



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF W- INC.

DATE: MAR. 1, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a supplier of industrial resources, recycling, and manufacturing, seeks to temporarily employ the Beneficiary as a “pricing analyst” under the H-1B nonimmigrant classification. *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. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.¹

II. SPECIALTY OCCUPATION

A. Legal Framework

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.

¹ We follow the preponderance of the evidence standard as specified in *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).

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. Fed. 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 individuals 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 individual, 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 or 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. Proffered Position

The Petitioner described the position in its letter dated July 14, 2015, as follows:²

1. Apply statistical analysis methodology to analyze the pricing data for each product line of the company, including current and historical sales data, customer data, competitors’ data, pricing trends, etc., use key performance criteria such as service levels, sales volume, inventory volume, and saving, etc.

The incumbent will spend approximately 20% of her time on these duties.

2. Build price optimization models based on analyses of variables including cost, value to the customer, market research data, region specific pricing conditions, and competitor price. Build models to assess the financial impact of various pricing scenarios.

The incumbent will spend approximately 10% of her time on these duties.

² These duties are essentially restated from the duties provided in the Petitioner’s support letter dated March 31, 2015.

3. Develop and test various pricing frameworks and analytical techniques suitable to the company's operation and business models.

The incumbent will spend approximately 10% of her time on these duties.

4. Analyze and develop, value-based pricing strategies including segment strategies for the various markets for each product line to achieve targeted growth objectives, and create in depth financial models for all pricing initiatives.

The incumbent will spend approximately 20% of her time on these duties.

5. Work with sales and marketing teams to gather and maintain competitive intelligence as it relates to pricing or market share. Identify segments of customers where opportunity exists to optimize sales, procurement and profitability through price strategies and make recommendations to the management to develop strategies to realize these opportunities.

The incumbent will spend approximately 5% of her time on these duties.

6. Work with the marketing and sales teams to define processes for pricing new products, defining customer and product segmentation models, quantifying variation in willingness to pay and improving price realization and negotiation outcomes across product lines and markets.

The incumbent will spend approximately 10% of her time on these duties.

7. Apply statistical analysis methodology to forecast the future pricing trend by analyzing the current and historical data.

The incumbent will spend approximately 5% of her time on these duties.

8. Maintain and create data extraction tools (primarily using Microsoft Access or Excel tools), linked to the company's system, for all aspects of performance reporting, including Pricing and Gross Margin, Sales History, and Purchase History, etc.

The incumbent will spend approximately 10% of her time on these duties.

9. Develop and maintain a system of analysis to review and report market influence on the price offering, impact on standing offering, and effect on future wins and losses.

The incumbent will spend approximately 5% of her time on these duties.

10. Validate sales quotations for accuracy and profitability.

The incumbent will spend approximately 5% of her time on these duties.

The Petitioner further indicated that it requires at least a bachelor's degree in business for the proffered position. We note that, on appeal, the Petitioner provides a more detailed position description that elaborates on the skills required to perform the proffered duties than those stated above, which we also reviewed.

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

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)(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.

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.³ 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 may require a master's degree. Strong math and analytical skills are essential.

Education

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

³ All references are to the 2016-2017 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/ooh/>. 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 or consumer behavior, 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's degree in business administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

Licenses, Certifications, and Registrations

Certification is voluntary, but analysts may pursue certification to demonstrate a level of professional competency. The Marketing Research Association offers the Professional Researcher Certification (PRC) for market research analysts. Candidates qualify based on experience and knowledge; they must pass an exam, be a member of a professional organization, and have at least 3 years working in opinion and marketing research. Individuals must complete 20 hours of industry-related continuing education courses every 2 years to renew their certification.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2016-17 ed., Market Research Analysts, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm> (last visited Feb. 26, 2016).

When reviewing the *Handbook*, we must note that the Petitioner designated the proffered position under this occupational category at a Level I on the LCA.⁴ This 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 her work

⁴ 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.

closely monitored and reviewed for accuracy. 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 positions located within the market research analyst occupational category 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 individuals in this occupational category 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 and consumer behavior) are also important. Therefore, although the *Handbook* indicates that employees 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.⁵ 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 backgrounds in business administration, the social sciences, or communications." Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding

⁵ 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.

that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.⁶

That is, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty (or its equivalent) that is directly related to the proposed position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation.⁷ Accordingly, as the *Handbook* indicates that working in positions located within the market research analyst occupational category does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the 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.⁸

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

⁶ 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: otherwise, 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.

⁷ A general degree requirement does not necessarily preclude a proffered position from qualifying as a specialty occupation. For example, an entry requirement of a bachelor's or higher degree in business administration with a concentration in a specific field, or a bachelor's or higher degree in business administration combined with relevant education, training, and/or experience may, in certain instances, qualify the proffered position as a specialty occupation. In either case, it must be demonstrated that the entry requirement is equivalent to a bachelor's or higher degree in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

⁸ 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/about> (last visited Feb. 26, 2016).

three years of relevant industry experience). Specifically, the Market Research Association emphasizes that the credentialing program differentiates the individual who takes it and provides a “badge” of competence that the individual is current in knowledge and experience. 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 addition, we find that the Occupational Information Network (O*NET) Summary Report, referenced by the Petitioner, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor’s degree in a specific specialty, or its equivalent. On February 26, 2016, we accessed the pertinent section of the O*NET Internet site relevant to 13-1161.00 – Market Research Analysts and Marketing Specialists. Contrary to the assertions of the Petitioner, O*NET does not state a requirement for a bachelor’s degree for this occupation. Rather, it assigns this occupation a Job Zone “Four” rating, which groups it among occupations for which “most . . . require a four-year bachelor’s degree, but some do not.” O*NET Summary Report for “13-1161.00 – Market Research Analysts and Marketing Specialists,” <http://www.onetonline.org/link/summary/13-1161.00> (last visited Feb. 26, 2016); O*NET Help – Job Zones, <http://www.onetonline.org/help/online/zones> (last visited Feb. 26, 2016). Further, O*NET does not indicate that four-year bachelor’s degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET information is not probative of the proffered position being a specialty occupation.

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.⁹

⁹ 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*

In the district court case, the employer designated the position as a “Marketing Analyst & Specialist” position.¹⁰ 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.¹¹

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.¹² The occupational category designated by a petitioner is considered as an aspect 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

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.

¹⁰ 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.

¹¹ 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).

¹² In *Raj*, the court quoted a brief excerpt from the *Handbook*; however, the quotation is from the 2012-2013 edition rather than the current 2016-2017 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 PRC credential – and therefore to work as a market research analyst.

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. The claimed requirement of a degree in such majors as "Business" or "Business Administration" for the proffered position, without further specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

In the appeal, the Petitioner also 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.

The Petitioner also cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). In *Tapis Int'l v. INS*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something

equivalent is by studying a related field (or fields) and then obtaining specialized experience.” *Id.* at 177.

We agree with the district court judge in *Tapis Int’l v. INS*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor’s degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. Moreover, we also agree that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor’s degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, 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 a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis Int’l v. INS* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor’s degree in that field. In other words, we do not find that *Tapis Int’l v. INS* stands for either (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the Beneficiary. A beneficiary’s credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether a beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. at 560 (“The facts of a beneficiary’s background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].”).

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term “specialty occupation” could not be expanded “to include those occupations which did not require a bachelor’s degree in the specific specialty.” 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that “the definition of specialty occupation was too

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severe and would exclude certain occupations from classification as specialty occupations,” the former INS stated that “[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor’s degree in the specific specialty or its equivalent]” and, therefore, “may not be amended in the final rule.” *Id.*

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis* or *Residential Fin. Corp.*¹³

Further, the Petitioner submitted a professional position evaluation prepared by [REDACTED] Dean of the School of Management at the [REDACTED] [REDACTED] stated that the proffered position requires the attainment of at least a bachelor’s degree in business administration or the equivalent. However, [REDACTED] does not provide a substantive, analytical basis for his opinion and ultimate conclusion. For example, 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 substantive, in-depth 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 [REDACTED] 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). However, [REDACTED] states that the “complexity of the duties of the pricing analyst position at [the Petitioner] dictates that it can only be filled with someone with at least a bachelor’s degree in business administration or equivalent.” We consider this a significant omission, as 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.

In addition, [REDACTED] finds that the proffered position requires the attainment of a bachelor’s degree or its equivalent in business administration. 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.

¹³ Moreover, the district judge’s decision in *Residential Fin. Corp.* 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 Director’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.

(b)(6)

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We may, in our discretion, use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (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.* Therefore, we find [REDACTED] letter unpersuasive. 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).

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. Nor is there any other evidence for consideration under this prong.

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.

Again, 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. 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 a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.¹⁴ 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.”¹⁵ 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 significant 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.

¹⁴ 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.

¹⁵ 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.

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 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* section 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. 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.

The Petitioner has stated that the proffered position is a new one for the company. 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 this particular 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 the Petitioner normally requires at least a bachelor's degree in a specific specialty

or its equivalent for the position. 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 find 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 market research or price analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for positions located within the market research analyst occupational category, 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.

As evidence of the position's complexity, the Petitioner submitted a forecasting model prepared by the Beneficiary when she worked for the Petitioner during her period of F-1 "Optional Practical Training." 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, although the Petitioner submits a list of courses the Beneficiary took on appeal that relate to the proffered duties, 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

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a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.¹⁶

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.¹⁷

III. 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.

Cite as *Matter of W- Inc.*, ID# 15803 (AAO Mar. 1, 2016)

¹⁶ 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.

¹⁷ 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.