



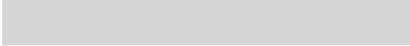
U.S. Citizenship
and Immigration
Services

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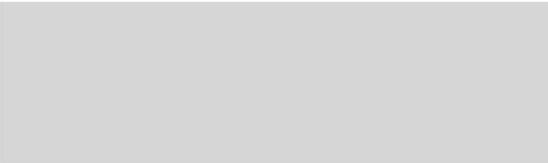
DATE: **MAY 28 2015**

PETITION RECEIPT #: 

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 30-employee "Manufacturer of jumpers, water slides and inflatable obstacle courses" established in 2004. In order to employ the beneficiary in what it designates as a "Marketing Manager" 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 found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the Director's RFE. The Director reviewed the information and determined that the petitioner did not establish eligibility for the benefit sought. The Director denied the petition, finding that the evidence of record did not establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the Director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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; (2) the service center's RFE; (3) the petitioner's response to the RFE; (4) the Director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.¹

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.

II. THE PROFFERED POSITION

The petitioner submitted a letter dated March 25, 2014, from [REDACTED] signing as the petitioner's "Owner/President."² Mr. [REDACTED] stated:

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

² We note there are at least three alternative spellings of the petitioner's Owner/President the record, i.e., [REDACTED] and [REDACTED]. For consistency's sake, we will utilize the spelling of the last name that appears on the Form I-129 throughout this decision.

[The beneficiary] will be responsible for leading a team of individuals who will examine and analyze statistical data in our industry in order to better forecast the future marketing trends. That will include developing strategies, taking into account the types of products being offered, the level of demand for the products, competitive analysis, various methods of marketing and distribution, purchasing patterns, customer preferences, etc. to name a few example of the factors to be analyzed. Moreover in carrying out the above mentioned tasks, our Marketing Manager will be responsible for overseeing the submission of comprehensive flow charts, diagrams, statically and probability equations, past scales and pricing analyses, future trend reports, and other related marketing information which will enable us to computer the level of past, present and future of this merchandise.

[The beneficiary] will also attend meetings with our customers in order to better understand their own unique needs and requirements concerning the purchase of inflatable products. This is particularly significant in that through this comprehension [the beneficiary] will better promote our company and products.

[Verbatim.]

In a letter dated July 18, 2014, Mr. [REDACTED] provided the following additional description of the duties of the proffered position:

- 1) **COORDINATION OF MARKETING ACTIVITIES (50% or 20 of 40 hours/week)** – [The beneficiary] will coordinate activities of departments, such as PR, Media & Advertising, and research. She will confer with department heads of staff to discuss topics such as contracts, selection of advertising or marketing media, and products to be advertised. She will plan and prepare marketing and promotional materials to increase sales of products, working with customers, company officials, sales departments, and advertising agencies.

She will plan and manage developments and communications of informational programs to maintain favorable public perceptions of our company's products. She will study the objectives, promotional policies, and needs of our company.

- 2) **MARKET RESEARCH (20% or 8 hours of 40 hours/week)** – [The beneficiary] will collect and analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand. She will monitor and analyze sales promotion results to determine cost effectiveness of promotion campaigns. She will conduct research on consumer opinions and marketing strategies, collaborating with marketing professionals. Likewise, she will devise and evaluate methods and procedures for collecting data, such as surveys, opinion polls, questionnaires and arrange to obtain existing data. She will establish a

proper research methodology and lead a team of individuals who will examine and analyze statistical data.

- 3) **DATA ANALYSIS (20% or 8 hours of 40 hours/week)** – [The beneficiary] will examine and analyze various statistical data generated through market research. Through the analysis of these statistical data, [the beneficiary] will be able to analyze market trends, growth, market size, market share, market competition and will lead her to determine our company's market target, market forecast, and market position. She will implement promotional strategies, manage inventory of company's resources, order products, hire staff in our Marketing Department and based on the company's marketing and advertising reports, determine what marketing operation strategies to implement.
- 4) **CONSULTING (10% or 4 hours of 40 hours/week)** – [The beneficiary] will confer with personnel concerned to ensure successful functioning of newly implemented systems or marketing procedures. She will document findings of studies and prepare recommendations for implementation of new systems, marketing procedures and organizational changes. She will plan studies of work problems and procedures, such as organizational changes, communications, information flow, integrated production methods, inventory control and cost analysis.

Mr. [REDACTED] further stated, "[W]e firmly believe that only an individual with a bachelor's degree in Marketing, Economics or related fields can competently perform these specific job duties for the proffered position of Marketing Manager."

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Marketing Manager" manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-2021, Marketing Managers, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

III. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. The Law

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies for classification 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 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.

B. Analysis

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

We recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title code and title 11-2021, Marketing Managers, from

³ 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.

O*NET. In the chapter entitled, "Advertising, Promotions, and Marketing Managers," the *Handbook* states the following about the educational requirements of such positions:

How to Become an Advertising, Promotions, or Marketing Manager

A bachelor's degree is required for most advertising, promotions, and marketing management positions. These managers typically have work experience in advertising, marketing, promotions, or sales.

Education

A bachelor's degree is required for most advertising, promotions, and marketing management positions. For advertising management positions, some employers prefer a bachelor's degree in advertising or journalism. A relevant course of study might include classes in marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography.

Most marketing managers have a bachelor's degree. Courses in business law, management, economics, finance, computer science, mathematics, and statistics are advantageous. For example, courses in computer science are helpful in developing an approach to maximize traffic through online search results, which is critical for digital advertisements and promotions. In addition, completing an internship while in school is highly recommended.

Work Experience in a Related Occupation

Advertising, promotional, and marketing managers typically have work experience in advertising, marketing, promotions, or sales. For example, many managers are former sales representatives; purchasing agents; buyers; or product, advertising, promotions, or public relations specialists.

Important Qualities

Analytical skills. Because the advertising industry changes with the rise of digital media, advertising, promotions, and marketing managers must be able to analyze industry trends to determine the most promising strategies for their organization.

Communication skills. Managers must be able to communicate effectively with a broad-based team made up of other managers or staff members during the advertising, promotions, and marketing process. They must also be able to communicate persuasively to the public.

Creativity. Advertising, promotions, and marketing managers must be able to generate new and imaginative ideas.

Decision-making skills. Managers often must choose between competing advertising and marketing strategies put forward by staff.

Interpersonal skills. These managers must deal with a range of people in different roles, both inside and outside the organization.

Organizational skills. Advertising, promotions, and marketing managers must manage their time and budget efficiently while directing and motivating staff members.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Advertising, Promotions, and Marketing Managers," <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-4> (last visited May 12, 2015).

While the *Handbook* indicates that most marketing managers have a bachelor's degree, it does not state that a bachelor's degree is a minimum requirement. Further, it does not indicate that marketing manager positions require a minimum of a bachelor's degree or the equivalent *in a specific specialty*. That courses in business law, management, economics, finance, computer science, mathematics, and statistics are advantageous does not indicate that such positions require a bachelor's degree in a specific subject, or even any bachelor's degree at all.

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."

To address this need, the petitioner has cited the O*NET report pertinent to marketing managers. However, that report does not state that marketing manager positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, O*NET assigns marketing manager positions a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET does not indicate that four-year bachelor's degrees that may be required by some Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

In an evaluation of the proffered position dated October 14, 2014, [REDACTED] Ph.D.,⁴ stated that the high level of sophistication in marketing skills demanded by the proffered position requires at least a bachelor's degree in marketing, economics, or a related field. However, as discussed below, the letter from Dr. [REDACTED] does not persuade us that the proffered position is a specialty occupation position.

Dr. [REDACTED] provided his résumé, listing his educational credentials, professional experience, and publications. The documentation about Dr. [REDACTED]'s credentials does not establish that he has any expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification in the record, it is unclear how his education, training, skills or experience would translate to any particular knowledge of the current recruiting and hiring practices of such manufacturers or similar organizations for marketing manager positions.

Dr. [REDACTED] provided a paraphrase of the duty description from Mr. [REDACTED]'s March 25, 2014 letter, and stated that those duties require at least a bachelor's degree in marketing, economics, or a related field. There is insufficient indication, however, that Dr. [REDACTED] possesses any knowledge of the petitioner's proffered position beyond that brief description. He does not discuss the duties of the proffered position in any substantive detail. Further, he does not demonstrate or assert in-depth knowledge of the specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that Dr. [REDACTED] visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Dr. [REDACTED] asserted an educational standard for the proffered position without referencing any supporting authority or any empirical basis for the pronouncement. He does not relate his conclusion to specific, concrete aspects of the petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion.

Furthermore, there is no indication that the petitioner advised Dr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level marketing manager position, for an employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that Dr. [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Dr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

⁴ The record indicates that Dr. [REDACTED] is the Chair of the Marketing and Management Department and an Associate Professor in Management in the [REDACTED]

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner 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 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.

To address this criterion, the petitioner provided vacancy announcements posted by other companies. They are for positions entitled marketing manager, marketing project manager, project/brand manager, and manager, corporate communications. The vacancy announcements indicate that the companies that placed them are in the engineering services, consumer packaged goods manufacturing, health care and skin care, advertising and public relations services, and beauty industries. None of those companies has been demonstrated to be in the petitioner's industry and

some clearly are not. They are not, therefore, persuasive evidence of the educational requirements of positions in the petitioner's industry.

Some of the vacancy announcements state a requirement of a bachelor's degree, but do not state that the requisite degree must be in any specific specialty. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

All of the vacancy announcements submitted require experience, and some require a considerable amount of very specific experience. On the LCA, the petitioner designated the proffered position a wage Level I position, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See 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. Clearly, the positions announced in the vacancy announcements provided are not entry-level positions, given that they require prior experience. They are not, therefore, persuasive evidence of the educational requirements of positions parallel to the proffered position.

One vacancy announcement states that a bachelor's degree in English, journalism, communications, or public relations is preferred for the position it announces. However, a preference is not a minimum requirement. Even if English, journalism, communications, and public relations are assumed to delineate a specific specialty, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that it requires: "[A] Bachelor's Degree, or the equivalent combination of education, professional training, or work experience." That vacancy announcement does not state that the position it announces requires a degree *in a specific specialty*. Further, although it says that equivalent professional training or work experience may be substituted for the otherwise requisite bachelor's degree, it does not contain any indication of the type or amount of professional training or work experience that the hiring authority would deem to be equivalent to the otherwise requisite bachelor's degree.

Some of the vacancy announcements state that the educational requirement of the positions announced may be satisfied by a bachelor's degree in business administration, without any additional specification. 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.

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 not demonstrated what statistically

valid inferences, if any, can be drawn from those announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁵

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 parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence includes a statement from Mr. [REDACTED], dated October 15, 2014, in which he asserts:

We have checked the hiring practices of other companies, who are in manufacturing business and found that they all require a minimum Bachelor's degree in Marketing or Business Administration or related field as a minimum in the marketing field.

The petitioner has not identified the data this statement is based upon.⁶ Although the statements by the petitioner are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).⁷

⁵ 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 not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the record 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).

⁶ As was stated above, the petitioner did furnish announcements of vacancies at other firms. Although the petitioner did not so stipulate, those vacancy announcements may be the data this conclusion was based upon. If so, then the reason we do not find them persuasive evidence of the petitioner's conclusion is explained in considerable detail above.

⁷ Further, even assuming that Mr. [REDACTED]'s conclusion is correct, it would not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, the educational requirement Mr. [REDACTED] asserts could be satisfied by an otherwise unspecified bachelor's degree in business administration. However, as was previously explained, 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.

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 parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has not credibly demonstrated 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 evidence of record does not demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has 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 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 marketing manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of marketing management. 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 marketing manager positions do not require such a 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 has not demonstrated 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).

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. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

The petitioner has not expressly asserted eligibility nor submitted evidence under this criterion. We note that the proffered position appears to be a new position, and that this is the first time the petitioner is hiring for the position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. We cannot conclude that the petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁸

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 devising, conducting, and evaluating methods and procedures for gathering data; examining and analyzing data; forecasting marketing trends; developing marketing strategies; planning and preparing promotional materials; selecting advertising or marketing media; monitoring and analyzing sales promotion results; etc., contain insufficient indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Overall, the evidence of record is inadequate to establish that the duties of the position are 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. For the

⁸ While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 the 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 section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

IV. CONCLUSION

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.