U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-T-C-C-, INC.

DATE: OCT. 16, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an international trade company of food, beverages, spices, and condiments, seeks to employ the Beneficiary as a market research analyst and to classify him as a nonimmigrant worker in a specialty occupation. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, California Service Center, denied the petition. Subsequently, the Petitioner filed a combined motion to reopen and reconsider. The Director granted the motion, but affirmed its decision to deny the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition, finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation. On appeal, the Petitioner asserts that the Director's basis for denial was erroneous and contends that it satisfied all evidentiary requirements.

We reviewed the record in its entirety before issuing our decision. We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989). We follow the preponderance of the evidence standard as specified in the *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010).

I. SPECIALITY OCCUPATION

The primary issue under consideration is whether the Petitioner has provided sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation.

A. Legal Framework

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. 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 of a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 beneficiaries 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 Beneficiary, 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. The Proffered Position

The Petitioner described the position in its support letter dated March 15, 2014, as follows:

> He will provide research and market analysis in support of the [Petitioner's] wholesale and merchandising activities of the company's food and other related products. He will determine rigorous bounds and measures of our responsiveness to the needs of the market and will develop efficient benchmarks for the monitoring of our marketing progress. His specific duties will include:

- **Benchmarking Against Industry Data:** [The Beneficiary] will perform extensive background surveys and statistical analyses comparing the products and services of the [Petitioner] to industry standards – external benchmarks. He will provide the benchmark data reports and trend assessments on a regular basis to senior management in order to measure our operational performance relative to external peer groups and to identify performance gaps and evaluate improvement opportunities.

- **Analyzing Our Performance:** Following the procedures for data collection and analysis, [the Beneficiary] will manage and analyze the daily stream of reported information on the flow of goods. Working with senior management, he will carefully define each of data collection points to ensure both a consistency of practices and meaningful measures.

- **Identifying elements for Improvement:** The reports of the Market Research Analyst are utilized to manage and control the sales and merchandising process of the company wholesale products. [The Beneficiary] will conduct intensive research on our current and proposed operations, will identify, and analyze relevant market factors and trends, will develop sophisticated operations models in order to forecast future trends in the industry, and will predict the resulting opportunities and challenges for our business. The research methodologies are both qualitative and quantitative. The Market Research Analyst will also analyze trade figures and statistics by industry, will conduct in-depth interviews with corporate managers, will develop competitive benchmarking, and will assess reliability requirements.

The Petitioner further indicated that it "normally requires an individual in the position of Market Research Analyst" to possess a bachelor's degree. It also stated that the Beneficiary has a Bachelor's degree in Business Administration with a concentration in management and that this credential is a related field to market research.

The Petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B. The Petitioner indicated that the proffered position corresponds to the occupational category "Market Research Analyst" with SOC (ONET/OES) code 13-1161, at a Level I (entry level) wage.

In response to the Director's Request for Evidence, the Petitioner provided a more detailed job description for the proffered position with a breakdown of duties by percentages, which we summarize as follows:

- Perform market research by studying and gathering market condition information and data (25%);

- Conduct intensive qualitative and quantitative research, analyze relevant market factors and trends, develop sophisticated operations models; and determine the Petitioner's position in the marketplace (25%);
- Study market trends and procurement practices within current and potential client business in the U.S. and Japan and analyze daily stream of reported information as well as carefully define each of data collection points (20%);
- Execute a direct mailing campaign (10%);
- Constantly measure the effectiveness of marketing programs and strategies (10%);
- Devise and evaluate methods for collecting and analyzing data using statistical software and convert the complex data and findings into understandable tables, graphs, and reports (5%); and
- Collaborate with senior management, prepare reports, and present findings (5%).

C. Analysis

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

We will first discuss the proffered position 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.

USCIS recognizes the U.S. Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[1] We reviewed the section of the *Handbook* covering "Market Research Analysts," including the section entitled "How to Become a Market Research Analyst," which states the following:

> 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**
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> 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.

[1] All references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational category are hereby incorporated into the record of proceeding.

> 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.
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> **Other Experience**
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> Most market research analysts can benefit from internships or work experience in business, marketing, or sales. Work experience in other positions that require analyzing data, writing reports, or surveying or collecting data can also be helpful in finding a market research position.
>
> **Licenses, Certifications, and Registrations**
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> Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts. Candidates qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Market Research Analysts, available on the Internet at http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm (last visited Oct. 13, 2015).

When reviewing the *Handbook*, we must note that the Petitioner designated the proffered position under this occupational category at a Level I on the Labor Condition Application (LCA).[2] This

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[2] The "Prevailing Wage Determination Policy Guidance" issued by the U.S. Department of Labor (DOL) provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

> **Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the Beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the Beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation is appropriate for a research fellow, a worker in training, or an internship. Thus, based upon the Petitioner's designation of the proffered position as a Level I position (relative to others with the occupation) it does not appear that the Beneficiary will serve in a senior or leadership role or in a position that performs more technical research.

The *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. That is, while the *Handbook* states that employees typically need a bachelor's degree in market research or a related field, it continues by specifying 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 backgrounds in fields such as business administration, the social sciences, or communications. This passage of the *Handbook* identifies various courses as essential to this occupation, including statistics, research methods, and marketing. It further elucidates that courses in communications and social sciences (such as economics, psychology, and sociology) are also important. Therefore, although the *Handbook* indicates that market research analysts typically need an advanced degree, it also indicates that degrees and backgrounds in various fields are acceptable for jobs in this occupation – including computer science and the social sciences, as well as statistics and communications.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (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 seemingly disparate fields, such as market research and computer science, 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.[3] Section 214(i)(1)(B) of the Act (emphasis added). The Petitioner has not done so here.

In addition to recognizing degrees in disparate fields, the *Handbook* also states that "others have a background in business administration." Although a general-purpose bachelor's degree, such as a

[3] Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. This also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

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.[4]

Therefore, the *Handbook*'s recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. 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 particular position proffered here as being a specialty occupation.

The narrative of the *Handbook* further reports that some employees obtain professional certification to demonstrate a level of professional competency. It continues by outlining the requirements for market research analysts to achieve the Professional Researcher Certification (PRC), and states that candidates qualify based upon their experience and knowledge. According to the *Handbook*, the credential is granted by the Marketing Research Association to those who pass an exam and have at least three years of experience working in opinion and market research.[5]

We reviewed the Marketing Research Association's website, which confirms the *Handbook's* statement regarding the requirements for professional certification (i.e., passage of an exam and three years of relevant industry experience), and further specifies that the "Education" necessary to apply for professional certification is "12 industry-related education hours within the two preceding years." The Market Research Association website provides the following information about the Professional Researcher Certification program:

> The Professional Researcher Certification program (PRC) is designed to recognize the qualifications and expertise of marketing and opinion research professionals. The goal of PRC is to encourage high standards within the survey profession to raise competency, establish an objective measure of an individual's knowledge and proficiency and to encourage professional development. Achieving and maintaining

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[4] Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

> The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass. 2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: elsewise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

[5] The Marketing Research Association website states that the association was founded in 1957 and is the leading and largest association of opinion and marketing research professions. For additional information, see http://www.marketingresearch.org/information (last visited Oct. 13, 2015).

> PRC validates the knowledge of the market research industry and puts researchers in a select group of like-minded professionals.
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> * * *
>
> Because PRC indicates to the public your ability to conduct marketing research, the PRC Board requires [a candidate] to have experience in the survey and opinion process. Three years of relevant experience is required. . . . A total of 12 industry-related education hours within the two preceding years are required at time of application. Conferences, seminars, webinars, etc., must be added to [the candidate's] record.
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> * * *
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> The benefits of a Certification program are both industry-wide and individual. For the individual, it is a means of differentiating oneself, a "badge" of competence in the given areas and an assurance that the individual is current in knowledge and experience. For the profession/industry as a whole, it provides a vehicle for developing a pool of well-trained, competent marketing researchers, thereby improving both perceived and substantive standards.

Market Res. Ass'n, http://marketingresearch.org/prc-faq (last visited Oct. 13, 2015).

The Market Research Association emphasizes that the credentialing program recognizes the qualifications and expertise of marketing and opinion research professionals, encourages high standards within the profession, and establishes an objective measure of an individual's knowledge and proficiency. According to the Association's website, the credential indicates to the public an individual's ability to conduct market research. The narrative continues by stating that the credential provides a vehicle for developing a pool of well-trained, competent marketing researchers, thereby improving both perceived and substantive standards. The website does not indicate that the market research analyst positions have any particular academic requirements for entry, nor does it indicate that these positions require any particular level of education to be identified as qualified and possessing a level of expertise/competence. Instead, the Market Research Association highlights the importance of professional experience and industry-related professional courses (through conferences, seminars, and webinars).

Thus, the *Handbook* and the Market Research Association website do not support the claim that the occupational category "Market Research Analysts" is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did (which it does not), to satisfy the first criterion, the Petitioner must provide evidence to support a finding that the particular position proffered would normally have such a minimum, specialty degree requirement or its equivalent.

In the appeal, the Petitioner cites to a recent district court case, *Raj and Co. v. U.S. Citizenship and Immigration Services,* 85 F. Supp. 3d 1241(W.D. Wash. 2015) and claims that it is relevant here.[6] In the district court case, the employer designated the position as a "Marketing Analyst & Specialist" position.[7] We reviewed the decision; however, there is no indication that aspects of the work such as the duties and responsibilities, level of judgment, complexity of the job duties, supervisory duties, independent judgment required or the amount of supervision received are analogous to the proffered position here. Accordingly, aside from the claimed occupational category, there is no indication that the positions are similar.

Further, in *Raj*, the court stated that a specialty occupation requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent. The court confirmed that this issue is well-settled in case law and with USCIS's reasonable interpretation of the regulatory framework. In the decision, the court noted that "permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers." The court stated that the regulatory provisions do not restrict qualifying occupations to those for which there exists a single, specifically tailored and titled degree program; but rather, the statute and regulations contain an equivalency provision.[8]

In *Raj*, the court concluded that the employer met the first criterion. We must note, however, that the court stated that "[t]he first regulatory criterion requires the agency to examine the generic position requirements of a market research analyst in order to determine whether a specific bachelor's degree or its equivalent is a minimum requirement for entry into the profession." Thus, the decision misstates the regulatory requirement. That is, the first criterion requires the Petitioner to establish that a baccalaureate or higher degree (in a specific specialty) or its equivalent is normally the minimum requirement for entry into the particular position.

Consequently, if the court meant to suggest that any position classified under the occupational category "Market Research Analysts" would, as it stated, "come within the first qualifying criteria" – we must disagree.[9] The occupational category designated by a petitioner is considered as an aspect

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[6] In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-,* 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

[7] It is important to note and distinguish within the court's decision that "Marketing Analyst & Specialist" refers to the employer's particular position, whereas "Market Research Analysts" refers to a general occupational category.

[8] We agree with the court that a specialty occupation is one that requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent. We further note that a petitioner must also demonstrate that the position requires the theoretical and practical application of a body of highly specialized knowledge in accordance with section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), and satisfy one of the four criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

[9] In *Raj,* the court quoted a brief excerpt from the *Handbook*; however, the quotation is from the 2012-2013 edition rather than the current 2014-2015 edition (which contains several revisions). Further, we observe that the court did not address the section of the *Handbook* indicating that there are no specific degree requirements to obtain the Professional Researcher Certification credential – and therefore to work as a market research analyst.

in establishing the general tasks and responsibilities of a proffered position, and USCIS regularly reviews the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. However, to satisfy the first criterion, the burden of proof remains on the Petitioner to submit sufficient evidence to support a finding that its particular position would normally have a minimum, specialty degree requirement or its equivalent for entry. That is, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title or designated occupational category. 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384.

Nevertheless, it is important to note that the court in *Raj* determined that the evidence in the record demonstrated that the particular position proffered required a bachelor's degree in market research or its equivalent as a minimum for entry. Further, the court noted that "[t]he patently specialized nature of the position sets it apart from those that merely require a generic degree."

The position in *Raj* can, therefore, be distinguished from the instant position. Here, 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.

Specifically, the Petitioner made inconsistent statements regarding the requirements for the proffered position. For example, in the support letter dated March 15, 2014, the Petitioner stated that it normally requires a bachelor's degree for the proffered position without stating a specific specialty. Later in the same letter, the Petitioner asserted that it "requires a bachelor's degree in market research or related field-such as business administration and management." In response to the RFE, the Petitioner asserts that "the position normally requires the person who holds it to have completed a bachelor's degree." On appeal, the Petitioner asserts that it requires "a minimum of a bachelor's degree in Business Administration with a concentration in Management."

We note that the Petitioner asserts throughout the record that the Beneficiary has a Bachelor's degree in Business Administration with a management concentration and has taken courses related to marketing. For example, on appeal, the Petitioner asserts that "[the Beneficiary]'s degree is not a generalized degree in Business Administration but one with a concentration in management and [sic] including completion of a plethora of marketing, economics, statistics and finance coursework." However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. Here, the Petitioner has not explained the discrepancies regarding the requirement for the position, and it is not clear what specific specialty is required for the proffered position. Further, assuming *arguendo* that the Petitioner established the requirements for the position, the Petitioner also did not sufficiently explain how each field is directly related to the duties and the responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these specialties.

In the appeal, the Petitioner also cites to *Chung Song Ja Corp. v. U.S. Citizenship and Immigration Services,* No. C14-0177RSM, 2015 WL 1058110 (W.D. Wash. 2015) for the proposition that "in determining a 'specialty occupation' when considering qualification for the first regulatory criteri[on] . . . many degrees may qualify for the specific occupation." The Petitioner further cites to *Residential Finance Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) for the similar propositions that a specialty occupation need not require a degree "in a single academic discipline as opposed to a specialized course of study in related business specialties," and that "it is the knowledge and not the title of the degree which controls."

We generally agree with the aforementioned propositions. For the aforementioned reasons, however, the Petitioner has not met its burden to establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those tasks.

In any event, the Petitioner has not furnished evidence to establish that the facts of the instant petition are analogous to those in *Chung Song Ja Corp.* and *Residential Finance Corp.*[10]

Further, the Petitioner submitted a professional position evaluation prepared by Associate Dean at the School of Business at the CT. stated that the proffered position requires the attainment of at least a Bachelor's Degree in Marketing, Business Administration, or a closely related field.

However, does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion 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. For instance, he based his analysis on a generic list of duties that were provided by the Petitioner, but did not indicate that he had any knowledge of the Petitioner's business and how the Beneficiary's duties might specifically relate to that business.

Moreover, there is also no indication that the Petitioner advised that it characterized the proffered position as a low, entry-level market research analyst position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the Beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on

[10] We note that *Chung Song Ja Corp.* does not share the same fact pattern as the present petition because the proffered position in that case was for a part-time Health Care Manager. We also note that in *Residential Finance Corp.*, the district court judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

required tasks and expected results. However, [redacted] describes the duties of this position as "so advanced and specialized," and "complex." It appears that [redacted] would have found the wage-level information relevant for his opinion letter. Moreover, without this information, the Petitioner has not demonstrated that [redacted] possessed the requisite information necessary to adequately assess the nature of the Petitioner's position.

Therefore, the letter from [redacted] does not support the Petitioner's assertion that the proffered position qualifies as a specialty occupation. Further, [redacted] does not reference or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted.

In addition, [redacted] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in marketing, business administration or a related field. For the reasons we explained above, however, the requirement of a general-purpose bachelor's degree, such as a bachelor's degree in business administration, is inadequate to establish that a position qualifies as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

We may, in our discretion, use advisory opinion statements submitted by the Petitioner as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). 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. *Id.* For efficiency's sake, we hereby incorporate the above discussion regarding the letter into our analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fact that a person may be employed in a position designated by a petitioner as that of a market research analyst and may apply some marketing principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. In this case, the Petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

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 independent, 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.

There are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement and no submission of letters or affidavits from firms or individuals that attest that such firms routinely employ only individuals with a degree in a specific specialty.

The Petitioner also did not submit any job advertisements placed by other similar businesses in the Petitioner's industry to demonstrate that the degree requirement is common in parallel positions among similar organizations.

Therefore, 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 (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*).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

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.

The LCA submitted by the Petitioner in support of the instant petition indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels.[11] Without further evidence, the record of proceeding does not indicate that the proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as

[11] While the Petitioner has not indicated that foreign language is required for the proffered position, it appears that nature of its business may necessitate foreign language for the proffered position. In accordance with the guidance provided by DOL, a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of "Foreign Language Teachers and Instructors," "Interpreters," and "Caption Writers."

a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.[12] For example, 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."[13] The evidence of record does not establish that this position is significantly different from other positions in the occupational category such that it refutes the *Handbook's* information that a bachelor's degree in a specific specialty or its equivalent is not required for the proffered position.

Upon review, we find that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Given that we cannot accord weight to the position evaluation submitted for the reasons discussed above, 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 did not establish that its particular position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

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 a petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must also establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber

[12] The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

[13] For additional information regarding wage levels as defined by DOL, 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.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement 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 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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.

As discussed previously, the Petitioner has stated that the proffered position is not a new one for the company, and submitted a copy of a degree for one of its employee. On motion, the Petitioner submitted a copy of the support letter filed for the same employee which outlines the duties and requirements for the position, along with current pay roll records.

However, as stated above, the record must establish that the Petitioner's imposition of a degree requirement is necessitated by the performance requirements of the position. In this matter, the Petitioner has not explained in sufficient detail why the performance of the proffered duties actually requires the theoretical and practical application of a body of highly specialized knowledge, such that a baccalaureate or higher degree in a specific specialty is necessary.

Moreover, we are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). If any of the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, they would constitute material and gross error on the part of the director. It would be "absurd to suggest that [USCIS] or any agency must treat acknowledged errors as binding precedent." *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve

the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Therefore, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 in a specific specialty, or its equivalent

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

Upon review of the record of the proceeding, we note that the Petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been credibly developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent. Therefore, the evidence of record does not establish that this position is significantly different from other marketing manager positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for marketing manager 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 other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The Petitioner claims that the proffered position "features an atypical combination of circumstances that distinguishes the role its Market Research Analyst will play." The Petitioner highlights its services in both domestic and international commerce, as well as its position as part of an expanding international chain operation, as distinguishing factors that render the proffered duties as more complex than those normally performed by other Market Research Analysts. However, the Petitioner's explanations are insufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). Specifically, the Petitioner has not sufficiently explained why the proffered duties are so specialized and complex that the knowledge required to perform them are usually associated with a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty

degree and did not establish how such a curriculum is necessary to perform the duties it claims are so specialized and complex. Merely identifying "especially relevant" courses that the Beneficiary completed, without more, is insufficient to establish how and why these courses provided the necessary knowledge to perform the proffered duties.

We further incorporate our earlier discussion and analysis regarding the designation of the proffered position in the LCA as a Level I position (the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position falling under this occupational category 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.[14]

The Petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. We, therefore, conclude that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons related in the preceding discussion, 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.[15]

II. CONCLUSION AND ORDER

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.

Cite as *Matter of D-T-C-C-, Inc.*, ID# 14210 (AAO Oct. 16, 2015)

[14] As previously discussed, a Level IV (fully competent) position, for example, 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.

[15] Since the identified bases for denial are dispositive of the Petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.