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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 09 140 50401 Office: CALIFORNIA SERVICE CENTER

Date APR 22 2011

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

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 filed the visa petition on April 1, 2009. On the Form I-129 visa petition the petitioner stated that it is a restaurant with nine employees that was established in 2008. It further stated that it has gross receipts of \$40,000 per month, but did not provide any corroborating evidence of that assertion. It did not provide its net income in the space provided. To employ the beneficiary in what it designates as an accountant position, the petitioner endeavors to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, 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) the Form I-290B and counsel's brief in support of the appeal.

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. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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 also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 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 a particular position 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), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations.

These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The visa petition describes the duties of the proffered position as follows:

Prepare, examine, and analyze accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards; compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements; analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice; report to management regarding the finances of establishment; establish tables of accounts and assign entries to proper accounts; develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs; develop, implement, modify, and document recordkeeping and accounting systems, making use of current computer technology; prepare forms and manuals for accounting and bookkeeping personnel, and direct their work activities; survey operations to ascertain accounting needs and to recommend, develop, or maintain solutions to business and financial problems; and advise management about issues such as resource utilization, tax strategies, and the assumptions underlying budget forecasts.

In a letter dated March 30, 2009 and submitted with the visa petition, [REDACTED] the petitioner's owner reiterated that those are the duties of the proffered position.¹ She also stated, "The minimum educational requirement for the position is a bachelor's degree," but did not state that the bachelor's degree must be in a specific specialty.

In its support letter, the petitioner states that accountant positions in general usually require a bachelor's degree, but does not state that it requires this degree or equivalent experience for the proffered position, nor does it state that the bachelor's degree must be in a specific specialty.

In a letter, dated March 31, 2009 and submitted with the visa petition, counsel cited the Bureau of Labor Statistics *O*Net Online* for the proposition that accounting positions require a bachelor's degree.² Counsel further stated, ". . . an Accountant is considered to be a specialty occupation, [and the beneficiary] has attained the required educational requirement." Counsel stated that the

¹ Actually, in a letter dated May 22, 2009, [REDACTED] stated that her husband, [REDACTED] is the sole member of the petitioning LLC. Reference to the 2008 tax return of [REDACTED] confirms that her husband is listed as the petitioner's proprietor on a Schedule C, Profit or Loss from Business. Elsewhere in the record, however, [REDACTED] routinely refers to herself as the petitioner's owner, and this decision will, for convenience, refer to her as the petitioner's owner.

² *O*Net Online* is accessible on the Internet at <http://www.onetonline.org/>.

beneficiary has a bachelor's degree in accounting from Bangkok University and a master's degree in business administration from Strayer University in Washington, D.C.

Because the evidence did not demonstrate that the visa petition was approvable, the service center, on April 24, 2009, issued an RFE in this matter. The service center requested, *inter alia*, an explanation of the need for a minimum of a bachelor's degree or the equivalent in a specific specialty to perform the duties of the proffered position.

In response, counsel submitted a letter, dated May 22, 2009, from the petitioner's owner. That letter provides a more detailed description of the ostensible duties of the proffered position and states, "The minimum education required for [the proffered position] is a bachelor's degree." It does not state that the degree must be in any specific specialty.

In his own letter, dated May 22, 2009, counsel stated that the position requires a bachelor's degree or the equivalent, but did not identify the subject the requisite degree must be in. Counsel again asserted that the beneficiary has a bachelor's degree in accounting as well as a master's degree in business administration. Counsel also cited the *O*Net Online* and the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for the proposition that accountant positions require a bachelor's degree.³

The director denied the visa petition on July 16, 2009 finding, as was noted above, that the petitioner had not demonstrated that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, and had failed, therefore, to demonstrate that the proffered position is a position in a specialty occupation, and qualified to be considered in the instant visa category. In that decision the director found that the proffered position is a position for a bookkeeper, rather than a position for an accountant.

On appeal, counsel again cited the *O*Net Online* and the *Handbook* for the proposition that accountant positions require a bachelor's degree, and also cited them for the proposition that the instant position is a position for an accountant, rather than a bookkeeper, stating that the duties described by the petitioner fall squarely within the description of accountant positions as described by both *O*Net Online* and the *Handbook*.

The AAO notes that, in discussing accountant positions, *O*Net Online* does not state that they categorically require a bachelor's degree. Rather, it assigns accountant positions a Job Zone Four rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, *O*Net* contains no indication that even those accountant positions that require a bachelor's degree require a degree in any specific specialty.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

Rather, the *O*Net Online* does not indicate that four-year bachelor's degrees required by some Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Moreover, the Education section of the *O*Net Online* section on accountants states that, according to respondents to *O*Net Online* surveys, 5% of accountants have only an associates degree. Therefore, the *O*Net Online* information is not probative of the proffered position's being a specialty occupation.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. To determine whether a particular job qualifies as a specialty occupation position, however, the AAO does not solely rely on the job title or the extent to which the petitioner's descriptions of the position and its underlying duties correspond to occupational descriptions in the *Handbook*. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform.

The AAO notes that the record contains a chart of the positions in the petitioner's restaurant. Although the petitioner would be expected to require the services of a bookkeeper, no such position appears on that chart. Other than the proffered position, the positions at the petitioner's restaurant consist of its president, its managing director, its kitchen staff, and its wait staff. Who would perform the bookkeeping duties is unclear, unless it would be the beneficiary.

Further, the description of the duties of the proffered position states that the beneficiary would "prepare forms and manuals for accounting and bookkeeping personnel, and direct their work activities." The petitioner, however, has no accounting or bookkeeping personnel, and has indicated no inclination to hire any, other than the beneficiary. The organizational chart indicates that the beneficiary would have no subordinates. The inclusion of that duty, which clearly has no applicability to the petitioner's business, suggests that the description of duties provided, rather than pertaining to the instant position, is a generic description of the duties of accountant positions in general. In fact, the description appears to have been lifted, verbatim, from a description of generic accountant duties at http://www.careerdepot.org/Descriptions/job_accountant.htm. Those facts, taken together, suggest that the description of duties provided is not an accurate description of the duties of the proffered position.

The AAO's first point with regard to its analysis of the proffered position is that, despite the petitioner's assumption to the contrary, accountants do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

As will now be discussed, the *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

The “Accountants and Auditors” chapter at the 2010-2011 edition of the *Handbook* indicates that not every accountant position requires least a bachelor’s degree level of knowledge in accounting or a related specialty.

The introduction to the “Training, Other Qualifications, and Advancement” section of the *Handbook* states that “[m]ost accountants and auditors need at least a bachelor’s degree in business, accounting, or a related field.” This does not support the view that any accountant job qualifies as a specialty occupation. “Most” is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor’s degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).⁴ Further, the “Education and training” subsection of the aforementioned section of the *Handbook* includes this statement:

Some graduates of junior colleges or business or correspondence schools, as well as bookkeeping and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to accountant positions by demonstrating their accounting skills on the job.

In this context, the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in accounting. This the petitioner has failed to do.

The AAO notes that, as reflected in the job description quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, such as “[prepare, examine, and analyze accounting records, financial statements, and other financial reports . . .]”; “analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice”; and “advise management about issues such as resource utilization, tax strategies, and the assumptions underlying budget forecasts.” Such statements, the AAO finds, do not convey either the substantive nature of the specific matters upon which the beneficiary would focus or the practical and theoretical level of level accounting knowledge that the beneficiary would have to apply to those matters. As the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal must be dismissed, and the petition denied.

⁴ For instance, the first definition of “most” in *Webster’s New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is “Greatest in number, quantity, size, or degree.”

Thus, the AAO finds that the evidence in this record of proceeding does not establish that the actual work to be performed by the beneficiary would involve the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in accounting. As already noted, to the extent that they are described in the record of proceeding, the proffered position and its duties are not indicative of a specialty occupation. While they indicate that performance of the proffered position may involve the application of some accounting knowledge, they do not establish the extent and educational level of the requisite knowledge. Further, nothing provided in the record of proceeding about the petitioner's business, income, or finances indicates that the beneficiary would be applying at least a bachelor's degree level of accounting knowledge.

Additionally, in light of the dearth of reliable evidence pertinent to the duties of the proffered position and the improbability of such a business employing a full-time accountant, the AAO finds that the petitioner has not established that the beneficiary would perform services above the level of a bookkeeper.

The *Handbook* addresses the duties of bookkeepers in the section entitled Bookkeeping, Accounting, and Auditing Clerks. The *Handbook* describes the duties of those positions as follows:

Bookkeeping, accounting, and auditing clerks are financial recordkeepers. They update and maintain accounting records, including those which calculate expenditures, receipts, accounts payable and receivable, and profit and loss. These workers have a wide range of skills from full-charge bookkeepers, who can maintain an entire company's books, to accounting clerks who handle specific tasks. All these clerks make numerous computations each day and must be comfortable using computers to calculate and record data.

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. Additionally, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

On appeal, counsel asserted that the proffered position had been incorrectly categorized as a bookkeeping position, arguing that the description of the duties of the proffered position provided by the petitioner's owner corresponds closely with the description of the duties of a management accountant contained in the *Handbook*. The AAO notes that, as was explained above, the description of the proffered position's duties provided by the petitioner's owner has been found not to be closely related to the actual duties of the proffered position, based on the inclusion of duties pertinent to instructing and supervising other accountants and bookkeepers, which the petitioner does not have.

The *Handbook* describes the educational requirements of a bookkeeper or bookkeeping clerk position as follows:

Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

In sum, the evidence in the record of proceeding does not establish the proffered position as one for which a bachelor's or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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)).

In the instant case, as was noted above, the *Handbook* does not support the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the record of proceeding contains no documentation from a relevant professional association or from other individuals or firms in the petitioner's industry that establishes a bachelor's degree, or the equivalent, in a specific specialty as the minimum hiring requirement for a position such as the one that is the subject of this petition.

As the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree, or the equivalent, in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, it has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

For reasons detailed above, the AAO has determined that the duty descriptions provided by the petitioner are not an accurate description of the duties the beneficiary would actually perform.

However, as reflected in this decision's earlier discussion regarding the lack of substantive information about the proffered position and the duties comprising it, the record of proceeding does not develop uniqueness or complexity as aspects of the proffered position. The petitioner, therefore, has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty. Thus, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position. Therefore, the petitioner has not demonstrated the history of recruiting and hiring necessary to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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.

Here the AAO incorporates by reference and reiterates its earlier discussions about the generalized and generic nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge of accounting at a level usually associated with at least a bachelor's degree, or the equivalent, in accounting or a related specialty. Nothing about the duties as described in the petition indicates that performance of the proffered position requires a higher degree of knowledge than would normally be required of bookkeeping clerks, accounting clerks, auditing clerks, tax preparers, or other types of employees, including those bearing the title "accountant," who engage in some accounting duties and employ some accounting principles, but not at a level of an accountant position whose performance requires the application of accounting knowledge that is usually associated with at least a bachelor's degree in that specialty.

Again, the AAO does not accept that the provided description of the duties of the proffered position accurately describes the duties the beneficiary would perform. Even if it did, however, that description, and the related evidence and argument, would be insufficient to show that any one of those duties, or any combination of them, is so specialized and complex that knowledge required to perform it or them is usually associated with the attainment of a bachelor's degree or the equivalent in a specific specialty. Preparing tax returns and computing tax liability, for instance, does not necessarily require a bachelor's degree in any specific subject, nor does establishing tables of accounts or reporting to management regarding finances.

As the record of proceeding does not establish that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds

that the argument submitted on appeal has not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

Beyond the decision of the director, the AAO finds that the petition must also be denied because the record of proceeding does not establish that the beneficiary is qualified to perform the services of the type of specialty occupation claimed in the petition. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), and it was in the exercise of this function that the AAO identified this additional ground for denying the petition.

A bachelor's degree does not, *per se*, qualify a beneficiary for employment in a specialty occupation. Rather, the position must require a degree in a specific specialty. *See Matter of Michael Hertz, Assoc.*, 19I&N Dec. 558,560 (Comm. 1988). Further, the beneficiary must have a degree in that specific specialty. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in [section 214(i)(1)(B) of the Act] for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In the instant case, the record contains no evidence, nor even an assertion, that the beneficiary holds an unrestricted state license to practice in the proffered position. No argument was made that the beneficiary qualifies for the proffered position based on experience or training, other than his college degrees. The only evidence that the beneficiary might qualify to perform in the proffered position is evidence pertinent to the beneficiary's education in Thailand and, subsequently, in the United States.

The record contains evidence, including a transcript and a diploma, showing that the beneficiary attended Bangkok University for three full years from the second semester of 1989 to the first semester of 1992 and accumulated 105 semester hours of instruction, which resulted in his being awarded a diploma in business administration from the School of Accounting.⁵ Whether this should be considered a degree in business administration or a degree in accounting, which subjects are far from synonymous, is unclear. Further, the record does not contain an evaluation of the beneficiary's foreign degree, or any other evidence to demonstrate that it is equivalent to a U.S. bachelor's degree in any specific subject. That it was obtained with 105 semester hours of credit obtained in three years suggests that it is not. If the proffered position had been shown to require a minimum of a bachelor's degree or the equivalent in a specific specialty, whatever specific specialty that might be, the beneficiary diploma from Thailand would not have demonstrated that he is qualified to hold that position.

The beneficiary also has a master's degree in business administration, without further specification, from Strayer University, a U.S. institution. If the proffered position were shown to require a minimum of a bachelor's degree or the equivalent in a specific specialty as claimed, that degree would not qualify the beneficiary for the proffered position. A degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. See *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. The AAO's determination in that regard is, of course, dispositive of the appeal.

⁵ A letter, dated January 8, 1993, from the registrar at Bangkok University indicates that it has a School of Business Administration that is separate from its School of Accounting. Given that fact, why the School of Accounting would issue a diploma in business administration is unclear to the AAO. However, reconciliation of this apparent discrepancy is unnecessary to adjudication of the instant visa petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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