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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

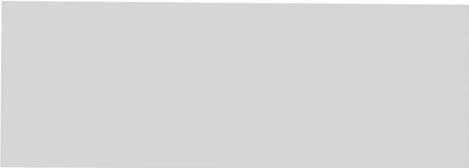


DATE: **MAY 01 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 12-employee "Univesity" [sic] established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a "Market Research 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

II. THE LAW

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

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

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

III. EVIDENCE

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

With the visa petition, the petitioner submitted evidence that the beneficiary received a "Bacharel em Administracao" degree from [REDACTED]. An evaluation in the record, produced by [REDACTED] senior evaluator at the [REDACTED] states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration.

The petitioner also submitted a letter, dated June 5, 2013, from [REDACTED] signing as the petitioner's president emeritus and registrar, who provided the following description of the duties of the proffered position:

To collect and analyze data on demographics, preferences and buying habits, to identify potential markets and factors affecting demand; conduct research on consumer opinions and marketing strategies; gather data on competitors and analyze their services, prices and method of marketing; measure and assess customer and employee satisfaction; forecast and track marketing and sales trends, analyzing collected data; seek and provide information to help our institution to determine its

position in the marketplace; measure the effectiveness of marketing, advertising and communications programs and strategies; prepare reports of findings, illustrating data graphically and translating complex findings and provide management with information and proposals concerning the design, pricing and promotion for educational programs.

On January 22, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner provided, *inter alia*, (1) vacancy announcements; (2) marketing reports and studies pertinent to education, including the state of education in Angola; (3) statistical tables that purport to have been prepared by the beneficiary on June 10, 2013; (4) another description of the duties of the proffered position; (5) two unpublished decisions of the AAO; (6) a printout of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to Market Research Analysts; (7) an evaluation, dated April 7, 2014, of the proffered position; and (8) a letter, dated April 11, 2014 from [REDACTED]

The statistical tables provided indicate that the beneficiary produced them on June 10, 2013. Those tables show data such as the number of students, presumably of the petitioner, in various age groups, segregated by gender; the languages spoken by the male and female students; the states and countries from which the students originate; etc.

The additional duty description states the following as the duties of the proffered position:

To collect and analyze data on demographics, preferences and buying habits, to identify potential markets and factors affecting demand; 20%

- Monitor industry statistics and follow trends in trade literature;
- Through data collection from websites, catalogs, flyers, radio and newspapers advertisements, and data processing related to the market research.
- Devise and evaluate methods and procedures for collecting data (such as surveys, opinion polls, or questionnaires), or arrange to obtain existing data.
- Direct trained survey interviewers.

- By designing or assisting in the development of questionnaires, editing and verifying questionnaires, reports and presentations. Monitor the quality of the data and discard non-qualified respondents.

Measure and assess customer and employee satisfaction; 7%

Forecast and track marketing and sales trends, analyzing collected data; 5%

Measure the effectiveness of marketing, advertising and communications programs and strategies; 8%

- Prepare written and oral presentations of findings containing actionable recommendations for implementation. Answer questions and prepare new reports based [on] manager's and Director's feedback.

Prepare reports of findings, illustrating data graphically and translating complex findings and provide management with information and proposals concerning the design, pricing and promotion for our educational programs. 15%

- Analyze research results and create graphical displays to convey the implications of the data. Write reports that include effective graphs, tables, summaries, and narratives. Prepare written and oral presentations of summaries, and narratives. Prepare written and oral presentations of findings for implementation of proposals concerning the promotion, distribution, design, and pricing of company products or services.

Seek and provide information to help our institution to determine its position in the marketplace; 8%

- Attend staff conferences and Board of Directors meetings to provide management and directors with information on market position of the institution.

Gather data on competitors and analyze their prices, sales, and method of marketing and distribution. 17%

- Intelligence gathering from a variety of primary and secondary sources with frequent travel required. Assist in documenting and processing travel expenses and organizing and filing of project folders.

Conduct research on consumer opinions and marketing strategies, collaborating with marketing professionals, statisticians, pollsters, and other professionals. 20%

- Conduct in-depth analyses using traditional and advanced methods. Organize market data for effective analysis of information and implementation of new strategies. Present data from consumer opinions on academic and student experiences to management and Board of Directors.

The April 7, 2014 evaluation of the proffered position was prepared by [REDACTED] an assistant professor of marketing at [REDACTED]. It states that, in the proffered position, the beneficiary would:

- Collect and analyze demographical data;
- Identify markets and potential factors affecting demand;
- Conduct research on consumer opinions and market strategies;
- Gather competitor data and analyze services;
- Define prices and marketing methods;
- Measure and assess customer and employee satisfaction;
- Forecast and track marketing and sales trends;
- Measure marketing effectiveness;
- Develop advertising and communications programs and strategies;
- Prepare finding reports;
- Translate complex findings to data graphs;
- Provide management with information and proposals concerning the design, pricing, and promotion of educational programs.

As to the education requisite to the position, the evaluator stated:

[The duties of the proffered position] are so specialized and complex that the knowledge required to perform [them] is derived from attainment of a Bachelor's degree in Marketing, Business Administration, or a related field.

In her April 11, 2014 letter, [REDACTED] reiterated the duty description from her June 5, 2013 letter.

The director denied the petition on June 11, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submitted a brief asserting that the evidence submitted is sufficient to show that the proffered position qualifies as a specialty occupation position and citing, *inter alia*, the *Handbook*.

IV. SPECIALTY OCCUPATION ANALYSIS

As a preliminary matter, we note that the petitioner provided copies of two of our unpublished decisions, issued in 2005 and 2006. These are decisions in which we found that the particular market research analyst positions offered in those cases qualified as specialty occupation positions. However, the petitioner furnished no evidence to establish that the facts of the instant petition are otherwise analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.¹ The petitioner is permitted, of course, to assert that the circumstances of those cases are similar to those in the instant case, and to contend that the reasoning of those cases is sound and should be extended. However, our unpublished decisions have no value as precedent.

As another preliminary matter, we observe that the petitioner has never alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, in her June 5, 2013 and April 11, 2014 letters, [REDACTED] did not list any educational requirement at all. Of the evidence presented, only the April 7, 2014 position evaluation provided states an educational requirement. That evaluation states that the proffered position requires a bachelor's degree in marketing, business administration, or a related field.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. None of the petitioner's submissions indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The petitioner has not even effectively alleged, therefore, that the proffered position qualifies as a specialty occupation position. This is sufficient reason, in itself, to dismiss the appeal and to deny the visa petition.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree

¹ In any event, those cases, if they were precedent decisions, would not stand for the proposition that all market research analyst positions qualify as specialty occupation positions, but only that a particular market research analyst position may, given sufficient evidence, be shown to qualify as a specialty occupation position.

requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

The petitioner claims in the LCA that the proffered position is a market research analyst position and that it corresponds to SOC code and title 13-1161, Market Research Analysts and Marketing Specialists, from O*NET. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category.

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

How to Become a Market Research Analyst

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

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

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

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

Other Experience

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

Licenses, Certifications, and Registrations

Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts. Candidates qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research.

Important Qualities

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

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

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

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

The *Handbook* indicates that most market research analyst positions require at least a bachelor's degree. However, it indicates that, in addition to a degree in market research, a degree in statistics, mathematics, computer science, business administration, any of the social sciences, or communications may suffice.

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 either of two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added). The educational requirement of market research analyst positions may be satisfied by a degree in any of a very wide array of subjects, which indicates that they do not require a minimum of a bachelor's degree in a specific specialty or its equivalent and do not, therefore, as a category, qualify as a specialty occupation positions.

Further, the *Handbook* indicates that an otherwise undifferentiated bachelor's degree in business administration may be a sufficient educational qualification for a market research analyst position. As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For this additional reason, the *Handbook* does not indicate that market research analyst positions qualify, as a category, as specialty occupation positions.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a

bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further still, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of collecting, analyzing, and presenting market data, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

As was stated above, the petitioner did submit several vacancy announcements. Each is for a position entitled Market Research Analyst or Marketing Research Analysts. Some of those vacancy announcements were placed by companies that are clearly not in the education industry, as the petitioner is. The industries of the companies that placed the other vacancy announcements are unclear. None of the vacancy announcements has been demonstrated to have been placed by a company in the petitioner's industry. As such, none of the vacancy announcements provided has

been shown to be directly relevant to the criterion at the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Further, the LCA provided indicates that the proffered position is a wage Level I position, which indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dept 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. Each of those vacancy announcements states an experience requirement. This suggests that they are not entry-level positions, as the proffered position has been indicated to be. As they are apparently higher-level positions than the proffered position, no reason exists to assume that their educational requirements would be identical to the educational requirement of the proffered position. In order to demonstrate that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to show that wage Level I positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, some of those vacancy announcements state that the positions they announce require college degrees, but not that the degrees must be in any specific specialty, nor even in any range of specialties. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Others state that they require a bachelor's degree in a range of specialties, which range of specialties includes business or business administration. As was stated above, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from these announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the

³ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

petitioner, and does not satisfy the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position.

Although the petitioner asserts that the beneficiary will, for example, produce marketing reports, studies, and graphic illustrations of market data, the record contains insufficient indication that production of those reports, studies, and graphs is so complex or unique that it would require a specialized degree or the equivalent.

While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

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

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty

or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as collecting, analyzing, and presenting market data, contain insufficient indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of market research analyst positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

In fact, the petitioner's own evidence, the April 7, 2014 evaluation prepared Professor Fisher, stated that the duties of the proffered position are specialized and complex, but also indicated that a bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. As was explained above, a requirement of an otherwise unspecified degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific

specialty or its equivalent. As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration does not mark a position as a specialty occupation position.

Further, as was noted above, the petitioner filed the instant visa petition for a wage Level I market research analyst position, a position for a beginning-level employee with only a basic understanding of market research analysis. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to market research analysis, especially as the *Handbook* indicates that some market research analyst positions require no such specialized degree.

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

V. ADDITIONAL BASIS

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.⁴

If the proffered position had been demonstrated to qualify as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would have been obliged to show, not just that the beneficiary has a bachelor's degree, but that he has a bachelor's degree *in that specific specialty*. See generally *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, in a specific specialty, or its equivalent, and has not, therefore, been shown to qualify as a position in a specialty occupation. This would ordinarily preclude a discussion of whether the beneficiary had been shown to be qualified.

However, in the instant case, the evidence relied upon to show that the beneficiary has a qualifying degree is the evaluation of [REDACTED] which states that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in business administration.

As was explained above, an otherwise undifferentiated bachelor's degree in business administration is not a degree *in a specific specialty*. There is insufficient evidence in the record that the

⁴ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

beneficiary has a U.S. bachelor's or higher degree in a specific specialty, or the equivalent; therefore, the beneficiary has not been shown to be qualified to work in *any* specialty occupation. The visa petition must be denied for this additional reason.

VI. CONCLUSION

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

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 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 director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.