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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**

DATE: **JUN 27 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: 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg". Below the signature, the word "for" is written vertically.

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.

The Form I-129 visa petition in this matter was signed by a California attorney, who also submitted a Form G-28 Notice of Entry of Appearance, which he and the petitioner's CEO properly executed. Counsel also appears to have participated in responding to the Request for Evidence (RFE) issued in this matter. The Form 290B appeal, however, was signed only by the petitioner's CEO. It and the other submissions on appeal bear no indication that counsel participated in the appeal, and the petitioner did not submit a new Form G-28 Notice of Entry of Appearance with the appeal, as would be required by 8 C.F.R. § 292.4(a) if the petitioner is to be represented by counsel on appeal. The petitioner will be considered to be self-represented on appeal.

On the Form I-129 visa petition, the petitioner describes itself as a jewelry wholesale business established in 2004. In order to employ the beneficiary in what it designates as an accountant position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's RFE; (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

The issue on appeal is whether the petitioner has demonstrated that the 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act 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 on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 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 Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an accountant position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011 Accountants and Auditors. The LCA further states that the proffered position is a Level I position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in business administration with a concentration in finance from [REDACTED] in Minnesota.

With the visa petition, counsel submitted a letter, dated August 18, 2011, from its CEO, which contains the following description of the duties of the proffered position:

As the [petitioner's] accountant, [the beneficiary's] duties will include both establishing effective internal controls as well as accurate and appropriate financial analyses. He will be responsible for auditing the [petitioner's] purchase contracts and

sales orders and preparing reports to substantiate individual transactions prior to settlement. He will be responsible for providing management with summaries and analysis of the financial records of the [petitioner's] customers to enable management to make informed credit decisions. He will also be responsible for compiling various accounts, including general ledger accounts, account receivable accounts, accounts payable accounts and other documentation of the [petitioner's] business transactions. He will then work closely with the [petitioner's] General Manager and CEO to provide the summaries and analytic reports of the [petitioner's] current and projected financial position need for strategic decision making and strategic utilization of working capital.

As to the educational requirement of the proffered position, the petitioner's CEO stated:

As noted above, this position requires the ability to summarize and analyze complex financial information and prepare financial reports targeted to the specific needs of management. For this reason, the minimum entry requirement is at least a Bachelor[']s Degree in Business Administration with a concentration in Finance or its equivalent.

On December 20, 2011, the service center issued an RFE in this matter. The director outlined the specific evidence to be submitted. The service center requested evidence that the petitioner would employ the beneficiary in a specialty occupation, including, *inter alia*, a more detailed description of the duties of the proffered position.

The RFE also stated:

Past Employment Practices: Provide evidence to establish that the petitioner has a past practice of hiring Accountants to perform the duties of the proffered position. Provide copies of present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires a degreed accountant.

Indicate the number of persons employed in the past in similar positions. Further, submit documentation to establish how many of those persons have a baccalaureate degrees [sic] or higher in the field of Accounting. Documentation should include copies of transcripts and pay records or Quarterly Wage Reports for the employees claimed to hold a baccalaureate degree in the field of Accounting.

If the petitioner claims to be using outside accounting services, provide evidence to establish this claim and the cost of those services. The evidence should include copies of invoices for the particular services, a copy of the contract for such accounting services, and cancelled checks.

In response, counsel submitted an organizational chart and a letter, dated March 9, 2012, from the petitioner's CEO, which contains the following additional description of the duties of the proffered position.

REVIEW AND AUDIT CUSTOMER FINANCIAL STATEMENTS: 30%

[The beneficiary] will conduct a review and audit of our credit customers' financial statements in order to evaluate and assess the risk of providing merchandise to these clients on credit. This is a very important function in our business, because we commonly provide merchandise to our customer on consignment or credit terms with a value of tens of thousands of dollars with little protection against loss from non-payment or even fraud. In order to minimize our potential risk, it will be necessary for [the beneficiary] to carefully review the customers' financial records, comparing documents with prior years, identifying unusual transactions and at times performing audits at the offices of our prospective customers. This process requires a knowledge of accounting practices and finance that can only be gained through a course of study leading to a bachelor[']s degree in business administration.

CORPORATE TAX REPORTING AND PLANNING MATTERS 20%

We expect that approximately 20% of [the beneficiary's] working time will be spent preparing the [petitioner's] tax reporting documents and in tax planning. We expect to assume the duties previously performed by our outside CPA in preparing the returns, while providing a more thorough and integrated tax planning to the corporation. We expect him to ensure that our returns meet the requirements of the codes and regulations of the [IRS], while also thoroughly researching available incentives, credits and rebates at the federal, state and local level. This clearly requires the expertise of a professional accountant and is a function for which we have previously employed the services of an outside CPA.

RECORD KEEPING, RECORDING AND ANALYSES FUNCTIONS 30%

We expect that an additional 30% of [the beneficiary's] time will be spent overseeing the company's record keeping record keeping [sic] and recording functions and preparation of interim and final year-end financial statements. We expect [the beneficiary] to ensure that our record keeping meets the standards of the Generally Accepted Accounting Principles (GAAP) in order to ensure the company's continued financial viability and ability to obtain outside financing when required. Again, performing this function properly requires the services of a professional level accountant.

OVERSEE ACCOUNTS RECEIVABLE AND PAYABLE 20%

We expect [the beneficiary] to compile payable, receivable, collection and billing information, and prepare periodic statements and balance sheets and audit customer and vendor contracts to prepare periodic reports detailing collections of receivables

and payment of vendor accounts. Again, we expect [the beneficiary] to perform these functions in keeping with GAAP requirements.

The petitioner's CEO also stated:

. . . [A]ll of these functions require the ability to summarize and analyze complex financial information and prepare financial reports targeted to the specific needs of management. For this reason, the minimum entry requirement is at least a Bachelor['s] Degree in Business Administration with a concentration in Finance or its equivalent.

As to the people who previously performed the duties of the proffered position, the petitioner's CEO stated that the petitioner had previously employed a part-time accountant, [REDACTED] and an outside CPA firm, [REDACTED] to prepare its tax returns. He added that the petitioner expects the beneficiary to replace both the part-time accountant and the outside CPA.

Pay statements and quarterly returns in the record show that the petitioner paid Ms. [REDACTED] for part-time work during 2011. Invoices and cancelled checks show that it paid its CPA \$1,250 on January 31, 2012 and \$1,100 on February 14, 2012.

The petitioner's CEO stated: "Ms. [REDACTED] had a bachelor's degree in business administration and was pursuing her Master['s] Degree while working for our company." He did not state that Ms. [REDACTED] bachelor's degree in business administration was in any specific specialty, and the petitioner provided no evidence to corroborate the claims pertinent to her education.

The director denied the petition on May 7, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provided (1) a letter, dated June 22, 2012, from [REDACTED] managing officer of [REDACTED] (2) a letter, dated June 29, 2012, from [REDACTED] controller of [REDACTED] a jewelry designer and manufacturer; and (3) 12 vacancy announcements posted on www.craigslist.org.

Mr. [REDACTED] letter states:

By practice, [REDACTED] requires Bachelor's degree for Accountant related positions such as Staff Accountant, Financial Accountant, Management Accountant, and Budget Analyst, because we believe that the knowledge necessary to effectively perform the work of any Accountant position can only be acquired by finishing a bachelor's

degree and must be coupled with years of actual work experience in the same or related field.

Similarly, Mr. [REDACTED] letter states:

By practice, our company normally requires a Bachelor's Degree for Accountant related positions (Staff Accountant, Financial Accountant, Management Accountant, and Budget Analyst) because we believe that the knowledge necessary to effectively perform the work of any Accountant positions can only be acquired by finishing a Bachelor's degree and must be coupled with years of actual work experience in the same or related field.

The AAO will now discuss the application of the additional, supplemental requirements of 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 may be satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

In the "Accountants and Auditors" chapter, the *Handbook* provides the following description of the duties of those positions:

What Accountants and Auditors Do

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:

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- 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.

Some workers with a background in accounting and auditing teach in colleges and universities. For more information, see the profile on postsecondary teachers.

The four main types of accountants and auditors are the following:

Public accountants do a broad range of accounting, auditing, tax, and consulting tasks. Their clients include corporations, governments, and individuals.

They work with financial documents that clients are required by law to disclose. These include tax forms and balance sheet statements that corporations must provide potential investors. For example, some public accountants concentrate on tax matters, advising corporations about the tax advantages of certain business decisions or preparing individual income tax returns.

External auditors review clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

Some public accountants specialize in forensic accounting, investigating financial crimes, such as securities fraud and embezzlement, bankruptcies and contract disputes, and other complex and possibly criminal financial transactions. Forensic accountants combine their knowledge of accounting and finance with law and investigative techniques to determine if an activity is illegal. Many forensic accountants work closely with law enforcement personnel and lawyers during investigations and often appear as expert witnesses during trials.

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.

Government accountants maintain and examine the records of government agencies and audit private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by federal, state, and local governments ensure that revenues are received and spent in accordance with laws and regulations.

Internal auditors check for mismanagement of an organization's funds. They identify ways to improve the processes for finding and eliminating waste and fraud. The practice of internal auditing is not regulated, but the Institute of Internal Auditors (IIA) provides generally accepted standards.

Information technology auditors are internal auditors who review controls for their organization's computer systems, to ensure that the financial data comes from a reliable source.

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> (last visited June 26, 2013).

Most of the duties the petitioner's CEO attributed to the proffered position are consistent with the duties of accountants and auditors as described in the *Handbook*. On the balance, the AAO finds that the proffered position is an accountant or auditor position as described in the *Handbook*, and as claimed by the petitioner.

The *Handbook* states the following about the educational requirements of accountant and auditor positions:

How to Become an Accountant or Auditor

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.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. 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.

Work experience is important for getting a job, and most states require experience before an accountant can apply for a CPA license. Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

Licenses

Every accountant filing a report with the Securities and Exchange Commission (SEC) is required by law to be a Certified Public Accountant (CPA). Many other accountants choose to become a CPA to enhance their job prospects or to gain clients. CPAs are licensed by their state's Board of Accountancy. Becoming a CPA requires passing a national exam and meeting other state requirements.

As of 2012, 46 states and the District of Columbia required CPA candidates to complete 150 semester hours of college coursework, which is 30 hours more than the usual 4-year bachelor's degree. Many schools offer a 5-year combined bachelor's and master's degree to meet the 150-hour requirement, but a master's degree is not required.

A few states allow a number of years of public accounting experience to substitute for a college degree.

All states use the four-part Uniform CPA Examination from the American Institute of Certified Public Accountants. Candidates do not have to pass all four parts at once, but most states require that they pass all four parts within 18 months of passing their first part.

Almost all states require CPAs to take continuing education to keep their license.

Certification

Certification provides an advantage in the job market because it shows professional competence in a specialized field of accounting and auditing. Accountants and auditors seek certifications from a variety of professional societies. Some of the most common certifications are listed below:

The Institute of Management Accountants offers the Certified Management Accountant (CMA) upon applicants who complete a bachelor's degree. Applicants must have worked at least 2 years in management accounting, pass a two-part exam, agree to meet continuing education requirements, and comply with standards of professional conduct. The exam covers areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management.

The Institute of Internal Auditors (IIA) offers the Certified Internal Auditor (CIA) to graduates from accredited colleges and universities who have worked for 2 years as internal auditors and have passed a four-part exam. The IIA also offers the Certified in Control Self-Assessment (CCSA), Certified Government Auditing Professional (CGAP), and Certified Financial Services Auditor (CFS) to those who pass the exams and meet educational and experience requirements.

ISACA offers the Certified Information Systems Auditor (CISA) to candidates who pass an exam and have 5 years of experience auditing information systems. Information systems experience, financial or operational auditing experience, or related college credit hours can be substituted for up to 2 years of experience in information systems auditing, control, or security.

For accountants with a CPA, the American Institute of CPAs (AICPA) offers the option to receive any or all of the Accredited in Business Valuation (ABV), Certified Information Technology Professional (CITP), or Personal Financial Specialist (PFS) certifications. The business valuation certification requires a written exam and completion of at least 10 business valuation projects that demonstrate a candidate's experience and competence. The technology certification requires the achievement of a set number of points awarded for business technology experience and education. Candidates for the personal financial specialist certification also must achieve a

certain numbers of points based on experience and education, pass a written exam, and submit references.

Advancement

Some top executives have a background in accounting, internal auditing, or finance. For more information, see the profile on top executives.

Beginning public accountants often advance to positions with more responsibility in 1 or 2 years and to senior positions within another few years. Those who excel may become supervisors, managers, or partners; open their own public accounting firm; or transfer to executive positions in management accounting or internal auditing in private firms.

Management accountants often start as cost accountants, junior internal auditors, or trainees for other accounting positions. As they rise through the organization, they may advance to accounting manager, chief cost accountant, budget director, or manager of internal auditing. Some become controllers, treasurers, financial vice presidents, chief financial officers, or corporation presidents.

Public accountants, management accountants, and internal auditors can move from one aspect of accounting and auditing to another. Public accountants often move into management accounting or internal auditing. Management accountants may become internal auditors, and internal auditors may become management accountants. However, it is less common for management accountants or internal auditors to move into public accounting.

Important Qualities

Analytical skills. Accountants and auditors must be able to identify issues in documentation and suggest solutions. For example, public accountants use analytical skills in their work to minimize tax liability, and internal auditors do so when identifying fraudulent use of funds.

Communication skills. Accountants and auditors must be able to listen carefully to facts and concerns from clients, managers, and others. They must also be able to discuss the results of their work in both meetings and written reports.

Detail oriented. Accountants and auditors must pay attention to detail when compiling and examining documentation.

Math skills. Accountants must be able to analyze, compare, and interpret facts and figures, although complex math skills are not necessary.

Organizational skills. Strong organizational skills are important for accountants and auditors who often work with a range of financial documents for a variety of clients.

Id. at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited June 26, 2013).

In this instance it is noted that 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. As such, although the proffered position has been determined to be an accountant or auditor position, it cannot be concluded based on the *Handbook* that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in accounting or a closely related field.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of accounting principles and practices, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Finally, as noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.dol.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some accountant positions do not require such a degree.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, 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 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*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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.

The petitioner did submit two letters from others in the petitioner's industry, the managing officer of [REDACTED] and the controller of [REDACTED]. Those letters, however, suggest that those companies employ staff accountants, financial accountants, management accountants, and budget analysts. Their finances are apparently much more complex than those of the petitioner, whose organizational chart indicates that it employs the beneficiary as its only accountant, and that it does not employ a budget analyst.

Further, those letters both indicate that the positions they discuss require "years of actual work experience in the same or related field." The positions they discuss do not, therefore, appear to be Level I entry-level positions, as the proffered position is designated. *See U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.dol.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. As such, the positions discussed in those letters do not appear to be parallel to the proffered position, as it is described on the LCA.

Further still, although those letters state that the positions they discuss require a bachelor's degree, they do not indicate that the positions require a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Those letters do not appear to be for positions parallel to the proffered position as it is designated on the LCA, do not appear to be from organizations similar to the petitioner, and do not state that the positions they discuss require a minimum of a bachelor's degree in a specific specialty or its equivalent. For all of those reasons, those letters have little relevance to the first alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As was noted above, the petitioner also submitted 12 vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Staff Accountant with Finance Duties for an unidentified firm requiring a "BA degree in accounting, finance or economics";
2. Staff Accountant for a property management company requiring a "bachelor's degree in accounting or related field (or equivalent experience)" and "Minimum 2 years of related experience";
3. Staff Accountant for a "Real Estate Investment/Property Management firm" with a "BA/BS degree in Accounting and/or Finance" and "At least 2 years relevant accounting experience in a similar capacity";
4. Accountant/Administrative Assistant in the Operations Department of an unidentified firm requiring "Bachelor's Degree (at a minimum) – business and accounting are preferred areas of study";
5. Financial Analyst for a media company requiring a "Bachelor's degree in Finance, accounting, economics" and "Minimum of 3 years of relatable experience";
6. Accountant for an unidentified manufacturer requiring a "Degree in Accounting or equivalent experience" and a minimum of two years of experience;
7. Staff Accountant for an unidentified construction company requiring a "Bachelor's degree in Accounting or Finance, and minimum two years experience with construction and/or real estate accounting";
8. Staff Accountant/Analyst for an unidentified company requiring a bachelor's degree in "Accounting/Finance";
9. Accountant for an import and export company requiring a "Bachelor degree in accounting or related field";
10. Staff Accountant for an unidentified company with a bachelor's degree in accounting;
11. Staff Accountant for "[an otherwise unidentified] private brand, marketing, and distribution company" requiring a "Bachelor's degree in Accountancy, Finance, Economics or Business Administration" and "3 – 5 years in a similar or related position."
12. Financial Analyst for an otherwise unidentified "Very Popular and Prestigious Entertainment Company with a bachelor's degree in "Finance, Economics, or Accounting."

The tenth vacancy announcement requires a bachelor's degree in accounting. That vacancy announcement appears to require a minimum of a bachelor's degree in a specific specialty or its equivalent. The third, seventh, and eighth announcements each require a bachelor's degree in accounting or finance. The first, fifth, and twelfth announcements require a bachelor's degree in accounting, finance, or economics.

The fourth announcement states that the position announced requires a bachelor's degree, and that "business and accounting are preferred areas of study." The AAO observes that a preference is not a

minimum requirement. For that reason, the fourth vacancy announcement does not indicate that the position announced requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Further, however, one of the preferred areas of study indicated in the fourth announcement is "business," with no indication that the degree must be in any specific concentration or specialty. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For this additional reason, the fourth vacancy announcement does not contain an indication that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, the eleventh vacancy announcement indicates that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the position announced. Therefore, it, too, does not indicate a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The second vacancy announcement states that the position requires a bachelor's degree in accounting or a related field, or equivalent experience. It does not state what fields would be considered sufficiently closely related to accounting in order to qualify, and does not state what amount or type of experience the hiring authority would consider equivalent to a bachelor's degree in accounting. As such, the AAO is unable to independently determine that the vacancy announcement requires a minimum of a bachelor's degree in a specific specialty or its equivalent.²

The sixth vacancy announcement states that the position it announces requires a degree in accounting "or equivalent experience," without revealing what type and amount of experience the hiring authority would consider equivalent to a bachelor's degree in accounting. The AAO is unable, therefore, to make an independent determination that the sixth vacancy announcement requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The ninth vacancy announcement states that the position it announces requires a bachelor's degree in accounting or a related field, without revealing what fields the hiring authority would consider sufficiently closely related to accounting to qualify. If, for instance, the array of similar fields considered sufficiently closely related includes business administration, without any specialty or concentration, then that vacancy announcement would not include a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The ninth vacancy announcement has not

² The hiring authority might, for instance, consider an otherwise undifferentiated bachelor's degree in business administration to be a field sufficiently closely related to the position described to qualify one for it. As was explained above, if the educational requirement of that position would be satisfied by an otherwise undifferentiated bachelor's degree in business administration, it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

been shown, therefore, to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Most of the vacancy announcements provided do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The advertisements provided establish, at best, that a bachelor's degree is generally required for most of the positions posted, but that a bachelor's degree or the equivalent in a *specific specialty* is often not. They are not evidence of a common requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the vacancy announcements are not accompanied by sufficient evidence that the advertising companies are similar organizations in the petitioner's industry. Therefore, they are not evidence that similar companies in the petitioner's industry require accountants to have a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet further, most of the vacancy announcements provided make clear that the positions announced require some years of experience. As was observed above, the petitioner has designated the proffered position a Level I accountant position, which indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. *See U.S. Dep't of Labor, Emp't & Training Admin., Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.dol.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I accountant positions, entry-level positions requiring only a basic understanding of accountancy, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which cannot be adequately supported with information about positions that require years of experience.

Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 12 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar home care organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the 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 the job announcements supported the finding that the position of accountant for a jewelry

Yet further, as was explained above, the designation of the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some accountant positions do not require such a degree.

Thus, based upon a complete review of the record, the petitioner has not established 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains little evidence that would differentiate the work of the proffered position from the work required by accountant positions in general. The duties of the proffered position (such as establishing effective internal controls, conducting financial analyses, auditing purchase contracts and sales orders, providing management with summaries and analysis of the financial records of the petitioner's customers, compiling accounts, and providing or contributing to summaries and analytic reports of the petitioner's current and projected financial position) are described in terms of functions common to accountant positions in general, and so have not been shown to be more complex or unique than the duties of other accountant positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I accountant, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of accountancy. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a

wholesaler required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may 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 require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

specific bachelor's degree, especially as the *Handbook* suggests that some accountant positions do not require such a degree.

For the reasons stated above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.⁴

The service center requested in the RFE that the petitioner identify all of the people it has employed in the proffered position, and provide evidence pertinent to their education. The petitioner identified a CPA whose services it used to prepare its 2011 tax returns and perform some other accounting duties during 2012. The petitioner also provided evidence that it employed Ms. [REDACTED] as a part-time accountant during 2011, and stated that she had a bachelor's degree in business administration and was studying for a master's degree in an unidentified subject. However, the petitioner provided no evidence to corroborate that claimed education.

The RFE requested evidence pertinent to the education of all of the people the petitioner had previously employed in the proffered position, not an uncorroborated assertion. Although the statements by the petitioner are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

Further, the petitioner's CEO only asserted that Ms. [REDACTED] had an otherwise undifferentiated bachelor's degree in business administration. Even if this were accepted as proven, it would not indicate that Ms. [REDACTED] had a bachelor's degree in a specific specialty or its equivalent. As was explained above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

⁴ 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 possessed a baccalaureate or higher degree in a 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").

Further still, although the visa petition states that the petitioner was established in 2004, the petitioner provided no evidence pertinent to any year prior to 2011, and provided no explanation for that omission. The evidence submitted is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position and insufficient, therefore, to satisfy the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Reviewing and auditing customer financial statements, reporting corporate taxes, financial record keeping and analysis, and overseeing accounts receivable and accounts payable, for instance, contain no indication of specialization and complexity that requires attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties, as described, have not been shown to be more specialized and complex than the duties of accountant positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I accountant position, a position for a beginning level employee with only a basic understanding of accountancy. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to accounting, especially as the *Handbook* indicates that some accountant positions require no such degree.

For both of the reasons explained above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will 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 whether it will require a baccalaureate or higher degree in a specific

(b)(6)

[REDACTED]
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specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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