degree in Business Administration or "related." In its October 17, 2014 letter, it indicated that a degree in *any* field of study would suffice. The claimed requirement of a degree in "Business Administration" for the proffered position, without specialization, 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, or a general-purpose bachelor's degree in any field, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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 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).

Again, the petitioner 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. This assertion is essentially an admission that the proffered position is not in fact a specialty occupation.

Having made these determinations, we will turn next to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, which we recognize as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Market Research Analysts" occupational category.

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

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.

⁵ 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.

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 Apr. 28, 2015).

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

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

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.

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.

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.

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 Apr. 28, 2015).

As a preliminary matter, we note that most of the duties listed for the proffered position do not appear to relate to those described in the *Handbook* for Market Research Analysts.⁶ Even if the duties of the proffered position did relate to those of a Market Research Analyst, the *Handbook* does not indicate that a baccalaureate or higher degree, or its equivalent, *in a specific specialty* is normally the minimum requirement for entry.

The *Handbook's* statement that "[m]ost market research analysts need at least a bachelor's degree" is acknowledged. However, these findings do not indicate that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into positions in this occupational category. With regard to the *Handbook's* statement that "most" market research analysts need at least a bachelor's degree, it is noted that the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of market research analysts positions require at least a bachelor's degree, it could be said that "most" market research analysts positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

⁶ This disparity calls into question the validity of the LCA.

Here, the *Handbook* states that "[t]op research positions often require a master's degree.⁷ Strong math and analytical skills are essential. 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." As mentioned, 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 (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 two 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).

Although the *Handbook* indicates that a bachelor's or higher degree is "typically" required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, i.e., social science and computer science as acceptable for entry into this field, the *Handbook* also states that "others have a background in business administration." Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working in a position located within the Market Research Analysts occupational category does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as satisfying the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Accordingly, as the *Handbook* indicates that entry into the Market Research Analysts occupational category does not normally require at least a bachelor's degree or the equivalent in a specific specialty or its equivalent, it does not support the proffered position as being a specialty occupation. Finally, it is noted again that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others

⁷ The wage-level selected by the petitioner on the LCA does not indicate that the proffered position is a "top" position as described in the *Handbook*.

within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.⁹

As the evidence of record does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the evidence of record does not satisfy the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the evidence of record does not satisfy 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

⁹ Again, the *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last visited Apr. 28, 2015)) issued by DOL states the following with regard to Level I wage rates:

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 [emphasis in original].

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level is appropriate for a proffered position that is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA with a Level I wage rate, the petitioner effectively attests that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and her work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner has provided job postings from an insurance broker, a consulting company, a credit union, an auto engine manufacturer, a technology portfolio company, a private security organization, an electronics company, an employment website business, a travel business, an engineering consulting and professional services firm, a commodity merchandising company, a law firm, a risk management company, a financial intelligence provider, a security company, and a human resources service provider. The advertisements submitted by the petitioner do not establish that these employers are "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or in any other relevant extent. The petitioner has also provided job postings from two asset management companies. These two advertisements submitted by the petitioner do not establish that these employers are "similar" to the petitioner in size, scope, and scale of operations, business efforts or expenditures. Furthermore, most of the advertisements require experience, ranging from one to seven years. However, as noted above the petitioner submitted an LCA certified for a Level I, entry-level position, therefore indicating that the positions are not parallel. The advertisements do not establish that the positions are the same or similar to the proffered position, and do not satisfy this prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).¹⁰

More importantly, many of these advertisements fail to state a requirement for a bachelor's degree *in a specific specialty*, or the equivalent. For instance, they accept solely a bachelor's degree, or a bachelor's degree in business administration, which is a general-purpose degree.

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.

Therefore, the evidence of record does not satisfy the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty or its equivalent that 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.

¹⁰ 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 evidence of record does not 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).

Next, we find that the evidence of record 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."

In this particular case, the evidence of record does not credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, we find, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Market Research Analysts" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, those assertions are undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. We incorporate here by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the analysis of the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy.¹¹

Accordingly, given the *Handbook's* indication that typical positions located within the "Market Research Analysts" occupational category do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement.

¹¹ While counsel's comments regarding the "high-end" nature of the petitioner's clientele are acknowledged, counsel does not specifically explain how this characteristic of the petitioner's clientele affects the nature of the duties proposed for the beneficiary such that we should not rely upon the findings made by DOL in the *Handbook*.

The evidence of record therefore does not establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent, the evidence of record does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

Our review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.¹²

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's June 9, 2014 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The RFE includes the following specific requests for such documentation:

If you have previously employed individuals in the position of Business Development Specialist, submit documentary evidence such as W-2 Forms and copies of degree and transcripts to verify:

¹² 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 the same occupation.

- The number of individuals you have employed in this position in the past;
- The level of education held by each individual; and
- The field of study in which the degree was earned.

Although the director provided the petitioner with the opportunity to establish a history of recruiting and hiring only individuals for this position with a bachelor's degree in a specific specialty, or the equivalent, the petitioner submitted no such evidence. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

As the evidence of record does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

In reviewing the record of proceeding under this criterion, we reiterate our earlier discussion regarding the *Handbook's* entries for positions falling within the "Market Research Analysts" occupational category. Again, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of such positions (to the contrary, it indicates precisely the opposite). With regard to the specific duties of the position proffered here, we find that the record of proceeding lacks sufficient, credible evidence establishing that they are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty, or the equivalent.

Finally, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by submitting an LCA certified for a Level I wage, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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 [emphasis in original].

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last visited Apr. 28, 2015).

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Id.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of the petitioner's Level I wage-rate designation.

Further, we note the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

Id.

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Id.

Here we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, the evidence of record does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

V. CONCLUSION AND ORDER

As set forth above, we agree with the director's findings that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.¹³ Accordingly, the director's decision will not be disturbed.

¹³ As this issue precludes approval of the petition, we will not discuss any of the additional deficiencies we have observed on appeal in our *de novo* review of the record. However, if the petitioner is able to overcome the matters discussed in this decision the petitioner may not be approved prior to an exploration of the issues of whether: (1) the beneficiary is qualified to perform the duties of a specialty occupation; (2) the petitioner is offering a wage equal to or greater than that required by law; and (3) whether the LCA corresponds to and supports the H-1B petition.



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.