

AAU WAC 07 146 54196 (DHS), 2009 WL 1742242

U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Administrative Appeals Office (AAO)

California Service Center

IN RE: Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

Beneficiary: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)
(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

On Behalf of Petitioner: [IDENTIFYING INFORMATION REDACTED BY AGENCY]

File No. WAC 07 146 54196

March 4, 2009

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

The petitioner is a corporation engaged in master planning **real estate** development and property management. To employ the beneficiary in what it has designated as a **real-estate-market-analyst** position, the petitioner endeavors to classify her as a nonimmigrant worker in a **specialty occupation** pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1101(a)(15)(H)(i)(b).

The director denied the petition based upon her determination that the petitioner had failed to establish that the proffered position qualifies as a **specialty occupation** under the statutes and regulations governing the H-1B nonimmigrant classification. The director found that “the duties of the position described by the petitioner appear to reflect many of those performed by **Market Research Analysts** as listed under **Market and Survey Researchers**” in the 2006-2007 edition of the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, but noted, in part, that “sole reliance on a list of duties” resembling those in the *Handbook* or other publications is misplaced, as “[e]ach position must be evaluated based upon the nature and complexity of the actual job duties.” The director specified two reasons “why the record is insufficient to classify the position as that of a **market research analyst**.” The first reason is a combination of her findings (1) that, as described in the record, the proposed duties differ from the *Handbook*’s information about what a **market research analyst** does; and (2) that “it does not appear that the petitioner has the organizational complexity to credibly offer a position for a **Market Research Analyst**,” because the record lacks evidence that the petitioner (a) has staff to gather market data for analysis; and (b) has conducted advertising or sales campaigns based upon its own market analysis. The second reason that the director cited for denying the petition is her finding that the petitioner’s firm is not in one of the industries that the *Handbook* notes as typical employers of **market research analysts**.

On appeal, counsel contends that the record’s descriptions of the proposed duties and the skills required to perform them indicate that only a person with a bachelor’s degree would be qualified to perform the proffered position. Counsel also asserts that the director’s analysis was defective, particularly in her focus on organizational complexity and the fact that the petitioner’s type of firm is not among the industries noted by the *Handbook* as employing the largest number of **market research analysts**.

*2 The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the response to the RFE; (4) the director’s denial letter; and (5) and the Form I-290B, counsel’s brief on appeal,

and copies of the following reports that had been previously submitted: Apple Valley **Marketing Research** Report, Biological Survey Report, Focused Sensitive Wildlife Surveys, and Preliminary Geotechnical Engineering Investigation.

The AAO will first address three aspects of the director's decision with which it disagrees, namely: (1) the director's statement that the 2006-2007 edition of the *Handbook* indicated that **market research analysts** comprise a **specialty occupation** category; (2) the finding that the petitioner's organization was not sufficiently complex for the employment of a **market research analyst**; and (3) the finding that the petitioner would not have a **market-research-analyst** work for the beneficiary because the petitioner's type of firm is not included in the *Handbook's* list of industries employing the largest number of **market research analysts**.

The AAO disagrees with, and thus withdraws, the director's statement to the effect that **market research analysts** comprise a **specialty occupation** category. Contrary to the director's view, the 2006-2007 edition of the *Handbook* does not indicate that entry into positions in that occupation normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. While the 2006-2007 edition of the *Handbook* reports that a baccalaureate degree is the minimum educational requirement for many **market** and **survey research** jobs, it does not indicate that the degrees held by such workers must be in a specific specialty that is directly related to **market research**, as would be required for the occupational category to be recognized as a **specialty occupation**. This is evident in the range of qualifying degrees indicated in the Significant Points that introduces the 2006-2007 *Handbook's* chapter "**Market and Survey Researchers**," which are:

- **Market** and **survey researchers** need at least a bachelor's degree, but a master's degree may be required for employment; continuing education also is important.

- Employment is expected to grow faster than average.

- Job opportunities should be best for those with a master's or Ph.D. degree in **marketing** or a related field and strong quantitative skills.

That the 2006-2007 edition of the *Handbook* does not indicate that **market-research-analyst** positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "Training, Other Qualifications, and Advancement" section of its chapter "**Market and Survey Researchers**," which does not specify a particular major or academic concentration:

*3 A bachelor's degree is the minimum educational requirement for many **market** and **survey research** jobs. However, a master's degree may be required, especially for technical positions, and increases opportunities for advancement to more responsible positions. Also, continuing education is important in order to keep current with the latest methods of developing, conducting, and analyzing surveys and other data. **Market** and **survey researchers** may earn advanced degrees in business administration, **marketing**, statistics, communications, or some closely related discipline. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or **marketing research** firms prior to graduation.

In addition to completing courses in business, **marketing**, and consumer behavior, prospective **market** and **survey researchers** should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to **market** and **survey researchers**, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. Many corporation and government executives have a strong background in **marketing**.

Next, because it concurs with counsel that the petitioner's organizational complexity is not a decisive factor in this particular proceeding, the AAO withdraws this basis for denying the petition. The AAO also withdraws the director's finding as a basis

for denial the type of industry in which the beneficiary would be employed, as the *Handbook* states that **market research analysts** “are employed throughout the economy.” However, as will be discussed below, the AAO finds that the petitioner has not established that the proffered position is a **specialty occupation**. Accordingly, the director's decision to deny the petition shall not be disturbed.

The AAO is not persuaded by counsel's comments on *Unical Aviation, Inc. v. INS*, 248 F. Supp. 2d 931 (D.C. Cal 2002). The material facts of the present proceeding are distinguishable from those in *Unical Aviation*. In contrast to the present proceedings, *Unical Aviation* involves: a position for which there was a companion position held by a person with an MBA; a record of proceedings that included an organizational chart showing that all of the employees in the beneficiary's department held degrees; and, in the Court's words, “sufficient evidence to demonstrate that there is a requirement of specialized study for [the beneficiary's] position.” Also the proffered position and related duties in the present proceeding are different from those in *Unical Aviation*, where the beneficiary was to liaise with airline and Maintenance Repair Organization (MRO) customers in China for supply of parts and services; analyze and forecast airline and MRO demands, to generate plans to capture business; provide after-sales services to customers in China; and develop new products and services for the China market. Further, in *Unical Aviation* the Court partly relied upon *Augut, Inc. v. Tabor*, 719 F. Supp. 1158 (D.Mass. 1989), for the proposition that Immigration and Naturalization Service (INS, now USCIS), had not used an absolute degree requirement in applying the “profession” standard at 8 U.S.C. § 1101(a)(32) for determining the merits of an 8 U.S.C. § 1153(a)(3) third-preference visa petition. That proposition is not relevant here, because now the H-1B **specialty occupation** statutes and regulations, not in existence when INS denied the Augut, Inc. third-preference petition, mandate a degree, or degree-equivalent, in a specific specialty. The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

*4 The AAO acknowledges counsel's comments on the non-precedential decision that he cites on appeal. Aside from restating that, as counsel acknowledges, the decision has no precedential value or binding effect, the AAO disagrees with counsel's interpretation that the case supports the proposition that, in counsel's words, “the petitioner has no burden of proof to establish that the service of a **market research** analysis is necessary for its business operation.” The AAO is unfamiliar with the Immigration Reporter source from which counsel retrieved a copy of the decision, but it found a copy at the Westlaw Internet service, at AAU EAC 94 214 50527, 1995 WL 1798233 (INS). On reading the decision, the AAO found no discussion about a proposed position's necessity to a petitioner's business operations, and no basis for the proposition for which counsel cites it. The AAO bases its decision on the statutory and regulatory framework below, which focuses on the nature of the work proposed for the beneficiary, rather than on the relative importance that such work may have in the overall scheme of the petitioner's business.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a **specialty occupation**.

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

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a **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**, the 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;

*5 (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, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of **specialty occupation**. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of **specialty occupation** would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of **specialty occupation**.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(II), United States 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.

The petitioner's March 26, 2007 letter filed with the Form I-129 states that the beneficiary will: “be responsible for analyzing and promoting the **real estate market** in Southern California;” “establish **research** methodology, design format for data gathering, examine, and analyze statistical data to forecast future **real estate market** trends and sales;” and “be responsible for keeping management informed of **real estate** developments, as well as providing expert insight and rational recommendations for overall business, **marketing** and development strategy.” The letter presents the following duties as “a detailed job description” of the proffered position:

*6 • Work closely with Sales and **Marketing** Manager in developing **marketing** communication strategies and tactics, including advertising, website **marketing**, and direct **marketing**. Furthermore, generating customer incentive programs, enhancing our relationships with existing customers, and developing **marketing** programs.

- **Research market** conditions in time management industry by designing **research** format and methodology for data collection, to help identify potential sales.
- Examine and analyz[e] statistical data and reports to time management industry trends in relationship to the company's **marketing** position in terms of product **research**, development and pricing.
- Attend meetings with our network agents around the world, in order to gain first-hand time management industry-related information so as to assist with the development of new **marketing** projects for [the] Southern California **market**.

In this March 26, 2007 letter, the petitioner also asserts that, "[a]s with any **Real Estate Market Analyst** position in a time management company, the usual minimum requirement for performance of the job duties is a bachelor's degree in Economics, **Marketing**, or related disciplines." The AAO notes that the AAO accords no weight to this claim of a standard educational requirement, as the record lacks documentary evidence of its accuracy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Counsel's letter of response to the RFE describes the petitioner as a firm specializing in **real estate** investment and development in North America; identifies five subsidiaries under the petitioner's leadership; indicates that the petitioner and its subsidiaries are actively involved in numerous **real estate** projects; and states that the petitioner is a fast-growing company managing **real-estate** investment and development. According to the letter, the proffered position "is functional for the petitioner's business development and continuous growth." This RFE-response letter also provides additional descriptions of the proffered position. It states that the **real-estate market-analyst** "will be responsible for all aspects of analysis and **research** for the firm's commercial **real estate** acquisitions, development and asset management teams," and that the job duties of the proffered position include:

- **New Business Development: Research** and analyze potential new retail and residential **real estate** projects.
- **Market Research:** Participate in the acquisition and development teams' efforts to formulate and select target investment strategies, **markets** and opportunities being pursued.
- **Due Diligence:** Work with the acquisitions and development team to obtain **market** information from appraisers, brokers, lenders and others in the industry.
- *7 • **Financial Analysis:** Perform various financial analyses for both prospective investment opportunities as well as assets currently within the firm's portfolio. Create pro forma models for investment properties and sensitivity analyses for project cash flows and investment returns.

Counsel also asserts that the proffered position requires several skills and abilities, namely:

- 1) Ability to develop framework and execute **research** on **market** opportunities independently;
- 2) Strong ability to glean insightful knowledge from large amounts of data and draw conclusions to make recommendations;
- 3) Analyze key industry trends and maintain knowledge of competitive positioning;
- 4) Excellent written and oral communication skills; and
- 5) Excellent analytical skills to respond to evolving needs.

As evident in the duty descriptions excerpted above from the petitioner's letter of March 26, 2007 and counsel's RFE-reply letter, counsel and the petitioner have limited their descriptions of the proffered position and its duties to exclusively generic terms that relate only abstract, general functions, such as analyzing and promoting the **real estate market** in Southern California, establishing **research** methodology, designing formats for data gathering, examining and analyzing statistical data to forecast future **real estate market** developments, providing expert insight and rational recommendations, and participating in the acquisition and development teams' efforts to formulate and select target investment strategies, **markets** and opportunities being pursued. The record contains no substantive information about the on-the-job performance required to execute the generalized functions. The record's job and duty descriptions neither identify nor explain the need for any theoretical and practical applications of highly specialized knowledge. Further, the record's **Market Research** Report and PPR are not indicative of **specialty occupation** work.

The **Marketing Research** Report does not evidence any complex or complicated methodologies in gathering or analyzing the data reported therein, and the AAO finds nothing in that report that indicates that its preparation required the theoretical and practical application of a level of knowledge attained by or usually associated with at least a bachelor's degree in a specific specialty. The report's narrative consists of fundamental concepts that are not indicative of a particular level of academic achievement in any specialty. The report's data is relatively simple and does not indicate the application of any complex analytical methodologies. The PPR consists of a summary page and a single page of dollar amounts and percentages attributed to various categories related to sales, profits, operating expenses, total expenses, and net profit before tax. The document is not accompanied by worksheets or any explanation of the methodology for arriving at the figures. As such, the AAO cannot determine the nature and level of knowledge required to produce the report.

*8 Counsel's list of skills and abilities asserted as necessary for the proffered position are not probative. They are so generally described that they do not indicate that they are the product of any particular level of academic attainment in any specific specialty.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(7), which assigns **specialty occupation** status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The generic statements that comprise this proceeding's information about the proffered position and its duties are sufficient to align the position with the broad occupational category of **Market Research Analysts** as discussed in the *Handbook*. However, as already indicated in the discussion of the 2006-2007 *Handbook*, employers of **market research analysts** do not normally require at least a bachelor's degree, or its equivalent, in a specific specialty. This fact is also clear in the following excerpt from the "Training, Other Qualifications, and Advancement" section 2008-2009 *Handbook's* chapter "**Market and Survey Researchers**, which indicates that a major or concentration in a specific specialty is not a normal aspect of the baccalaureate threshold for entry into the **market-research-analyst** occupation:

Training, Other Qualifications, and Advancement

A bachelor's degree is usually sufficient for entry-level **market** and survey **research** positions. Higher degrees may be required for some positions, however. Continuing education and keeping current with the latest methods of developing, conducting, and analyzing surveys and other data also is important for advancement.

Education and training. A bachelor's degree is the minimum educational requirement for many **market** and survey **research** jobs. However, a master's degree may be required, especially for technical positions.

In addition to completing courses in business, **marketing**, and consumer behavior, prospective **market** and survey **researchers** should take other liberal arts and social science courses, including economics, psychology, English, and sociology. Because of the importance of quantitative skills to **market** and survey **researchers**, courses in mathematics, statistics, sampling theory and survey design, and computer science are extremely helpful. **Market** and survey **researchers** often earn advanced degrees in business administration, **marketing**, statistics, communications, or other closely related disciplines.

While in college, aspiring **market** and survey **researchers** should gain experience gathering and analyzing data, conducting interviews or surveys, and writing reports on their findings. This experience can prove invaluable later in obtaining a fulltime position in the field, because much of the initial work may center on these duties. Some schools help graduate students find internships or part-time employment in government agencies, consulting firms, financial institutions, or **marketing research** firms prior to graduation.

*9 The AAO also notes that while the 2008-2009 *Handbook's* "Job prospects" subsection states that "the best" **market-and-survey-researcher** opportunities for bachelor's degree holder's are for those "with good quantitative skills, including a strong background in mathematics, statistics, survey design, and computer science," it does not specify any particular academic majors or types of bachelor's degree as requirements for hire in the occupation. Further, the AAO's review of the **Marketing Research Association (MRA)** Internet site (www.mra-net.org), provided at the *Handbook's* "Sources of Additional Information" section, found no reference to a specific degree requirement for attaining the organization's Professional Researcher Certification. In fact, the Internet site's Certification Overview section indicates that a particular academic degree is not a requirement for certification, stating that "Professional **Researcher** Certification (PRC) was developed as a powerful tool for **researchers** of all levels of work experience and education."

Because the *Handbook* indicates that entry into the **market-research-analyst** occupation does not normally require a degree in a specific specialty and as the limited extent to which the evidence of record develops the proffered position and its duties does not distinguish the proffered position from the general level of **market research analysts** requiring no more than a bachelor's degree without particular specialization, the *Handbook* does not support the proffered position as being a **specialty occupation**.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns **specialty occupation** status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) 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)).

*10 As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

Contrary to the petitioner's purpose for submitting them, the record's job-vacancy advertisements are not evidence of a common degree-in-a-specific-specialty requirement in positions that are both (1) parallel to the proffered position and (2) located in organizations similar to the petitioner. The advertisements are too few to be indicative of an industry-wide practice. As they are only solicitations for hire, they are not evidence of the advertisers' actual hiring practices. There is no independent evidence of how representative these job advertisements are of the particular employers' recruiting histories for the type of job advertised. Most of the advertisements state only a bachelor's degree requirement, without specifying that the degree be in a particular specialty. The advertisements' content and the record's information about this petition's proffered position and the petitioner's business operations are too limited and generalized to establish that the advertised positions are parallel to the proffered position and that the advertising organizations are similar to the petitioner. Furthermore, the range of the degree requirements cited in the job advertisements are not inconsistent with the *Handbook's* information to the effect that a bachelor's degree in a specific specialty is not normally a requirement for **market-research-analyst** positions.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for **market-research-analyst** positions, including degrees not in a specific specialty related to **market research** analysis. As evident in the earlier discussion about the generalized descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than **market-research-analyst** positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in this decision's earlier discussions of the limited information about the proffered duties, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than **market-research-analyst** positions that are not usually associated with a degree in a specific specialty.

***11** An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

As the petitioner has failed to establish that the proffered position qualifies as a **specialty occupation** under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.

John F. Grissom
Acting Chief
Administrative Appeals Office

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