



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

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

In Re: 8868140

Date: JULY 17, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (H-1B)

The Petitioner, a cabinetry manufacturer and distributor, seeks to temporarily employ the Beneficiary as a “business development specialist” under the H-1B nonimmigrant classification for specialty occupations.¹ The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish that the proffered position qualifies as a specialty occupation. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.² We review the questions in this matter *de novo*.³ Upon *de novo* review, we will dismiss the appeal.

I. 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates this statutory definition but adds a non-exhaustive list of fields of endeavor. In addition, the regulations provide that the proffered position must meet one of the following criteria to qualify as a specialty occupation:

¹ Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b)

² Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

³ See *Matter of Christo’s Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

- (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.

8 C.F.R. § 214.2(h)(4)(iii)(A). We construe the term “degree” to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed 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”); *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000).

II. EDUCATIONAL QUALIFICATIONS

Preliminarily, we note that the Petitioner provided unclear and inconsistent statements regarding its educational requirements for the proffered position. In its initial support letter, the Petitioner stated that its minimum educational requirement for entry into the proffered position is “a bachelor’s degree in business administration, marketing and related fields.” In the same initial letter, the Petitioner replaced the “and” in the above phrase with an “or,” thereby suggesting that not all of the qualifying fields were required, but rather, at least one of them. In other words, that a bachelor’s degree in business administration *or* marketing would be acceptable.

In its response to the Director’s request for evidence (RFE), however, the Petitioner again used the conjunctive “and” in the phrase, suggesting that a degree in each of the qualifying fields was required. The Petitioner then ranked the qualifying fields by preference, stating that it “is first requesting bachelor’s degree in marketing . . . second requesting a bachelor’s degree in Business Administration a degree with course study and body of knowledge directly related to/overlapping with the degree in marketing.” The construction of this statement again suggests that a bachelor’s degree in business administration *or* marketing would be acceptable.

Later in the same RFE response, the Petitioner pivots again to require all fields when it states that it “does not merely demand a bachelor’s degree just in business administration as its only requirement for the position, but it also specifically requires marketing and related fields” (emphasis in original). Though the Petitioner acknowledged that a marketing concentration within a business administration degree exists, it did not state that such a concentration is required for the position. Subsequently in the same RFE, the Petitioner again uses the “and” conjunctive when articulating its degree requirements, but also adds a requirement for the completion of specific courses in “marketing, statistics, finance, or related subjects” in order to qualify for the position.

In at least two articulations of its requirements, the Petitioner appears to state that a bachelor's degree in business administration, with no further specification, would be sufficient to enter into the position. In response to the Director's RFE, the Petitioner modified its requirements several times, subsequently adding further specification.⁴ When viewing these statements collectively, it is unclear if the position requires a bachelor's degree in business administration; in marketing; in marketing *and* business administration; in business administration *and* marketing *and* a related field; or in business administration with the specifically listed courses.⁵

The Director's decision informed the Petitioner that its requirement for a general-purpose degree, such as business administration, without further specialization or explanation, was insufficient. On appeal, the Petitioner repeats much of the information it already provided in its RFE response, lending little additional clarity to its requirements. In fact, the information provided on appeal reinforces the conclusion that the Petitioner has not clearly defined its educational requirements for the position.

On appeal, the Petitioner emphasizes that a bachelor's degree in business administration alone *is* an acceptable field to enter into the proffered position. The Petitioner argues that it requires a bachelor's degree in business administration because the coursework of such a degree program overlaps with marketing. As such, the Petitioner appears to presuppose that all business administration degree programs have "extensive marketing courses" included and that this marketing component is sufficient to establish that the business administration bachelor's degree is a specialized field of study. The Petitioner has not provided sufficient support for a conclusion that bachelor's degrees in business administration are closely correlated with marketing so as to overcome their otherwise generalized nature. Once again, the Petitioner does not state that it requires a bachelor's degree in business administration with a concentration in marketing, but simply that such an option exists.

Paradoxically, the Petitioner also argues on appeal that a bachelor's degree in business administration is *not* sufficient to enter the position, but that the Petitioner "also specifically requires marketing and related fields." In support, the Petitioner references a chart listing the marketing courses that provide the requisite knowledge to perform the duties of the proffered position. The chart also lists the courses undertaken by the Beneficiary in his business administration degree program, which overlap and provide the same knowledge as those listed as "marketing major" courses. The Petitioner does not provide evidence that these marketing major courses are covered in business administration bachelor's degree programs generally. Rather, this chart simply indicates that the Beneficiary has taken the marketing courses the Petitioner requires. It is relevant to note that the test to establish a position as a

⁴ It is well established that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). Because a petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication,⁴ a visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978). As such, eligibility for the benefit sought must be assessed and weighed based on the facts as they existed at the time the instant petition was filed. In order for a petitioner to comply with 8 C.F.R. § 103.2(b)(1) and USCIS to perform its regulatory duties under 20 C.F.R. § 655.705(b), a petitioner must file an amended or new petition, along with a new LCA certified by DOL, in order to capture any material changes in terms or conditions of employment or the beneficiary's eligibility.

⁵ Due to the disjointed nature of the Petitioner's statements, it also appears semantically possible that the Petitioner requires separate bachelor's degrees each in the fields of business administration, marketing, and a related field.

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.⁶ We further note that the Beneficiary took many of the referenced marketing courses in a master's degree program, not a bachelor's degree program.⁷ As such, this chart does not evidence that a degree in business administration overlaps with marketing or includes "extensive marketing courses" such that it would be considered a specialized field of study.

Though the Petitioner's requirements remain unclear, we note generally that a claimed entry requirement for at least a bachelor's degree, or equivalent, in business administration, without more, is inadequate to establish that the proffered position qualifies as a specialty occupation.⁸ 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. There must be a close correlation between the required specialized studies and the position. Thus, the mere requirement of a general degree, such as business administration, without further specification, does not establish the position as a specialty occupation.⁹ Though the Petitioner has identified marketing as a further specification, it has not established how general business administration bachelor's degrees have a marketing component sufficient to establish that the overall degree is in a specialized field.

Therefore, if a bachelor's degree in business administration is sufficient to enter into the proffered position, it cannot be concluded that the proffered position requires anything more than a general bachelor's degree. Accordingly, the proffered position does not qualify under the definition of a specialty occupation and the appeal must be dismissed on this basis alone. Even setting aside the foregoing analysis, we still conclude that the proffered position is not a specialty occupation because the evidence of record does not satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)-(4).

III. ANALYSIS

Upon review of the record in its totality and for the reasons set out below, we conclude that the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation. Specifically, the

⁶ We are required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether the beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

⁷ The Petitioner claims its minimum educational requirement for the proffered position is a bachelor's level education, but this appears inconsistent with the Petitioner's continued reference to the Beneficiary's master's degree courses as the reason he is qualified for the position. This indicates that the Petitioner has not clearly defined its educational requirements.

⁸ 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 combined with relevant education, training, and/or experience could, 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.

⁹ *Royal Siam Corp.*, 484 F.3d at 147 (a general-purpose bachelor's degree in business may be a legitimate prerequisite for a particular position, but such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation). *See also Irish Help at Home LLC v. Melville*, No. 13-cv-00943-MEJ, 2015 WL 848977 (N.D. Cal., Feb. 24, 2015), *aff'd* 679 Fed. App'x 634 (9th Cir. 2017).

record (1) does not describe the position's duties with sufficient detail; and (2) does not establish that the job duties require an educational background, or its equivalent, commensurate with a specialty occupation.¹⁰

A. First Criterion

We turn first 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. To inform this inquiry, we will consider the information contained in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* regarding the duties and educational requirements of the wide variety of occupations it addresses.¹¹

The Petitioner designated the position on the labor condition application (LCA) as a Standard Occupation Classification (SOC) code 13-1161, "Market Research Analysts and Marketing Specialists" occupation, at a Level I wage.¹² The Petitioner asserts that the duties of the proffered position are most closely aligned with the generalized duties listed in the *Handbook* for "Market Research Analysts." The *Handbook's* subchapter entitled "How to Become a Market Research Analyst" does not indicate that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required for entry into market research analysts' positions.

In the initial summary of this subchapter, the *Handbook* recognizes that "[m]ost market research analysts need at least a bachelor's degree" while also reporting that "[s]ome research positions may require a master's degree" and that "[s]trong math and analytical skills are essential."¹³ Thus, generally these positions may require a bachelor's degree and some skills, but not a bachelor's degree in a specific specialty, or its equivalent. Although the *Handbook* also reports that "[m]arket research analysts typically need a bachelor's degree in market research or a related field," it then adds that "[m]any have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications."¹⁴

The *Handbook's* observation that disparate fields of study, including statistics, computer science, and the social sciences, may qualify a worker to enter positions in the "Market Research Analysts" occupational category indicates that there is no normal minimum entry requirement that the bachelor's or higher degree

¹⁰ The Petitioner submitted documentation to support the H-1B petition, including evidence regarding the proffered position and its business operations. While we may not discuss every document submitted, we have reviewed and considered each one.

¹¹ We do not maintain that the *Handbook* is the exclusive source of relevant information. That is, the occupational category designated by the Petitioner is considered as an aspect in establishing the general tasks and responsibilities of a proffered position, and we regularly review the *Handbook* on the duties and educational requirements of the wide variety of occupations that it addresses. Nevertheless, 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.

¹² A petitioner submits the LCA to DOL to demonstrate that it will pay an H-1B worker the higher of either the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to other employees with similar duties, experience, and qualifications. Section 212(n)(1) of the Act; 20 C.F.R. § 655.731(a).

¹³ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Market Research Analysts, at <https://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm> (last visited Jul. 16, 2020).

¹⁴ *Id.*

be *in a specific specialty*, or its equivalent. That is, the *Handbook* does not describe the normal minimum educational requirement for the occupation in a categorical manner, other than recognizing that these occupations generally require a bachelor's degree. Here, the *Handbook* does not establish that a bachelor's degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupational category.

In its RFE response and on appeal, the Petitioner argues that the fields the *Handbook* lists are a limited spectrum of degrees and that the Market Research Analyst category “is a distinct occupation with a specialized course of study, which may include multiple specialized but limited fields.” Further, the Petitioner argues on appeal that the Director overlooked that these fields are interrelated and overlap such that they form a limited area of specialty. However, the Petitioner does not offer sufficient evidence to support its conclusions. For instance, the Petitioner does not explain how or why a social science field such as sociology, anthropology, or psychology interrelates and overlaps with computer science or math, such that they form a limited area of specialty.

In its RFE response and on appeal, the Petitioner cites several cases in support of its petition, including *Residential Finance Corp. v. USCIS* for the proposition that “there is no apparent requirement that the specialized study needed be in a single academic discipline as opposed to a specialized course of study in related business specialties.”¹⁵ We generally agree with the aforementioned proposition, provided that 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.

Because there must be a close correlation between the required “body of highly specialized knowledge” and the position, however, a minimum entry requirement of a degree in disparate fields, such as computer science and social sciences, would not meet the statutory requirement that the degree be “in *the* specific specialty (or its equivalent),”¹⁶ unless the Petitioner establishes how each field is directly related to the duties and responsibilities of the particular position.¹⁷ In the instant case, the Petitioner has provided insufficient evidence to establish the minimum requirements for the proffered position and did not adequately address its requirement for a general-purpose degree.

The Petitioner cites to *Tapis Int'l v. Immigration and Naturalization Service*¹⁸ to remind us that a position may be specialized even when the position permits more than one specific specialty for entry into it. In *Tapis Int'l*, we note that 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

¹⁵ *Residential Finance Corp. v. USCIS*, 839 F. Supp. 2d 985 (S.D. Ohio 2012).

¹⁶ Section 214(i)(1)(B) of the Act (emphasis added).

¹⁷ The court in *Residential Finance* did not eliminate the statutory “bachelor's or higher degree in the specific specialty” language imposed by Congress. Rather, it found that the petitioner in that case had *satisfied* the requirement.

¹⁸ *Tapis Int'l v. Immigration and Naturalization Service*, 94 F. Supp. 2d 172 (D. Mass. 2000).

experience based training.”¹⁹ 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.”²⁰

We agree with the district court judge in *Tapis Int’l*, 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. We incorporate herein by reference our discussion of closely related specialties as it pertained to our analysis of the *Residential Finance* case above. 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 conclude, 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.

Furthermore, 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.”²¹ More specifically, in responding to comments that “the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations,” the former INS stated that “[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor’s degree in the specific specialty, or its equivalent]” and, therefore, “may not be amended in the final rule.”²²

The Petitioner also cites to *Next Generation Tech., Inc. v. Johnson*²³ as relevant here and uses it to support a conclusion concerning the meaning of what is “normally” the minimum requirement for the position. We question the applicability of *Next Generation Tech., Inc.* in the instant matter, as it analyzed our reading of the *Handbook* concerning the entry requirements for positions located within the different and separate occupational category of “Computer Programmers,” rather than the “Market Research Analysts” category designated by the Petitioner in the LCA relating to this case.

As noted above, the *Handbook* does not indicate that a bachelor’s degree *in a specific specialty*, or its equivalent, is normally required for entry into this occupation. While the *Handbook* may establish the first regulatory criterion for certain professions,²⁴ many occupations are not described in such a categorical manner.²⁵ For example, “[the *Handbook*’s] description for the Computer Programmer occupation does not describe the normal minimum educational requirements of the occupation in a

¹⁹ *Tapis Int’l v. INS*, 94 F. Supp. 2d at 176.

²⁰ *Id.* at 177.

²¹ Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 56 Fed. Reg. 61,111, 61,112 (Dec. 2, 1991) (to be codified at 8 C.F.R. pt. 214).

²² *Id.*

²³ *Next Generation Tech., Inc. v. Johnson*, 328 F. Supp. 3d 252 (S.D.N.Y. 2017).

²⁴ Such professions would include surgeons or attorneys, which indisputably require at least a bachelor’s degree for entry into the occupation.

²⁵ See *Innova Sols., Inc. v. Baran*, 2019 WL 3753334, at *8 (N.D. Cal. Aug. 8, 2019) (declining to follow *Next Generation Tech., Inc.*).

categorical fashion.”²⁶ In such a case, “[the Petitioner] could not simply rely on [the *Handbook*] profile, and instead had the burden to show that the particular position offered to [the Beneficiary] was among the Computer Programmer positions for which a bachelor’s degree was normally required.”²⁷

Moreover, the court in *Next Generation Tech., Inc.* relied in part on a U.S. Citizenship and Immigration (USCIS) policy memorandum regarding “Computer Programmers” indicating generally preferential treatment toward computer programmers, and “especially” toward companies in that particular petitioner’s industry. However, USCIS rescinded the policy memorandum cited by the court in *Next Generation Tech., Inc.*²⁸

The Petitioner cites to *Raj and Co. v. USCIS*, and claims that it is relevant here.²⁹ We reviewed the decision; however, the Petitioner has not established that the duties and responsibilities, level of judgment, complexity, supervisory duties, independent judgment, or amount of supervision in that case are analogous to the position proffered here.³⁰ There is little 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 the agency’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.³¹

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.

²⁶ *Id.*; see also *Xiaotong Liu v. Baran*, 2018 WL 7348851 (C.D. Cal. Dec. 21, 2018).

²⁷ See *Innova Sols., Inc.* 2019 WL 3753334, at *8.

²⁸ See USCIS Policy Memorandum PM-602-0142, *Rescission of the December 22, 2000 “Guidance memo on H1B computer related positions”* (Mar. 31, 2017), <https://www.uscis.gov/sites/default/files/files/nativedocuments/PM-6002-0142-H-1BComputerRelatedPositionsRecission.pdf>.

²⁹ *Raj and Co. v. USCIS*, 85 F. Supp. 3d 1241, 1246 (W.D. Wash. 2015).

³⁰ We note that the Director’s decision was not appealed to our office. 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 in our *de novo* review of the matter.

³¹ 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).

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.³² 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.

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.

In any event, the Petitioner has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Finance*,³³ *Tapis Int’l*, *Raj* or any of the other cases it cites. 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.³⁴ 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.³⁵ It is also important to note that in a subsequent case reviewed in the same jurisdiction, the court agreed with our analysis of *Residential Finance*.³⁶

Regardless of the district court case law, 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.³⁷

³² 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.

³³ The district judge’s decision appears to have been based largely on the many factual errors made by the Director in the 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.

³⁴ See *Matter of K-S-*, 20 I&N Dec. 715, 719-20 (BIA 1993).

³⁵ *Id.*

³⁶ See *Health Carousel, LLC v. USCIS*, No. 1:13-CV-23, 2014 WL 29591 (S.D. Ohio 2014).

³⁷ See generally *Defensor*, 201 F.3d 384.

The Petitioner relies on the DOL's Occupational Information Network (O*NET) summary report for "Market Research Analysts and Marketing Specialists," to support its conclusion that because 100% of employers report requiring at least a bachelor's degree, the position thereby qualifies as a specialty occupation. The O*NET Summary Report does not establish that a bachelor's degree *in a specific specialty*, or the equivalent, is normally required. It provides general information regarding the occupation, but it does not support a conclusion that the proffered position requires a bachelor's degree in a specific specialty, or the equivalent.

Instead, O*NET assigns these positions a "Job Zone Four" rating, which states "most of these occupations require a four-year bachelor's degree, but some do not." Moreover, the Job Zone Four designation does not indicate that any academic credentials for Job Zone Four occupations must be directly related to the duties performed. In addition, the specialized vocational preparation (SVP) rating designates this occupation as 7 < 8. An SVP rating of 7 to less than ("<") 8 indicates that the occupation requires "over 2 years up to and including 4 years" of training. While the SVP rating indicates the total number of years of vocational preparation required for a particular position, it is important to note that it does not describe how those years are to be divided among training, experience, and formal education. The SVP rating also does not specify the particular type of degree, if any, that a position would require.³⁸ Moreover, the respondents' positions within the occupation are not distinguished by career level (e.g., entry-level, mid-level, senior-level). Furthermore, the graph in the summary report does not indicate that the "education level" for the respondents must be in a specific specialty. For all of these reasons, O*NET does not establish the proffered position as a specialty occupation.

The Petitioner argues that the Director failed to read the O*NET summary report in conjunction with the knowledge areas listed for the occupational category. The Petitioner points out the O*NET knowledge areas of sales and marketing; administration and management; mathematics, including statistics; and economics and accounting for the occupational category. Specifically, the Petitioner argues that O*NET supports a conclusion that the occupational category as a whole is specialized because these knowledge areas form a limited spectrum of degree fields. The Petitioner does not provide sufficient evidence to support such a conclusion and has made no attempt to explain how, for instance, mathematics and management, or sales and statistics are related degree fields such that the spectrum of knowledge is limited and specialized.

The Petitioner has not provided sufficient documentation from a probative source to substantiate its assertion regarding the minimum requirement for entry into this particular position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

B. Second Criterion

The second criterion presents two, alternative prongs: "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

³⁸ For additional information, see the O*NET Online Help webpage available at <http://www.onetonline.org/help/online/svp>.

a degree[.]” 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added). The first prong contemplates common industry practice, while the alternative prong narrows its focus to the Petitioner’s specific position.

1. First Prong

To satisfy this first prong of the second criterion, the Petitioner must establish that the “degree requirement” (i.e., a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent) is common to the industry in parallel positions among similar organizations.

We generally consider the following sources of evidence to determine if there is such a common degree requirement: 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 establish that such firms “routinely employ and recruit only degreed individuals.”³⁹ As noted, the *Handbook* does not indicate that a bachelor’s degree in a specific specialty is a common requirement within the industry for parallel positions among similar organizations. Also, the Petitioner did not submit evidence from an industry professional association or from firms or individuals in the industry indicating such a degree is a minimum requirement for entry into the position.

In support of its assertion that the degree requirement is common to the Petitioner’s industry, the Petitioner submitted several articles about the market research analyst occupational category. While the market research analyst articles provide statistical data on the occupational category, the information concerning the educational requirements directly draws upon and quotes the information contained in the *Handbook*. Thus, these articles do not lend any additional clarity as to the degree requirements for the occupational category beyond what the *Handbook* already states.

The Petitioner also submitted job vacancy announcements for our consideration under this prong.⁴⁰ To be relevant for consideration, the job vacancy announcements must advertise “parallel positions,” and the announcements must have been placed by organizations that (1) conduct business in the Petitioner’s industry and (2) are also “similar” to the Petitioner. These job vacancy announcements do not satisfy that threshold. Upon review of the documents, we conclude that the Petitioner’s reliance on the job announcements is misplaced.

We will first consider whether the advertised job opportunities could be considered “parallel positions.” Several of the postings feature duties that do not readily relate to the proffered position’s duties. For instance, some positions indicate sales and promotions-based positions with duties concerning photo shoots, product launches, social media, and requests for proposals. Other positions feature information

³⁹ 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) (considering these “factors” to inform the commonality of a degree requirement)).

⁴⁰ The Petitioner submitted several job postings with its initial petition filing, others in its RFE response, and several more on appeal. Though we have reviewed each posting individually, for brevity’s sake, we draw attention to specific examples from the collective sampling. We note, however, the postings submitted with the initial filing are documents formatted by the Petitioner and do not contain the original identifying information of a website printout. Though the Petitioner lists the link and the date it printed the document, the actual printout of the advertisement and the dates of when these postings were advertised has not been included. Therefore, these printouts have diminished probative value.

technology, customer service liaison related work, and third-party business intelligence tools, none of which feature prominently in the Petitioner's description of the proffered position. Several position descriptions are too vague and general to make a determination as to similarity with the proffered position. For instance, bulleted duties such as "[re]gular punctual attendance," "[c]oordinates planning and status meetings," and "perform other duties as assigned" do not assist us in understanding the nature of the position. Additionally, all postings appear to be full-time positions, whereas the proffered position is part-time. As such, the Petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions parallel those of the proffered position.

While the Petitioner contends that these positions are parallel to the proffered position, many of the positions require extensive experience beyond a bachelor's degree. Some postings advertise managerial positions or more senior roles than the proffered position, as evidenced by requirements for a bachelor's degree along with a range between two to five years of additional experience. If these are parallel positions as claimed, then the Petitioner has not resolved how payment of a Level I wage to the Beneficiary correlates to the experience the position requires. If alternatively, the positions are not parallel, but rather represent a different or more specialized position than the proffered position, then the postings have no relevance in establishing an industry standard for positions located within the occupational category. In either instance, these postings suggest that the LCA may be inconsistent with the Petitioner's claims and the evidence within the record.

Nor does the record contain documentary evidence sufficient to establish that these job vacancy announcements were placed by companies that (1) conduct business in the Petitioner's industry and (2) are also "similar" to the Petitioner. When determining whether the employer posting a job listing and the Petitioner share the same general characteristics, factors to be considered may include information regarding the nature or type of organization and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing. Here, the Petitioner is a twenty-employee durable goods manufacturer with around \$4 million in annual income.⁴¹ While a handful of companies do appear similar, the Petitioner submitted postings from a range of companies including a single employee non-durable goods distribution company with \$43k income, along with a company that has seventy-one employees at a single location and \$32 million in income. On the whole, there is insufficient information about the companies with which to draw conclusions about similarity or industry.

For all of these reasons, the Petitioner has not established that these job vacancy announcements are relevant. Even if that threshold had been met, we would still conclude that they did not satisfy this prong of the second criterion, as they do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is common to the industry in parallel positions among similar organizations. The announcements reflect that the employers accept a variety of degrees including a general-purpose degree in business and a bachelor's degree in any field. As noted above, a requirement of a degree with a generalized title, such as business, without further specification, does not establish that the position

⁴¹ On appeal, the Petitioner argues that when drawing size comparisons, the Director should have considered the Petitioner's parent company, which it claims has 200 employees and \$30 million in income. The Petitioner has not described how the proffered position's duties are applicable to the entire corporate group or feature any work related to the parent company. As such, it is not apparent how the parent company's existence affects the day-to-day activities of the proffered position such that the size and income of the parent company would be a relevant consideration.

qualifies as a specialty occupation.⁴² Other acceptable degrees include business analytics, math, computer science, sales, and marketing. Finally, at least one employer indicated that a specific degree was a preference but not required. As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.⁴³ That is, not every deficit of every piece of evidence has been addressed.⁴⁴

The Petitioner has not provided sufficient probative evidence to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations. Thus, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

2. Second Prong

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.

Upon review of the totality of the record, we conclude that the Petitioner has not sufficiently explained or documented why the proffered position is so complex or unique that a bachelor's degree in a specific specialty is required. For our consideration under this and other criteria, the Petitioner submitted work product samples, a letter about the Petitioner's products and company, as well as an industry research article.

The Beneficiary's work product documents do not readily feature the need for specialized knowledge. For instance, the documents include promotional materials such as product photographs with text and logo overlay, presentation slides, graphs and charts, as well as inventory lists. A basic working knowledge of third-party photo processing software and Excel appear to be sufficient to produce such work. The Petitioner has not explained why a bachelor's degree in a specific specialty is required to produce and manage these portfolios, let alone why it signifies that the proffered position is complex or unique.

The Petitioner claims to be unlike other employers because of its particular type of durable goods products. Even if the Petitioner had substantiated that its furniture materials themselves are complex or unique, this would not establish that the proffered position within the Petitioner's business is complex or unique.⁴⁵ Similarly, providing customized products, something that many companies offer

⁴² *Royal Siam Corp.*, 484 F.3d at 147.

⁴³ The Petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

⁴⁴ Even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the Petitioner does not demonstrate what statistically valid inferences, if any, can be drawn from the job postings with regard to the common educational requirements for entry into parallel positions in similar organizations. *See generally Earl Babbie, The Practice of Social Research* 186-228 (7th ed. 1995).

⁴⁵ The Petitioner stated that its products are E-0 certified, but has not explained, for example, why this makes the proffered

to consumers, does not adequately establish the complexity or uniqueness of the Petitioner as a company, nor does it establish the complexity or uniqueness of the proffered position. In any case, the Petitioner has not substantiated its claims of uniqueness or complexity with regard to either the nature of its materials or the customization of its products.

The Petitioner claims that the proffered position involves applying a proprietary management approach and an in-house strategy framework methodology.⁴⁶ The Petitioner does not explain these concepts or how they relate to its business or marketing approach or why the approach and methodology contribute to the unique or complex nature of the position. We further note that proprietary and in-house information cannot be learned in any bachelor's degree program. As such, we question whether this position could be performed with on-the-job training and a general education.

The Petitioner further states that unlike other employers, the Petitioner "has extensive insights on company's existing international and domestic services and strategic partnerships with key resellers at a global scale." While it is not entirely clear what the Petitioner means by this statement, we acknowledge that the Petitioner likely does have the most insights into its own company operations. It is unclear, however, why this insight in itself would make the Petitioner's business complex or unique, or how the proffered position would be complex or unique when compared to other positions falling within the market research analyst occupational category.

We reviewed the research article on the field of furniture manufacturing and marketing, as well as the Petitioner's comments and highlighting within the document. The Petitioner identified market globalization and the changing landscape of information technology and communications as reasons for the position being complex. Apart from merely making this statement, the Petitioner has not identified how its operations generally, or any specific tasks or duties within the proffered position specifically, are complex or unique because of these factors.

Based off information in the article, the Petitioner identified corporate strategy planning as a factor contributing to the complex nature of the proffered position. The Petitioner does not provide any information about how its corporate strategy planning is complex or unique within the industry or why this planning requires specialized knowledge. The Petitioner also identified the development of strategic alliances with producers and suppliers as an aspect of its industry and a reason that proffered position is complex. However, the proffered position does not appear to have the development of strategic alliances as part of its duties.

As these non-exhaustive examples illustrate, though the Petitioner has identified specific content within this research article, the Petitioner has not connected this information to how it affects the proffered position's duties or the Petitioner's overall business. In other words, simply declaring that the position is complex or unique and that it requires a bachelor's degree in a specific specialty does not adequately explain why. The Petitioner offers conclusory statements with little to no analysis as to how the Petitioner arrived at such a conclusion.

position unique or complex.

⁴⁶ The Petitioner has not substantiated these claims, such as through evidence of a trademark or copyright for the management approach and methodology.

The Petitioner did not sufficiently develop relative complexity or uniqueness as an aspect of the position, and it did not identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Accordingly, the Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

C. Third Criterion

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 satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history.

The record must establish that a petitioner's stated degree requirement is not a matter of preference for high-caliber candidates but is necessitated instead by performance requirements of the position.⁴⁷ Were U.S. Citizenship and Immigration Services (USCIS) limited solely to reviewing the 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 created a token degree requirement.⁴⁸

As discussed in the educational requirements section above, the Petitioner provided inconsistent statements concerning the requirements for the position. As such, we question whether these requirements are self-imposed, rather than dictated by the actual performance of the duties. The Petitioner submitted an Indeed vacancy announcement for the proffered position that states a bachelor's degree in business administration *or* marketing is required. The Petitioner also submitted an internal vacancy announcement for a position different from the proffered position. The material marketing specialist position requires a bachelor's degree in materials studies, statistics or business administration and the duties of this position differ from the proffered position, as they appear to be more focused on supplies, inventory, and materials. As such, this vacancy announcement is not relevant to a discussion of the hiring and recruitment history for the proffered position. Furthermore, we incorporate by reference our previous discussion of the educational requirements for a generalized degree in business administration.

Evidence provided in support of this criterion may include, but is not limited to, documentation regarding the Petitioner's past recruitment and hiring practices, as well as information regarding employees who previously held the position. In its initial letter, the Petitioner submitted the name, title, and education level of a partner in the company. There is no indication that a part owner of the company occupies the same position or has the same duties as the proffered position. Therefore, this information appears to be irrelevant. In its RFE response, the Petitioner submitted this same information again along with similar information concerning a marketing manager and a sales representative.

The record does not include any educational credentials or job duties performed by these employees beyond what is referenced in their resumes, nor does the record contain the job advertisements for their

⁴⁷ See *Defensor*, 201 F.3d at 387-88.

⁴⁸ *Id.*

positions. Therefore, we do not know what the recruitment process for hiring these individuals involved or whether specialized degrees were prerequisites. As such, the record contains insufficient evidence that these individuals have or had the same or similar substantive responsibilities, duties, and performance requirements as the proffered position. Though it has been in business since 2013, the Petitioner has not provided the total number of people it has employed in the past to serve in the proffered position nor has it provided information about its past hiring history for the proffered position.⁴⁹

Consequently, no determination can be made about the Petitioner's normal recruiting and hiring practices for the proffered position when the submitted employment evidence covers only three current employees who occupy positions different than the proffered one. The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

D. Fourth Criterion

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.

When determining whether a position is a specialty occupation, we look at whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge attained through at least a baccalaureate degree in a specific discipline. A crucial aspect of this matter is whether the Petitioner has submitted sufficient and consistent evidence describing the proffered position such that we may discern the nature of the position.

The Petitioner provided a chart of job duties with the percentage of time the Beneficiary will spend on each duty, the knowledge required to perform the duties, how the knowledge is obtained in a marketing major, along with the courses taken by the Beneficiary to establish that he has acquired such knowledge. Not only does the Petitioner fail to explain how the below verbatim duties require specialized knowledge, many of the duties themselves are described in vague and general terms, not allowing us to understand what the Beneficiary will actually be doing when carrying out the undefined tasks.

- Keep all pertinent data current used by marketing analysis and marketing strategy within [the Petitioner's] current business plan;
- Collect information to plan for [the Petitioner's] development/expansion and create new procedures to maximize daily efficiency;
- Cooperate with design and sales department to develop new clients...;
- [A]ssist in coordinating cost collection for budget planning purposes; and
- Assist management to analyze and propose improvements...

⁴⁹ We acknowledge an employee list with the names of the partner and manager highlighted. There is no indication that any of the individuals on this list are or were hired for the proffered position.

The Petitioner does not explain, for example, what tasks are involved in keeping data current. We do not know what information will be collected or how, or whether the Beneficiary or others will plan the development/expansion and how. Furthermore, maximizing daily efficiency appears to relate to time management and it is not apparent how this would require a bachelor's degree in a specific specialty to learn. The words "cooperate with" and "assist" do not identify the Beneficiary's level of involvement in the duty or what exactly the Beneficiary will do to carry out the duty, nor is it apparent why a bachelor's degree in a specialized field would be needed to develop new clients. Overall, the Petitioner has described these duties in overly broad and abstract terms, and it has not explained in detail how these duties require the theoretical and practical application of a body of highly specialized knowledge.

Other duties appear to be administrative or clerical in nature and we question whether they require any specialized knowledge or skill. Updating lists of competitors, attending trainings and trade shows, sharing reports on time, and studying industry journals are all examples of duties that, as described, do not readily require specialized knowledge. Without more, these duties do not indicate that the Beneficiary will be relieved of performing non-qualifying work.

The chart contains other statements that the Petitioner has not explained or substantiated. Though the Petitioner lists duties, knowledge, and courses, it does not meaningfully connect why the knowledge would be needed to perform the duty and why the knowledge must be obtained through a bachelor's degree program of study in a specific specialty. We note, for instance, that teamwork is a required knowledge area listed in the chart, but the Petitioner fails to articulate how working with others in a team is knowledge that must be obtained through a bachelor's degree program. Similarly, the Petitioner states that the following duties require basic micro and macroeconomics to perform:

Cooperate with design and sales department to develop new clients, making business initiatives including creating new symbolic icons, drafting simple and concise messages on symbolic icons, matching new icons with promotion materials; identify new business channels through attending cabinetry industry related trade shows and quarterly events and studying industry journals and publications . . .

The Petitioner has not explained why such duties require any economics knowledge at all, let alone a bachelor's-level knowledge in both micro and macroeconomics. Furthermore, the Petitioner states that statistical decision-making knowledge is required to "[m]aintain professional and technical knowledge by attending all relevant training; choreograph and execute advertising and marketing programs; share daily report and task on enterprise collaboration platform on time." The Petitioner has not explained why this so, nor can we discern from this description why statistical decision-making would be needed to carry out these duties.

Accordingly, we conclude that the Petitioner has not shown that the duties of the position are so complex and specialized that they can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Although some tasks may connote a requirement of familiarity with general business principles, including marketing knowledge, the record is insufficient to establish that the duties require anything more than a few basic courses and a broad educational background. While a few such courses may be beneficial in performing certain duties of the position, the Petitioner, who bears the burden of proof, has not demonstrated how an established curriculum of

such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

We conclude that the Petitioner has not established that its proffered position is one with duties sufficiently specialized and complex to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). We incorporate by reference our earlier discussion and analysis under criterion two.

Consequently, the Petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. CONCLUSION

Because the Petitioner has not satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it has not demonstrated that the proffered position qualifies as a specialty occupation.

The appeal will be dismissed for the above stated reason. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.