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U.S. Citizenship
and Immigration
Services



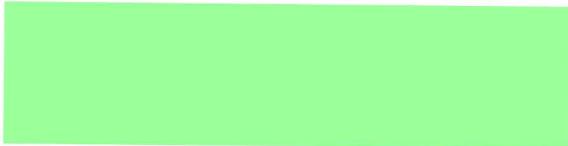
DATE: JUL 16 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary: [REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for *Michael T. Kelly*
Ron Rosenberg
Acting 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.

On the Form I-129 visa petition, the petitioner describes itself as an eight-employee publishing company¹ established in 2001. In order to employ the beneficiary in what it designates as an accountant position,² the petitioner seeks 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, concluding that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

At the outset, the AAO finds that the petitioner provided as the supporting Labor Condition Application (LCA) for this petition an LCA which does not correspond to the petition, in that the LCA was certified for a wage level below that which is compatible with the levels of responsibility, judgment, and independence the petitioner claimed for the proffered position through its descriptions of its constituent duties.³ This aspect of the petition undermines the credibility of the petition as a

¹ Although the petitioner described itself as a publishing company on the Form I-129, it also provided a North American Industry Classification System (NAICS) Code of 541211, "Offices of Certified Public Accountants." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541211 Offices of Certified Public Accountants," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed May 22, 2013).

Accordingly, the petitioner has provided conflicting information regarding its business operations, in that it claims to be both a publishing company and an office of certified public accountants. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 13-2011, the associated Occupational Classification of "Accountants and Auditors," and a Level I (entry-level) prevailing wage rate.

³ 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 course of this review that the AAO identified this issue.

whole and any claim as to the proffered position or the duties comprising it as being particularly complex, unique, and/or specialized.

In its March 28, 2012 letter of support, the petitioner claimed that the beneficiary would design and develop its accounting and financial systems and implement, maintain, and manage its accounting plans on an ongoing basis.

In his November 7, 2012 letter submitted in response to the director's RFE, counsel claimed that the duties of the proffered position would include the following:

- Preparing detailed accounting and financial statements including receipts and consolidated financial balance sheets to document transactions, sales, cash flow, and availability of funds;
- Preparing and updating the company's income statements, balance sheets, and statements of cash flow;
- Compiling accounting and financial information, including verifying funds received and spent;
- Calculating account totals with computer spreadsheets;
- Collecting and reviewing all invoices and payments to ensure that all records of payments and receivables are accurate and reflect the company's actual sales;
- Preparing the petitioner's annual budget and establishing future cash flow estimates;
- Evaluating the cost and benefits of the petitioner's financial transactions in order to maximize revenue, cut spending, and increase efficiency;
- Monitoring budget deviations on a monthly basis and analyzing trends;
- Managing and controlling spending;
- Using accounting and financial statements prepared by the staff accountant to make informed decisions for the company, including determining each department's allocated budget, deciding capital investment projects, authorizing large expenses, determining optimal borrowing levels, and adapting company-wide policies based on changes or trends in cash flow;
- Making important discretionary decisions based on accounting metrics;
- Studying old sales vouchers, invoices, purchase orders, costs of purchase, freight charges, average profit margin, and other historical data;

- Preparing balance sheets and profit/loss statements;
- Comparing current financial performance to historical performance;
- Calculating various ratios and metrics to accurately compare multiple years and ensure the company is growing;
- Tracking business plans, including cost timelines and revenue forecasts;
- Preparing rates of return statements, with focus on changing commodity prices and complete cash flow analyses;
- Planning the company's financial performance for the entire business cycle, from design to manufacture to sale;
- Forecasting and estimating the sales, costs, and profits associated with each product, and calculating the return on investment associated with each product; and
- Preparing the petitioner's quarterly federal and state income tax returns.

Counsel also stated that the beneficiary would be supervising an entry-level staff accountant.

The record contains several claims regarding the complexity and specialization of the duties of the proffered position. For example, in its March 28, 2012 letter the petitioner stated that the proffered position "involves demanding responsibilities, requiring a qualified person to have highly developed personal skills."

Counsel made the following assertions in his November 7, 2012 letter:

The job duties . . . are complex and demanding. The Accountant position requires the beneficiary to do more than the normal accounting positions of a junior accountant . . . The Beneficiary here is responsible for all of the company's accounting tasks, doing the work herself that an entire accounting department would do. . . .

The Accountant . . . is required to use theoretical concepts of business accounting principles and to exercise intensive effort and attention to handle day-to-day budgeting activities for the entire company . . . The variety of activities and type of clients associated with these tasks require more discipline, diligence, effort and concentration than is generally expected of an entry-level accountant. . . .

Additionally, the duties . . . are discretionary in nature . . . [the beneficiary] will exercise wide latitude in decision-making . . . [the proffered position] requires someone who can exhibit a high degree of independence with respect to guidelines

and decision-making because the tasks associated with administering and making changes to these functions are more complex in nature. The company employs a Staff Accountant, which is the entry level accounting position that reports to the Beneficiary. The Staff Accountant handles the routine accounting tasks at the director of the Beneficiary. The Accountant [i.e., the proffered position] supervises and is responsible for the department. She also manages the sophisticated tasks that require greater knowledge and decision-making.

* * *

[T]he Beneficiary's job duties are extremely complex and demanding, and far exceed the normal requirements of a typical accountant. In addition to her accounting functions, she also makes decisions at a very high level in the company. . . .

* * *

[I]n the instant case, the Beneficiary's job duties are far more complex, discretionary, demanding[,] and advanced than the normal industry standards for an accountant.

On appeal, counsel argues as follows:

[T]he record contains ample evidence of complex and advanced duties as well as high level decision making duties. . . .

* * *

[T]he Beneficiary's job duties are far more complex and advanced than [those of] a typical accountant. She will hold an executive, decision making role in the company and will report her analysis directly to the CEO. In addition, the Beneficiary will have a Staff Accountant who reports to her. The Staff Accountant will perform the basic accounting tasks to allow the Beneficiary to perform the complex and advanced tasks as well as the decision making tasks. Because the Beneficiary operates as part of the executive, decision making team, her position meets the requirements of a specialty occupation.

However, as will now be discussed, these assertions materially conflict with the wage level designated in the LCA that the petitioner submitted with the petition. As noted above, the LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as "Accountants and Auditors," SOC (O*NET/OES) Code 13-2011, at a Level I (entry-level) wage. The *Prevailing Wage Determination Policy Guidance*⁴ issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

⁴ Available at http://www.foreignlaborcert.dolleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed May 22, 2013).

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The assertions of record regarding the proposed duties' level of complexity and specialization, as well as the level of independent judgment and responsibility and the occupational understanding required to perform them, are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate is appropriate for positions in which the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the assertions regarding the proffered position's level of responsibility within the petitioner's hierarchy. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It should be noted that, for efficiency's sake, the AAO's discussion and findings regarding the material conflict between assertions in the petition and the LCA wage-level are hereby incorporated as part of this decision's later analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The U.S. Department of Labor (DOL) has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA. With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that “[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA.”

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

As previously noted, the conflict between the LCA and the petition adversely affects the merits of the petition, because it materially undermines the credibility of the petition's statements with regard to the nature and level of work that the beneficiary would perform.

The AAO will now address its determination that the evidence in the record of proceeding fails to establish that the proffered position is 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 Immigration and Nationality Act (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 term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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, 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 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently

interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely upon a proffered position’s title. The specific duties of the position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor’s (DOL) *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵ Two portions of the *Handbook* are directly relevant to this proceeding: (1) the *Handbook’s* discussion of the “Bookkeeping, Accounting, and Auditing Clerks” occupational classification; and (2) its discussion of the “Accountants and Auditors” occupational classification.

The AAO finds that the *Handbook’s* entries for the “Bookkeeping, Accounting, and Auditing Clerks” and “Accountants and Auditors” occupational classifications both contain aspects of the proposed duties, and that both occupations require some understanding of accounting principles.

⁵ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO’s references to the *Handbook* are from the 2012-13 edition available online.

However, the question to be addressed in this proceeding is not whether the proffered position requires some knowledge of accounting principles, but whether it is one that normally requires the level of knowledge of a body of highly specialized knowledge in accounting that is signified by at least a bachelor's degree, or its equivalent, in accounting or a closely-related specialty.

As discussed in the *Handbook*, bookkeeping, auditing, and auditing clerks do not comprise an occupational category that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. In pertinent part, the *Handbook* states the following with regard to this occupational classification:

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

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

The records that bookkeeping, accounting, and auditing clerks work with include expenditures (money spent), receipts (money that comes in), accounts payable (bills to be paid), accounts receivable (invoices, or what other people owe the organization), and profit and loss (a report that shows the organization's financial health).

Workers in this occupation have a wide range of tasks. Some in this occupation are full-charge bookkeeping clerks who maintain an entire organization's books. Others are accounting clerks who handle specific tasks.

These clerks use basic mathematics (adding, subtracting) throughout the day.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software, spreadsheets, and databases. Most clerks now enter information from receipts or bills into computers, and the information is then stored electronically. They must be comfortable using computers to record and calculate data.

The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, billing, purchasing (buying), and keeping track of overdue bills. Many of these functions require clerks to communicate with clients.

Bookkeeping clerks, also known as **bookkeepers**, often are responsible for some or all of an organization's accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income).

They also produce financial statements and other reports for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying receipts, and sending cash, checks, or other forms of payment to the bank.

In addition, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

Accounting clerks typically work for larger companies and have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do.

Often, their responsibilities vary by level of experience. Entry-level accounting clerks may enter (post) details of transactions (including date, type, and amount), add up accounts, and determine interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may add up and balance billing vouchers, ensure that account data is complete and accurate, and code documents according to an organization's procedures.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (accessed May 22, 2013).

In its March 28, 2012 letter the petitioner that the beneficiary would spend ten percent of her time preparing accounting and financial statements, including receipts and consolidated balance sheets, in order to document transactions, sales cash flow, and the availability of funds. She would spend another 25 percent of her time compiling accounting and financial information and using computer spreadsheets to calculate account totals. Finally, she would spend an unspecified amount of her

time preparing balance sheets and profit and loss statements. Thus, the beneficiary would spend more than 35 percent of her time performing tasks which, according to the *Handbook*, fall within those normally performed by bookkeepers and accounting clerks.

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this occupational category:

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.

Id. at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4>.

These statements do not support a conclusion that a bachelor's degree in a specific specialty, or its equivalent, is normally required for employment as a bookkeeping, accounting, or auditing clerk. Given that over one-third of the beneficiary's time would be spent performing duties falling within those described in the *Handbook* as normally performed by bookkeeping, accounting, or auditing clerks, an occupational category which does not normally require a bachelor's degree, or the equivalent, in a specific specialty, the *Handbook* does not support a finding that the proffered position qualifies for classification as a specialty occupation under the first criterion.

The remainder of the duties proposed by the petitioner for the beneficiary are generally similar to those described in the *Handbook* as normally performed by accountants.

In pertinent part, the *Handbook* states the following with regard to this occupational classification:

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. . . .

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

In addition to examining and preparing financial documentation, accountants and auditors must explain their findings. This includes face-to-face meetings with organization managers and individual clients, and preparing written reports.

Many accountants and auditors specialize, depending on the particular organization that they work for. Some organizations specialize in assurance services (improving the quality or context of information for decision makers) or risk management (determining the probability of a misstatement on financial documentation). Other organizations specialize in specific industries, such as healthcare.

* * *

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (accessed May 22, 2013).

With regard to the educational requirements necessary for entry into this occupational classification, the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in accounting or a related field." *Handbook* at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4>. However, "most" does not indicate that an accountant position normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in a specific specialty, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret

this provision otherwise would run directly contrary to the plain language of the Act, which requires in part “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.” Section 214(i)(1) of the Act.

Furthermore, the *Handbook* includes the following statement:

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.

Id. Thus, the *Handbook* does not indicate that a minimum of a bachelor’s degree in a specific specialty, or its equivalent, is normally required for this occupational category. Instead, this category accommodates a wide spectrum of educational credentials, and that spectrum includes credentials that fall short of a bachelor’s degree.

As clear from the statements from the *Handbook* excerpted above, 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 being proffered would involve 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. To make this determination, the AAO turns to the record for information regarding the duties and nature of the petitioner’s business operations.

In the instant matter, the AAO finds that those job duties listed by the petitioner that do generally fall within those described in the *Handbook* as normally performed by accountants (as opposed to the duties which align with those of bookkeepers and accounting clerks) are generalized descriptions of functions generic to accounting positions. As such, they do not establish that their performance requires the theoretical and practical application of at least a bachelor’s-degree level of a body of highly specialized knowledge in a specific specialty.

The AAO’s determination that the accounting duties proposed for the beneficiary would not involve 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 is bolstered by the wage-level designated by the petitioner on the LCA. As indicated by the *Prevailing Wage Determination Policy Guidance* cited above, both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner’s designation of an LCA wage-level I is indicative of duties of relatively low complexity.

The materials from DOL’s Occupational Information Network (O*NET OnLine) do not establish that the proffered position qualifies as a specialty occupation under the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine’s JobZone designations make no mention of the specific field of study

from which a degree must come. As was noted previously, the AAO 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 proposed position. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Accordingly, the evidence of record does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). First, it appears as though more than one-third of the duties of the position fall within the “Bookkeeping, Accounting, and Auditing Clerks” occupational classification which, the *Handbook* indicates, does not normally require a bachelor’s degree, or the equivalent, in a specific specialty. Second, with regard to the proposed duties which generally align with those of the “Accountants and Auditors” occupational classification, the petitioner has similarly failed to establish that the beneficiary’s actual work in that capacity would require at least a bachelor’s degree, or the equivalent, in a specific specialty.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position’s inclusion in either of these occupational categories is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a “particular position” for which “[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry.”

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, 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 alternatively calls for a petitioner to establish that a requirement of a bachelor’s or higher degree in a specific specialty, or its equivalent, is common 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 at 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and 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 or its equivalent. Also, there are no submissions from professional associations, individuals,

or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Nor do the six job-vacancy announcements submitted into the record satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petitioner has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions. Second, the petitioner has not established that these six positions are "parallel" to the proffered position.⁶ Nor has the petitioner established that the job-vacancy announcements require a bachelor's degree, or the equivalent, in a specific specialty.⁷ Nor does the petitioner submit any evidence regarding how representative these advertisements are of the industry's usual recruiting and hiring practices with regard to the positions advertised. Simply 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)).⁸

⁶ For example, it is noted that work experience is required for four of these six positions. However, as noted above, the petitioner indicated by the wage-level in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. It is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to these positions described in these job vacancy announcements.

The AAO notes further that the position at the unnamed educational publishing company located in Pacific Palisades, California is a part-time position, which is not a feature of the proffered position.

Finally, Perfection Learning is recruiting a Financial Analyst. "Financial Analyst" and "Accountant" are not interchangeable terms.

It is therefore not clear to the AAO how these positions are "parallel" to the proffered position.

⁷ For example, Super Duper Publications specifically states that it would find a "2 year degree" acceptable, and although Montessori Outlet and the unnamed educational publishing company located in Pacific Palisades, California require a bachelor's degree, they do not mandate that the degree be in a specific specialty.

⁸ Furthermore, according to the *Handbook* there were approximately 1,898,300 persons employed as bookkeeping, accounting, and auditing clerks in 2010. *Handbook* at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-6> (last accessed May 22, 2013). There were 1,216,900 persons employed as accountants in 2010. *Handbook* at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-6>. Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the six submitted vacancy announcement with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that these advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not 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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform that position. Rather, the AAO finds that the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic bookkeeping or accounting work, neither of which, the *Handbook* indicates, necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.⁹ It should be noted that the claims of counsel and

sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if these six job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these six job-vacancy announcements which appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

⁹ The claims of record with regard to the position of authority within the petitioner's hierarchy that the beneficiary would allegedly hold do not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). With particular regard to the claim that the beneficiary would supervise the work activities of a subordinate accountant, the AAO again highlights the Level I wage-level designated by the petitioner on the LCA. Again, and in accordance with the relevant DOL explanatory information on wage levels cited above, such a wage rate is appropriate for positions in which the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results. Given this wage-level designation, the assertions of record with regard to the position of authority within the petitioner's hierarchy that the beneficiary would occupy are simply not credible.

the petitioner related to this criterion are not substantiated by corroborating evidence. Again, 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 at 165.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

The AAO finds further that, even outside the context of the *Handbook*, the petitioner has simply not established relative complexity or uniqueness as attributes of the proffered position, let alone as being so elevated as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.¹⁰ In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 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 assertion of a particular degree requirement is not necessitated by the actual

¹⁰ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation.

performance requirements of the proffered position, the position 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”).

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner’s perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor’s degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

As evidence of eligibility under this criterion, the record contains information regarding the credentials of D-B-,¹¹ whom the petitioner claims to have previously employed in the proffered position. However, this evidence fails to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for three reasons.

First, the AAO does not consider a single previous hire, particularly one made pursuant to an H-1B approval, sufficient evidence of a past history of employing only persons with at least a bachelor’s degree, or the equivalent, in a specific specialty to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Second, the record does not establish that D-B- possesses a bachelor’s degree or the equivalent, in a specific specialty. The only evidence regarding D-B’s expertise contained in the record of proceeding is his *curriculum vitae*. However, this *curriculum vitae* carries, at best, only insignificant evidentiary weight. It represents a claim made by D-B- rather than evidence to support that claim, and the record of proceeding lacks documentary evidence to establish or corroborate the claims regarding D-B’s education and professional experience made in his *curriculum vitae*. Again, 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 at 165.

Finally, even if the AAO were to accept D-B’s *curriculum vitae* as evidence of his education, it is noted that D-B- claims to possess a bachelor’s degree in business administration. The requirement of a bachelor’s degree in business administration is inadequate to establish that a position qualifies

¹¹ Name withheld to protect individual’s identity.

as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, 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 at 147.

Thus, the petitioner's claims that it previously employed an individual with a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration, to perform the duties of the proffered position is tantamount to an admission that the proffered position is not in fact a specialty occupation.

As the evidence in the record of proceeding does not establish a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered 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 in the specialty.

The AAO also finds that the record of proceeding contains no evidence that establishes the nature of the proposed duties as being so specialized and complex. Rather, to the extent that they are described in the record, the AAO finds that the petitioner has not distinguished the proposed duties from generic bookkeeping and accounting duties, which, the *Handbook* indicates, do not necessarily require an individual with a bachelor's degree in a specific specialty, or the equivalent.

Further, there is the countervailing weight of the wage-level of the LCA. Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine

tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO is not persuaded by the caselaw cited by counsel on appeal. Counsel cites two cases: (1) *Young China Daily v. Chappell*, (hereinafter "Young China") 742 F.Supp. 2d 552, 554 (N.D. Cal. 1989); and (2) *Unico American Corp. v. Watson* ____ F. Supp. ___, (hereinafter "Unico") CV No. 896958 (C.D. Cal. March 19, 1991).

It is noted 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 cases arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district court judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.¹²

¹² Furthermore, *Young China* does not stand for the proposition cited by counsel. In *EG Enterprises, Inc. v. Department of Homeland Security*, 467 F. Supp. 2d 728, 737 (E.D. Mich. 2006), the court stated the following:

What [the petitioner] fails to grasp is that the duties of the proffered position, *combined with* the position title and business size, are all components in the H-1B visa petition analysis

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

[emphasis in original] . . . the Sixth Circuit, in an unpublished case, had also determined that the size of the employer is a relevant consideration, although not determinative:

[The court in *Young China*], on which [the petitioner] relies for this allegation of error, made only the narrow ruling that the duties of a graphic designer at a small newspaper do not necessarily differ from those of a graphic designer at a major newspaper. This leads neither to the general conclusion that the skills required to be a manager of a small company are necessarily the same as those required to be a manager at a large company, nor to the specific conclusion that the size of [the petitioner's] business is not relevant to the nature of the duties of its manager. *China Chef, Inc. v. Puelo*, 12 F. 3d 211 (table), 1993 WL 524276 at 2 (6th Cir. Dec. 15, 1993). . . .

[R]eliance in this case on *Young China* does not lead the court to the specific conclusion that the size of [the petitioner's] business is not relevant to the nature of [the beneficiary's] proffered duties. Although USCIS should not rely exclusively on the size of the employer's business when making a determination as to whether a position qualifies as a "specialty occupation," the Court does not find it an abuse of discretion for USCIS to consider size as just one factor in its analysis. It is reasonable to assume that the size of an employer's business has an impact of the duties of a particular position. . . .

The AAO, therefore, is not persuaded by counsel's citation of *Young China*.

With regard to *Unico American Corp. v. Watson*, the AAO notes that this was an unpublished decision and, given that published decisions of the district courts are not binding on the AAO outside of that particular proceeding, an unpublished decision of a district court has even less persuasive value. However, the AAO is not running counter to the proposition for which counsel cites *Unico*, as the AAO bases its decision upon the totality of the evidence in the record of proceeding bearing upon the specialty-occupation issue, and without sole or excessive reliance upon the relevant information contained in the *Handbook*.

(b)(6)

[REDACTED]
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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.