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



U.S. Citizenship
and Immigration
Services



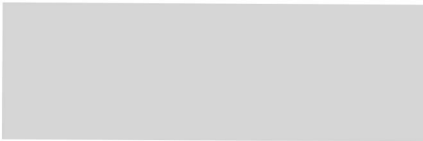
DATE: **MAY 26 2015** OFFICE: VERMONT SERVICE CENTER

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a five-employee "Survey-based market research technology firm" established in [REDACTED]. In order to employ the beneficiary in a position in what it designates as a "Telecommunications Research Analyst" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the evidence of record did not establish that the duties of the proposed position comprise the duties of a specialty occupation.

The record of proceeding before this office includes the following: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B), counsel's brief and additional documentation. We reviewed the record in its entirety before issuing our decision.¹

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the appeal will be dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated on the Form I-129 that it seeks the beneficiary's services as a telecommunication research analyst, on a full-time basis for an annual wage of \$66,000. In a letter, dated March 12, 2014, the petitioner claimed that through its Enterprise Technology Research (ETR) and Enterprise Technology Research and Development (ETR&D) divisions it is a leading survey-based market research technology firm. The petitioner indicated that it delivers technology-related data and insights necessary for its clients to make the best forward-looking decisions, as well as identifying and developing innovative new technologies for the enterprise. The petitioner stated that it needed to "employ a Research Analyst to conduct research and analysis in Telecommunications (TelCo) and Mobile Device Management (MDM)" and that "[s]pecific areas of focus will include strategy, architecture, best practices, technologies and vendors of telecommunications and mobile devices." The petitioner stated further that it expected the "Analyst to expand [its] research sample and perform the necessary research technology trends and voids that need to be served" and to "develop a network of potential end users/buyers of said technologies in the Latin American markets for [its] US-based investor clients who focus on Latin American technology companies."

The petitioner listed the responsibilities of the position as including the following:

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Develop, cultivate, grow and manage survey research sample members (i.e. CIOs [Chief Information Officers]) in the Latin American region[.]
- Create TelCo-focused surveys (bilingual) and interpret survey results[.]
- Lead the TelCo and MDM research by identifying critical questions facing ETR clients and crafting appropriate research methods to address them.
- Provide management with in-depth analysis of survey results and interpretations based on knowledge and prior experience in technology and industry associated with telecommunications and mobile devices including the market, vendors, products and user strategies.
- Monitor industry statistics and follow trends within the industries including tracking overall telecommunications economics and forecast service provider revenue as well as outsourcing and managed services.
- Help identify new market opportunities and product development, competitive analysis and service provider go-to-market strategy.
- Research and analyze related data to provide insight, predictions and advice for clients in Telecommunications and Mobile strategies and technologies and its intersection with Cloud, Big Data, Information Security and Enterprise Information Management.
- Forecast and track marketing and sales trends, analyzing collected data for ETR to quickly and accurately identify trends in the marketplace[.]
- Assist the sales team in sales and retention and expand client base to include appropriate potential institutional investor clients, banks, endowments, pensions, hedge and mutual funds, venture capital and private equity firms.
- Communicate research findings and analysis to clients to support the sales force in new sales and client retention in Latin America[.]
- Drive client demand for ETR's research on telecommunications and mobile device management[.]
- Create and deliver high value presentations and other materials on market analysis of telecommunications and mobile device management products and services[.]
- Prepare regular reporting of findings, illustrating data graphically and translating complex findings into written reports as well as quarterly and annual reports on research notes[.]
- Travel to Latin American countries for marketing and client meetings to present research findings and to conduct additional research within the Latin American TelCo and MDM space.

The petitioner stated that these "job duties require someone with advanced knowledge and experience, specifically in the field of Telecommunications that is normally associated with the attainment of a Bachelor of Science degree in Engineering or Computer Science."

The petitioner noted that the beneficiary received a Bachelor of Science degree in Electrical Engineering from [REDACTED] University in Venezuela and provided an academic evaluation showing the foreign degree had been evaluated as the equivalent of a bachelor's degree in electrical engineering from a regionally accredited educational institution in the United States.

The initial record further included the required certified Labor Condition Application (LCA) in which the petitioner attested that the LCA designation for the proffered position corresponds to the occupational category "Market Research Analysts and Marketing Specialists" – SOC (ONET/OES Code) 13-1161, at a Level II (qualified) wage for the New York City metropolitan area.

Upon review of the initial record, the director requested additional evidence to establish that the proffered position qualifies for classification as a specialty occupation. The director outlined the specific evidence that could be submitted.

In a letter, dated July 28, 2014, the petitioner provided further explanation regarding the beneficiary's proposed duties and the time she would spend performing those duties. The petitioner noted that the beneficiary would spend 30 percent of her time devising methods and procedures for obtaining data and conducting surveys, 40 percent of her time reviewing, analyzing and evaluating collected data and applying statistical analysis of relevant data, and 30 percent of her time preparing reports on research results and developing forecasts and recommendations based on findings for clients.

The petitioner also submitted several job announcements in support of its assertion that a bachelor's degree in engineering for the same or similar employment is normal within the industry. Additionally, the petitioner identified its five employees by name, position, and qualification. The petitioner asserted that the beneficiary's degree in electrical engineering provides her the qualifications necessary to perform the duties of a market research analyst who is expected to gather and obtain technological data related to the telecommunications industry and to identify the critical questions facing clients and devise the research methods to obtain the needed data.

Upon review of the record, the director denied the petition, determining that the record did not include sufficient evidence to establish that the proffered position is a specialty occupation.

On appeal, the petitioner asserts that it submitted documentation establishing its normal business requirement for a bachelor's degree, and based on the highly complex and specialized job duties to be performed as part of the proffered position, a degree in telecommunications engineering and/or electrical engineering is directly related to the job offered. The petitioner also reiterates its belief that such a degree requirement is common within the industry and references the job postings previously submitted in support of the petition. The petitioner asserts that the position of market research analyst requires at least a baccalaureate degree, that the only issue to be determined is whether the degree required and the degree earned by the beneficiary is in a specific specialty, and that in this matter the beneficiary's engineering degree is directly related to the proffered position. The petitioner cites two unpublished AAO decisions in support of this assertion. The petitioner concludes that the degree required and held by the beneficiary is common within the industry and that the duties are so complex and highly specialized that they can be performed only by someone with such a degree. The petitioner also submits letters from four firms expressing their preference for hiring research analyst positions covering the technology and telecommunications sectors who have engineering degrees.

II. THE ISSUE ON APPEAL

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

A. The Law

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

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

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

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

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), the 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.

B. Analysis

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

We recognize the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

We reviewed the chapter of the *Handbook* entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category.³ However, the *Handbook* does not indicate that "Market Research Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states the following about 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.

Education

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

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

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

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

³ We hereby incorporate the chapter of the *Handbook* regarding "Market Research Analysts" into the record of proceeding.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Market Research Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited May 20, 2015).

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide variety of disparate fields. The *Handbook* states that employees typically need a bachelor's degree in market research or a related field, but the *Handbook* continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have a background in fields such as business administration, one of the social sciences, or communications. The *Handbook* notes that various courses are essential to this occupation, including statistics, research methods, and marketing, while also indicating that courses in communications and social sciences (such as economics, psychology, and sociology) are also important.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum requirement of a bachelor's of higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, for example, 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). Here, the petitioner has not established the specific "body of specialized knowledge" that is required to perform the duties of the market research analyst.

Although the *Handbook* indicates that a bachelor's degree is typically needed for these positions, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields and backgrounds (i.e., social science⁴ and computer science) as acceptable for entry into this occupation, the *Handbook* also states that "others have a background in business administration." 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 normally the minimum entry requirement for this occupation.

⁴ According to *Webster's II New College Dictionary* 1047 (Houghton Mifflin 2001), the "social sciences" include sociology, psychology, anthropology, economics, political science, and history.

Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

On appeal, counsel references two unpublished AAO decisions. The first unpublished decision, dated June 24, 2008, pertains to a financial analyst position and the second unpublished decision, referred to in part in a printout from an internet website as a May 23, 2000 AAO decision, pertains to a software design engineer. Upon review of these references and the supporting information provided we do not find that either unpublished decision includes facts analogous to the instant petition. More significantly, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The petitioner also asserts on appeal that it has established that its particular position requires at least a baccalaureate degree and the beneficiary's degree is in a specific specialty that is directly related to the proffered position, implying that this establishes the proffered position as a specialty occupation. However, we cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Additionally, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

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

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R.

§ 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Further, the petitioner did not submit documentation from the industry's professional association indicating that it has made a degree a minimum entry requirement.

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

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

On the Form I-129, the petitioner stated that it is a survey-based market research technology firm with five employees. The petitioner stated its gross annual income exceeds \$2,000,000 and its net income exceeds \$950,000.⁵ The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 541600. NAICS currently does not include the code 541600 but indicates that 5416 is the industry segment for management, scientific, and technical consulting services. In addition, 541613 is the subheading for "Marketing, Consulting

⁵ The record does not include the petitioner's federal tax returns or other documentation substantiating these figures.

Services."⁶ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This U.S. industry comprises establishments primarily engaged in providing operating advice and assistance to businesses and other organizations on marketing issues, such as developing marketing objectives and policies, sales forecasting, new product developing and pricing, licensing and franchise planning, and marketing planning and strategy.

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541613 – Marketing Consulting Services on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 20, 2015).

The petitioner in this matter appears to gather information on the telecommunications industry, a technical industry, in order to sell the information or otherwise use the data gathered to create products. Thus, the petitioner falls within the 5416 industry segment for scientific and technical consulting services and moreover most likely under the subheading for "Marketing Consulting Services, Industry."

Upon review of the advertisements submitted, we find that they do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position. Moreover, the petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

First, the petitioner has submitted advertisements for organizations that do not appear to be similar to the petitioner. More specifically, the advertisements include positions with [REDACTED] (an automobile manufacturer), [REDACTED] (sound and vibration measurement and analysis), [REDACTED] (an engineering and electronics conglomerate), [REDACTED] (semiconductor foundry), and [REDACTED] (electrodesign automation). The petitioner did not state which aspects or traits (if any) it shares with these specific advertising organizations. Without further information, the advertisements from these companies appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner also provided advertisements from two research firms, [REDACTED] and [REDACTED]. Although these two firms appear to correspond more closely to the petitioner's survey-based market research technology industry, the petitioner has not established these firms'

⁶ NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited May 20, 2015).

⁷ The petitioner included two advertisements posted by [REDACTED]

revenue or staffing is comparable to those of the petitioner. The record does not include sufficient probative evidence to establish that any of the advertising organizations are similar to the petitioner.

Second, contrary to the purpose for which the advertisements were submitted, although all the job postings submitted specify that a bachelor's degree is required, the advertisers list a variety of degrees as acceptable to perform the duties of the different advertised positions. Four of the advertisers find a bachelor's degree in the general field of business or business administration as acceptable to perform the duties of their advertised position. As discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition. Again, although a general-purpose degree (such as a "business" degree") 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. Thus, advertisements that request a general-purpose degree are not probative to the issue of whether the petitioner's proffered position requires a degree in a *specific specialty*.

The petitioner on appeal notes that the advertisements submitted require degrees in a variety of fields, such as computer information systems, computer science, engineering (including electrical and telecom engineering), economics, finance, chemistry, physics, and material science as well as business and business administration. Thus, the advertisements submitted reinforce the *Handbook's* report that there are a variety of degrees and backgrounds available to enter into the occupation of a market research analyst.

The petitioner contends, however, that these advertisements demonstrate that US employers in the technology industry can be very specific in the degrees that they require and that the variety of degrees related to job responsibilities and performance should not preclude a position from being a specialty occupation. In this matter, however, it is not whether other companies require different degrees to perform the duties of their advertised positions for a market research analyst position but whether a bachelor's degree in a specific discipline, 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. This, the petitioner has not established.

Further, even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.⁸

⁸ *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As the job postings do not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

We have also reviewed the four letters from research firms expressing a preference for hiring research analysts who cover the technology and telecommunications sectors to have engineering degrees. Each letter-writer uses the same or similar language when stating this preference.⁹ Notably, none of the letter-writers indicate that they require the successful candidate to have an engineering or other degree. Preference for a degree is not synonymous with a routine requirement for individuals to possess a bachelor's degree in a specific discipline. Thus, these letter-writers do not persuade that there is a routine educational requirement within the petitioner's industry for positions parallel to the petitioner's position.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are 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. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

As such, even if the job announcements supported the finding that the position (for organizations similar to the petitioner) required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

⁹ The use of identical language and phrasing across the various letters suggest that the language in the letters is not the authors' own. *Cf. Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Because the letters appear to have been drafted by someone other than the purported authors, the letters possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In support of the petition, the petitioner provided information regarding the proffered position and evidence regarding its business operations. However, upon review of the record, we find that the petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of market research analyst.

First, we observe that when attempting to understand the actual duties of the proffered position and the level of complexity they may require, we also look to the LCA submitted with the petition. When reviewing the duties of the proffered position and the corresponding LCA we note that the petitioner designated the proffered position under this occupational category at a Level II wage on the LCA.¹⁰ Such a designation indicates that although the individual in the Level II wage level position has a good understanding of the occupation, she will perform only moderately complex tasks that require limited judgment. That is the LCA designation does not connote a position that includes duties that are complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.¹¹

More importantly, 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 that it claims are so complex or unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has not demonstrated 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 market research duties of the proffered position. For example, the petitioner in this matter stated that the job duties it described required an engineering or computer science degree. However, the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering.

¹⁰ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level II wage rate is described 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.

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.

¹¹ Notably, the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level III (experienced), or a Level IV (fully competent) level. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Market Research Analysts and Marketing Specialists," <http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-1161&area=35644&year=14&source=1> (last visited May 20, 2015).

Therefore, it is not readily apparent that a general degree in engineering is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.¹²

In summary, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not demonstrated that this position is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent.

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as any other information provided by the petitioner in support of the petition when reviewing this criterion.

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

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

The petitioner stated on the Form I-129 that it employed five persons and in response to the director's RFE, listed their job titles and qualifications. The petitioner's employees include a

¹² As discussed above, the petitioner in this matter focuses on the beneficiary's degree in electrical engineering as the degree that is directly related to the proffered position; however, (1) the petitioner does not specify that only a degree in electrical engineering is required to perform the duties of the proffered position; and (2) the beneficiary's degree is not pertinent to establishing the proffered position as a specialty occupation.

director of operations, head of statistical data analysis, head of institutional sales and service, an executive vice president, and its founder and director of research. The petitioner does not appear to claim that it previously employed individuals in the proffered position or that the proffered position qualifies as a specialty occupation under this criterion of the regulations. Moreover, the record does not include evidence to establish that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

On appeal, the petitioner asserts that its proffered position "combines the job duties of a Market Research Analyst with the knowledge required of an Engineer because of the nature of the job responsibilities" and that based on the highly complex and specialized job duties to be performed in the proffered position, that a degree in telecommunications engineering and/or electrical engineering is directly related to the job offered. We recognize that the petitioner desires an employee with a specific TelCom engineering background who generally will "have knowledge of the industry in order to identify the critical questions facing clients and then devise the research methods to obtain the needed data." However, the petitioner does not substantiate that only a bachelor's degree in "Engineering or Computer Science" would provide the specialized knowledge, rather than a moderate amount of experience for example, to perform the general duties it ascribes to the proffered position.¹³ Moreover, even if this were so, it is not clear why the petitioner designated the proffered position on the LCA as a Level II position (out of four assignable wage-levels) relative to others within the occupational category. That is, the petitioner has not accorded the proffered position a wage level that corresponds to a position distinguishable by relatively specialized and complex duties within the occupational category. Without further evidence, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

¹³ Again, we observe that a requirement of a general engineering degree is not a requirement of a degree in a specific specialty and that the beneficiary's background while of legitimate use to the petitioner, does not establish the proffered position of market research analyst and market specialist as a specialty occupation.



For the reasons related in the preceding discussion, the evidence of record does not establish that the petitioner 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.

III. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reason. 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.