

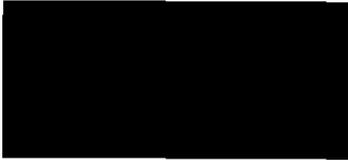
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D2



Date: JUN 13 2012

Office: CALIFORNIA SERVICE CENTER



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:

SELF-REPRESENTED

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 director of the California Service Center 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 claims to be a retail – management, operations & development company with seven employees. It seeks to continue to employ the beneficiary as a financial manager 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 concluding that the position does not meet any of the supplemental, additional criteria for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which requires [(1)] 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 requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must 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 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), 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.

In this matter, the petitioner continues to seek the beneficiary’s services as a financial manager. The petitioner’s support letter submitted with the initial filing indicates that the proffered position would require the beneficiary to perform the following duties:

- Supervise and direct the flow of cash receipts and disbursements to meet the business and investment needs of the company. (10%)
- Prepare financial reports summarize and forecast company's financial position, such as income statements, balance sheets, and analysis of future earnings or expenses. (45%)
- Evaluate financial details for new business before making financial decisions. (10%)
- Compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions. (5%)
- Analyze financial information detailing assets, liabilities, and capital, and prepare balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position, using computers. (10%)
- Audit contracts, orders, and vouchers, and prepare reports to substantiate individual transactions prior to settlement. (5%)
- Establish, modify, document, and coordinate implementation of accounting control procedures. (10%)
- Supports and enhances the ongoing audit process and management of business unit for both profitability and operational improvements. (5%)

The petitioner indicates that the minimum requirement for this position is a bachelor's degree or its equivalent. The submitted job posting describes the educational and experience qualifications for this position is a BS/BBA Degree in economics/business administration/accounting/ finance or its equivalent at minimum. The petitioner submitted an education evaluation from [REDACTED] which concludes that the beneficiary holds the equivalent of an individual with a bachelor of science degree in business administration with a concentration in accounting from an accredited college or university in the United States based on his three year bachelor of commerce degree with a concentration in accounting and auditing from Gujarat University and one year diploma in computer based accounting from Aditech Computers. The record contains copies of the beneficiary's bachelor of commerce degree and transcripts from Gujarat University, and certificate of completion and its transcripts from Aditech Computers.

The submitted Labor condition Application (LCA) was certified for a "Financial Manager" to work at the petitioner's office at [REDACTED] on a part-time basis at an hourly wage of \$23.80.

On May 21, 2010, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation, including detailed description of the actual duties to be performed by the beneficiary, more information about the products and services provided by the petitioner, and its organizational chart showing employees and the positions they occupy.

In response to the director's RFE, the petitioner submitted a letter dated June 22, 2010 stating that they "are always looking for new retail locations to manage and operate so as to increase their revenues." In addition, the petitioner indicated that they have four new locations they are currently

in negotiation for buying and managing.

In addition to the detailed job descriptions of the proffered position, the petitioner also submitted its organizational chart dated June 2010, evaluation report, diplomas and paystubs of an employee of the petitioner alleging that the person has been employed by the petitioner in the position of accountant, and the petitioner's tax return for 2009, W-2 forms for 2008 and 2009, and financial statements for 2007 through 2009.

The director determined that the evidence failed to establish that the petitioner's business in retail gas and grocery is of the financial or organizational scope or complexity to credibly offer a position for a financial manager. In addition, the director stated that as the petitioner is absent a financial staff, all the non-qualifying duties to maintain financial records would be a part of the duties of the position offered. Further, the director indicated that bookkeepers, accounting or auditing clerks are not normally considered specialty occupations. Accordingly, the director concluded that the petitioner did not establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner contends that this is a request for extension of H-1B status for same employer, same employee and same position without any change and the denial is contrary to the procedures laid in AFM and 8 C.F.R. § 103 as well as USCIS policy memo by [REDACTED] on April 23, 2004. The petitioner also contends that the *Occupational Outlook Handbook (Handbook)* states that almost every firm employs one or more financial managers and according to the *Handbook*, a financial manager qualifies as a specialty occupation. In addition, the petitioner asserts that the director erred in concluding that the beneficiary would perform the non-qualifying duties because she ignored the fact that the petitioner has more than one store to manage and has enough staff to perform non-qualifying duties as shown in the organizational chart submitted in response to the director's RFE.

Before the AAO discusses the primary issue, i.e., specialty occupation eligibility, in great detail, the AAO will discuss the issue whether the petitioner submitted sufficient evidence to demonstrate that its job offer to the beneficiary was and has been a realistic and *bona fide* one, and available for the beneficiary to perform actual duties in a specialty occupation as the director brought up the issue in her denial decision.

The petitioner's tax returns in the record show that the petitioner is doing its detail business to sell gas and grocery, and the petitioner's permit from Kansas Department of Agriculture also authorize the petitioner to operate a retail food store. The petitioner did not submit any documentary evidence showing its business necessity for a small gas station and food store with seven employees to hire a financial manager as a specialty occupation. The petitioner claimed that it had seven employees on the petition when it was filed on May 7, 2010. However, the petitioner's tax returns show that the petitioner paid a total of wages and salaries of \$53,500 to its employees in 2007, \$59,305 in 2008 and \$53,911 in 2009. Although the petitioner paid the beneficiary at the level of the proffered wage described on the LCA in support with the previously approved H-1B petition on a part-time basis,

average annual salary for each employee is far below the federal minimum wage.<sup>1</sup> Therefore, the AAO concurs with the director's finding that the petitioner's business was not of the financial scope to credibly offer or continue to offer a position of a financial manager at the time of filing the instant petition.

In response to the director's RFE, the petitioner asserted that it would manage not only the one initially claimed store on the petition, but four additional stores. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). 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). If the instant petition was not approvable at the time of filing because it failed to establish the petitioner's proffer to the beneficiary was a *bona fide* offer, the visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Furthermore, the petitioner did not submit any evidence of purchase showing that the petitioner owns and operates these four additional stores or any management agreements with these stores to provide management services to them. Even if the beneficiary were assigned to work at all these locations, pursuant to the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B), the petitioner must submit an itinerary with dates and locations. Accordingly, the petitioner would fail to provide the requested itinerary, the appeal would be dismissed and the petition would be denied for this additional reason.

On appeal, the petitioner further contends on this argument and provides six business names, addresses and their revenue figures. However, again the petitioner did not submit any evidence showing that it purchased these stores or has contracted with them to manage these stores. Nor does the petitioner provide the requested itinerary with dates and multiple locations. More importantly, the official corporation and business entity database maintained by the Kansas Secretary of State indicates that all of these six business entities are currently in forfeited status in the State of Kansas. *See* <http://www.accesskansas.org/bess/flow/main?execution=e2s12> (last accessed May 3, 2012). 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As previously mentioned, in response to the director's RFE, the petitioner submitted its organizational chart with at least five positions: the president of the petitioner, [REDACTED]; on the top of hierarchy, under the president, there are operations and sales manager, and a financial manager currently occupied by the beneficiary; under the operations and sales manager, there are sales associates (the chart does not indicate the number); and under the financial manager, an

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<sup>1</sup> Average annual salary per person would be approximately \$7,648 in 2007, \$8,472 in 2008 and \$7,702 in 2009.

accountant position occupied by a person named [REDACTED]. To support the assertion that there is an accountant currently working under the beneficiary in the financial manager position, the petitioner also submitted [REDACTED] evaluation report from [REDACTED], bachelor of commerce degree from University of Bombay, certificate of passing final examination from the Institute of Cost and Works Accountants of India, and paystubs for January through April of 2007 showing that [REDACTED] was paid at level of \$4,000 a month during this period.

However, the paystubs do not contain any information about the employer or payer. The record does not contain the petitioner's personnel record or other documentary evidence showing that [REDACTED] was employed by the petitioner in an accountant position and paid \$4,000 per month during the first four months of 2007. Thus, without other supporting evidence, these four paystubs themselves cannot establish that Dave worked and has been working as an accountant under the financial manager for the petitioner in 2007.

The petitioner's Kansas Department of Labor Quarterly Wage Report & Unemployment Tax Return for 2008 and 2009 show that the petitioner paid Dave \$600 in the second quarter and did not pay [REDACTED] in the first and third quarters of 2008, but remained on payroll. In the fourth quarter of 2008 and the first quarter of 2009, [REDACTED] was taken off the petitioner's payroll. [REDACTED] was back to payroll and paid \$323.71 in the second quarter, \$500 in each of the third and fourth quarters of 2009. The W-2 forms issued by the petitioner to [REDACTED] for 2008 and 2009 support the above quarterly wage reports. The W-2 forms show that the petitioner paid [REDACTED] \$600 in 2008 and \$1,323.71 in 2009. Without evidence of compensation of \$600 in 2008 and \$1,323.71 in 2009, the petitioner failed to demonstrate that the petitioner continued to employ [REDACTED] in the position of accountant in 2008 and 2009.

The record does not contain any documentary evidence establishing that the petitioner employed [REDACTED] in the position of accountant in 2010, the year of the submitted organizational chart dated. Without documentary evidence to support the claim, the assertions of the petitioner will not satisfy the petitioner's burden of proof. The unsupported assertions of the petitioner do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the petitioner's assertion on the organizational chart that the petitioner has been employing [REDACTED] in the accountant position under the beneficiary's proffered position, financial manager, and that, the proffered position is a supervisory and managerial position which qualifies as a specialty occupation is misplaced. Accordingly, the AAO cannot accept and consider the organizational chart as evidence to establish the proffered position as a specialty occupation.

For reasons related in the preceding discussion, the petitioner has failed to establish that it offered a bona fide position to the beneficiary to perform actual duties in a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

To make its determination whether the proffered position, as described in the initial petition and in the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific

specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As noted above, the petitioner quoted the *Handbook* under "Financial Managers" to support its assertion that the proffered position is a specialty occupation. The LCA also shows that the petitioner obtained the prevailing wage of a Level I financial manager (SOC/O\*NET code: 11-3031.00) for the proffered position. The *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-2> (last accessed May 3, 2012) describes "Financial Managers" as follows:

Financial managers perform data analysis and advise senior managers on profit-maximizing ideas. Financial managers are responsible for the financial health of an organization. They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization.

#### **Duties**

Financial managers typically do the following:

- Prepare financial statements, business activity reports, and forecasts
- Monitor financial details to ensure that legal requirements are met
- Supervise employees who do financial reporting and budgeting
- Review company financial reports and seek ways to reduce costs
- Analyze market trends to find opportunities for expansion or for acquiring other companies
- Help management make financial decisions

*Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last accessed May 3, 2012) describes "Accountants and Auditors" as follows:

Accountants and auditors examine financial statements for accuracy and conformance with laws. Accountants and auditors prepare and examine financial records. They ensure that financial records are accurate and that taxes are paid properly and on time. Accountants and auditors assess financial operations and work to help ensure that organizations run efficiently.

### **Duties**

Accountants and auditors typically do the following:

- Examine financial statements to be sure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures
- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

**Management accountants**, also called cost, managerial, industrial, corporate, or private accountants, record and analyze the financial information of the organizations for which they work. The information that management accountants prepare is intended for internal use by business managers, not by the general public.

They often work on budgeting and performance evaluation. They may also help organizations plan the cost of doing business. Some may work with financial managers on asset management, which involves planning and selecting financial investments such as stocks, bonds, and real estate.

*Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last accessed May 3, 2012) describes “Bookkeeping, Accounting, and Auditing Clerks” as follows:

Bookkeeping, accounting, and auditing clerks produce financial records for organizations. They record financial transactions, update statements, and check financial records for accuracy.

### **Duties**

Bookkeeping, accounting, and auditing clerks typically do the following:

- Use bookkeeping software as well as online spreadsheets and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) as well as income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared to income), income statements, and totals by account
- Check figures, postings, and reports for accuracy
- Reconcile or note and report any differences they find in the records

According to the *Handbook*, main duties of a financial manager are to oversee the preparation of financial reports, to direct investment activities, and to implement cash management strategies. The occupational group of financial managers include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. As previously discussed, the petitioner failed to demonstrate that the beneficiary in the proffered position would have any financial or accounting staff to oversee, supervise and direct. The record does not contain any evidence showing that the petitioner is seeking to employ the beneficiary in one of the following financial manager positions: controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking.

The petitioner argues that the petitioner seeks to employ the beneficiary in a financial manager position based on the statement in the *Handbook*, 2010-11 ed. that almost every firm, government agency, and other type of organization employs one or more financial managers. However, the plain meaning of the *Handbook*, 2010-11 ed. language indicates that it does not include all companies or business entities by using the term “almost every firm” instead of “every firm”. In addition, the *Handbook* defines the financial manager as a position in which the person oversees the preparation of financial reports, direct investment activities, and implement cash management strategies. The *Handbook* does not recognize a position with a title of financial manager but non-financial management duties as a financial manager in the *Handbook*'s definition. Therefore, the petitioner's assertion is misplaced. Although the petitioner asserts that the proffered position is a financial manager, the AAO finds that most of duties proposed by the petitioner for the proffered position do not resemble those duties described under the chapter of Financial Managers in the *Handbook*.

The description of the duties of the proffered position shows that although the proffered position is petitioned as a financial manager position, the AAO notes that the beneficiary would perform combined duties as described in the sections of Accountants and Auditors and Bookkeeping, Accounting, and Auditing Clerks in the *Handbook* considering the nature, financial scope and organizational structure of the petitioner. In this regard, the AAO has considered all of the assertions of the petitioner in support of the requirements of the position, but finds that they are not supported by the *Handbook* or other documentation in the record.

With respect to education and training requirements for “Accountants and Auditors”, the *Handbook* states as follows:

Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Certification within a specific field of accounting improves job prospects. For example, many accountants become Certified Public Accountants (CPAs).

### **Education**

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a

master's degree, either in accounting or in business administration with a concentration in accounting.

In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

*Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last accessed May 3, 2012).

The *Handbook* only states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." The *Handbook* does not state that such a degree is a normal minimum entry requirement for all accountant and auditor positions. In addition, as noted above, the *Handbook* indicates that some without a bachelor's degree or even a post-secondary degree may "advance to accountant positions by demonstrating their accounting skills on the job." In this instance, even if the petitioner had established that the proffered position would perform the duties as described under the section of Accountants and Auditors in the *Handbook*, it does not state that a bachelor's degree in a specific specialty is a normal minimum entry requirement for all accountant and auditor positions.

With respect to education and training requirements for "Bookkeeping, Accounting, and Auditing Clerks", the *Handbook* states as follows:

Most bookkeeping, accounting, and auditing clerks are required to have a high school diploma. Most bookkeeping, accounting, and auditing clerks need a high school diploma, and they usually learn some of their skills on the job. They must have basic math and computer skills, including knowledge of spreadsheets and bookkeeping software.

#### **Education**

Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. In 2009, 25 percent of these workers had an associate's or higher degree.

*Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last accessed May 3, 2012).

The *Handbook* states that "[m]ost bookkeeping, accounting, and auditing clerks need a high school diploma." Therefore, the *Handbook* does not state that a bachelor's degree in a specific specialty is a normal minimum entry requirement for all bookkeeping, accounting, and auditing clerk positions.

In short, the descriptions provided in the *Handbook* do not clearly show that neither Accountants and Auditors, or Bookkeeping, Accounting, and Auditing Clerks are positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement.

The record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by accountants and auditors, or bookkeeping, accounting, and auditing clerks pursuant to descriptions in the *Handbook*, and based on the fact that the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for these occupations, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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 and the petitioner failed to demonstrate that parallel positions for organizations that are similar to the petitioner require a college degree in a specific specialty for entry into the occupation. The record contains print-outs of Retail Industry: Retail Accountants and Financial Managers provided by the petitioner as evidence of an industry-wide requirement of at least a bachelor's degree for these positions. The print-outs state that the National Retail Federation (NRF) is the world's largest retail trade association which sponsors two specialty certification programs: the Certified Retail Accountant Executive (CRAE) program for financial accountants and managers, and the Certified Retail Technology Professional (CRTP) program for technology professional. The CRAE program is intended for those retail industry professionals who have responsibilities in accounting and financial management; each CRAE candidate must meet both education and work experience requirements: a candidate must acquire a minimum of 100 qualification points based on mandatory educational attainment and work experience, and optional NRF membership. The points of education (a minimum of 40 and a maximum of 50) may be obtained in four ways, as follows:

- College degrees in finance, accounting, economics or business administration, for which points were awarded as follows: 30 points for an associate degree, 40 for an undergraduate degree, 50 for a graduate degree, and/or 40 for a valid Certified Public Accountant (CPA);

- College credits, for which points are awarded as follows: 8 points per college accounting or financial courses (all college degrees and/or credit hours must be obtained from accredited colleges or universities);
- Participation in NRF supported workshops or educational seminars, for which points are awarded as follows: 1 point per approved hour of lecture or instruction; and/or
- Participation in non-NRF supported workshops or educational seminars, for which points are awarded as follows: 1 point per each hour of lecture or instruction in accounting or retail topics, provided such courses is approved by the CRAE Certification Administrator.

Accordingly, candidates can easily meet the educational requirements for NRF's CRAE program with an associate degree in finance, accounting, economics or business administration plus college accounting or financial courses and/or NRF supported workshops or educational seminars. The NRF as the retail trade association does not establish its industry-wide requirements of a bachelor's degree in a specific specialty to enter into the occupation of retail accountant and financial management positions in its retail industry. Therefore, the petitioner failed to demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has also failed to satisfy 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 a bachelor's degree in a specific specialty is not required for all accountant and auditor positions or that a bachelor's degree is not normally required for bookkeeping, accounting, and auditing clerk positions. The petitioner did not provide evidence to distinguish the proffered position as unique from or more complex than accountant and auditor positions or bookkeeping, accounting, and auditing clerk positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. The petitioner provided no information about its normal education requirements for the position. While the petitioner provided a copy of the job posting for the proffered position requiring a bachelor's degree in economics, business administration, accounting, finance or its equivalent at a minimum, the requirement of a bachelor's degree for the proffered position cannot establish that the petitioner normally requires a degree or its equivalent for the position. 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).<sup>2</sup>

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<sup>2</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position

Furthermore, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "economics, business administration, accounting, finance or its equivalent" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>3</sup>

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

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possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

<sup>3</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

*Id.*

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 or its equivalent. Relative complexity is not sufficiently developed by the petitioner and, absent evidence to the contrary, the duties of the proposed position are not so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>4</sup>

For the reasons related in the preceding discussion, even if the petitioner had demonstrated that the nature, financial scope and organizational structure of the petitioner's business showed that the petitioner had its business necessity to employ and to continue to employ the beneficiary in the proffered position to perform the proposed duties and that the petitioner had offered the beneficiary a bona fide job offer, the petitioner would still have failed to establish that it had satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As such, the petitioner has not established that the proffered position qualifies as a specialty occupation, and the appeal must be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit (1) an evaluation of the beneficiary's foreign degree evidencing that it is the equivalent of a U.S. bachelor's degree in a specific specialty or (2) sufficient evidence to establish that the beneficiary has education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in a specialty occupation as well as recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. Although the beneficiary holds a three-year bachelor of commerce degree from Gujarat University and a one-year course of study certificate in computer based accounting from Aditech Computers, the academic credentials evaluation by Frances Hewitt, Inc., submitted with the initial petition, equates the beneficiary's "combined" academic

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<sup>4</sup> It must be noted that the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

achievements to a four-year U.S. bachelor's degree in business administration with a concentration in accounting. Consequently, this evaluation does not establish that the beneficiary possesses "a foreign degree determined to be equivalent to a United States baccalaureate or higher degree" as required in part by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree or the equivalent in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

Finally, the petitioner emphasizes on appeal that the proffered position is the same position in job title and duties as the previously approved H-1B petition filed by the petitioner on behalf of the beneficiary. The petitioner also references an April 23, 2004 memorandum authored by [REDACTED] (hereinafter [REDACTED]), as establishing that USCIS should give deference to that prior approval. [REDACTED] *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3, (Apr. 23, 2004).

First, it must be noted that the [REDACTED] specifically states as follows:

[A]djudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. See 8 C.F.R. § 103.8(d). . . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

Thus, the [REDACTED] does not advise adjudicators to approve an extension petition when the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the memorandum's language quoted immediately above acknowledges that a petition should not be approved, where, as here, the petitioner has not demonstrated that the petition should be granted.

Again, as indicated in the [REDACTED], the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). If the previous nonimmigrant petition was approved based on the same description of duties and assertions that are contained in the current record, it would constitute material and gross error on the part of the director. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based

on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

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