



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 08 2014** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a finance services company with 3 employees, established in 2006. In order to continue to employ the beneficiary in what it designates as a "Financial Specialist" position, the petitioner seeks to classify the beneficiary 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 on the ground that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted a timely appeal of the decision. On appeal, the petitioner asserts that the director's denial was erroneous. In support of this assertion, counsel for the petitioner submits a brief and additional evidence.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of decision; and, (5) the petitioner's Notice of Appeal or Motion (Form I-290B) and supporting documentation. We reviewed the record in its entirety before issuing our decision.¹

For the reasons that will be discussed below, we agree with the director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

The petitioner indicated on the Form I-129 and in supporting documentation that it seeks the beneficiary's services in a position titled "Financial Specialist," to work on a full-time basis at a salary of \$55,000 per year.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Accountants and Auditors" – SOC (ONET/OES) Code 13-2011, at a Level I (entry level) wage.

In a letter of support, dated June 14, 2012, the petitioner stated that the beneficiary will be responsible for the following duties:

[w]ork with the insurance agent, collect individuals and commercial clients' financial

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

information; analyze individual and commercial clients' financial information and assess individuals and commercial clients' assets, liability, business performance, case flow, and the financial needs of the clients; using state of art accounting/financial software and technology to identify and plan to meet short- and long-term individual and business insurance needs; properly screen and complete applications to submit to underwriting.

The petitioner added the following regarding the requirements to perform the duties of the position:

The proposed position of financial specialist is a professional position requiring the ability to apply advanced analytic, writing, statistical and computations skills and their application in the context of accounting and financial management. Due to the complex nature of this position, we have to determine [*sic*] a minimum prerequisite to be a baccalaureate degree in Finance, Accounting or Business Administration, or a related field. We believe that only an individual possessing a minimum of a baccalaureate degree in the related field would possess a depth of understanding and analytical abilities necessary to perform in this position with our agency. We believe that this educational requirement is reflective of established industry standards.

Please note that there is no licensing requirement for this position as the prospect employee works for the insurance agent.

The petitioner stated that the beneficiary's degree was evaluated by [REDACTED] and was found to be the equivalent of a Bachelor's Degree in Business Administration from a regionally accredited educational institution in the United States. The petitioner submitted copies of the beneficiary's degree and school transcripts.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on November 6, 2012. The director requested that the petitioner provide evidence to establish that the proffered position qualifies as a specialty occupation, including evidence, that a bachelor's degree in a specific field of study is required to perform the duties of the position. The director outlined some of the specific types of evidence that could be submitted.

Counsel for the petitioner responded to the RFE and submitted the petitioner's response letter and additional evidence. The petitioner also provided the following breakdown of the duties of the proffered position, as follows:

Accounting and Accounting Management (70%): The beneficiary will be in charge [of] our accounting and accounting management. She will be responsible for developing and maintaining accounting principles, practices and procedures to ensure accurate and timely financial statements. This position addresses a multitude of accounting activities including general ledger preparation, financial reporting. To be more specific, she need obtain and maintain a thorough understanding of the financial reporting and general ledger structure; Ensure an accurate and timely

monthly, quarterly and year end close; Ensure the timely reporting of all monthly financial information; Ensure the accurate and timely processing of transactions; Assist in development and implementation of new procedures and features to enhance the workflow of the department. She will: Prepare Finance Statement, and financial report; Summarizes current financial status by collecting information; preparing balance sheet, profit and loss statement, and other reports. Reconciles financial discrepancies by collecting and analyzing account information; Secures financial information by completing data base backups; Maintains financial security by following internal controls; Prepare payments by verifying documentation, and requesting disbursements; Answers accounting questions; Complies with federal, state, and local financial legal requirements by studying existing and new legislation, enforcing adherence to requirements, and advising management on needed actions; Prepares special financial reports by collecting, analyzing, and summarizing account information; Maintains customer confidence and protects operations by keeping financial information confidential; Using state of art accounting software and technology to implement our new accounting system; monitor and oversee the financial activities and operations; Prepares asset, liability, and capital account entries by compiling and analyzing account information.

Financial Analysis and Financial Management (30%): collect individuals and commercial clients' financial information; analyze individual and commercial clients' financial information and assess individuals and commercial clients' assets, liability, business performance, cash flow, and the financial needs of the clients to identify and plan to meet short- and long-term individual and business insurance needs, make recommendations regarding financial and investment planning strategies so that our clients can achieve their financial goal; using state of art accounting/financial software and technology to summarize and organize financial data for our clients' accounts in special format in order to easily extract information from our clients' database as well as implement new accounting tools and software to improve our clients' financial data systems.

On March 27, 2013, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate 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 a specific specialty. The director also noted that the proffered position, as described by the petitioner, appeared to be that of an insurance agent and a bookkeeper, accounting and auditing clerk rather than an accountant. Counsel for the petitioner submitted a timely appeal of the denial of the H-1B petition.

On appeal, counsel for the petitioner contends that the petitioner clearly established that the proffered position is a specialty occupation. Counsel also asserts that the proffered duties fall under the section in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on

accountants and auditors. Counsel also submits an opinion letter regarding the nature of the proffered position.

II. LAW AND ANALYSIS

A. Standard of Review

In light of counsel's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

As footnoted above, we conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard,

however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

B. Failure to Establish that the Proffered Position Qualifies as a Specialty Occupation

We will now address whether the petitioner's proffered position qualifies as a specialty occupation. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among

similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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), 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 evidence in the record of proceeding establishes that performance of the particular proffered 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 issue here is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Applying the preponderance of the evidence standard and based upon a complete review of the record of proceeding, we agree with the director and find that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

As a preliminary matter, the petitioner provided a much more expansive job description in response to the director's RFE. The initial job description focused on the ability to obtain financial information from a client to assist with the client's insurance needs. In response to the RFE, the job description expanded to reflect more closely traditional accounting duties, such as general ledger preparation, financial reporting, processing of transactions, preparing balance sheet, profit and loss statement, and comply with legal requirements.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position, but rather added new generic duties to the job description.

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

In addition, we find that, as reflected in the duty descriptions, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, which do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of accounting knowledge that the beneficiary would have to apply to

those matters. We will provide a few illustrative examples. While the petitioner claims that the beneficiary's time will be devoted to "ensure the timely processing of transactions;" "reconciles financial discrepancies by collecting and analyzing account information;" "prepares special financial reports by collecting, analyzing, and summarizing account information;" and, "prepares asset, liability, and capital account entries by compiling and analyzing account information," the petitioner provides neither substantive information about, nor documentary evidence illustrating, the nature of the "financial information" that the beneficiary would be preparing and analyzing, or the types of reports the beneficiary would prepare, the nature of the analysis that the beneficiary would have to apply, or particular accounting applications that the beneficiary would employ.

Also, the petitioner stated that the beneficiary will "analyze individual and commercial clients' financial information and assess individuals and commercial clients' assets, liability, business performance, cash flow, and the financial needs of the clients to identify and plan to meet short- and long-term individual and business insurance needs." However, the petitioner fails to provide substantive evidence with regard to either the nature and level of analysis that the beneficiary would have to apply to the insurance opportunities, or with regard to the range and depth of "review" that the beneficiary would bring to bear upon the aforementioned insurance opportunities, or with regard to any accounting dimensions of the strategy upon which the beneficiary would be required to make recommendations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record's descriptions of the proposed duties and the position that they are said to comprise are not sufficiently detailed and concrete to establish either the duties or the proffered position as particularly complex, unique, and/or specialized. Rather, the proffered position, and its constituent duties, is described in terms of relatively abstract and generalized functions, that, as such, do not demonstrate whatever academic and/or experience derived level of accounting knowledge the beneficiary would have to apply to the petitioner's business matters if this petition were approved.

As the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner should note that because they bear upon our analyses of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) that follow below, the above findings and comments with regard to the evidentiary deficiencies in this record of proceeding should be deemed incorporated into this decision's treatment of each of those criteria.

We turn first to the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in an accountant position. Again, however, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Accountants and Auditors." The director found that the position offered falls under the occupational category of "Insurance Agent" and "Bookkeeping, Accounting, and Auditing Clerks."

We reviewed the chapter of the *Handbook* titled "Accountants and Auditors" including the sections regarding the typical duties and requirements for this occupational category. We also reviewed the chapter of the *Handbook* entitled "Bookkeeping, Accounting, and Auditing Clerks," including the sections regarding the typical duties and requirements for this occupational category. However, as will now be discussed, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into either of these occupational groups. Accordingly, the proffered position's inclusion in either of these occupational groups would not be in itself sufficient to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that is, by establishing that the particular position that is the subject of this petition is one that requires for entry at least a bachelor's degree, or its equivalent, in a specific specialty.

The subsection of the *Handbook* entitled "What Accountants and Auditors Do" states the following about the duties of this occupation:

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

Duties

Accountants and auditors typically do the following:

- Examine financial statements to ensure that they are accurate and comply with laws and regulations

² The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. Our references to the *Handbook* are to the 2014-2015 edition available online.

- 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 decisionmakers) 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 following are examples of types of accountants and auditors:

Public accountants perform 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.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms. Publicly traded companies are required to have CPAs sign documents they submit to the Securities and Exchange Commission (SEC), including annual and quarterly reports. External auditors review clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported.

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 also may 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, 2014-15 ed.*, Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-2> (last visited August 8, 2014).

The narrative of the *Handbook* indicates that government accountants work in the public sector, and internal auditors check for mismanagement, waste or fraud. These descriptions of accountants clearly do not apply to the proffered position. Moreover, under the *Handbook's* description, it appears to be unusual for small businesses to employ a public accountant, since public accountants are usually Certified Public Accountants (CPAs) with their own business or employed by accounting firms.

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, there is no indication in the record of proceeding that the petitioner requires the beneficiary to have obtained the designation CPA, Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position.

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.³ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁴ That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

³ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁴ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

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.

Id.

While the *Handbook* states that most accountant positions require at least a bachelor's degree in accounting or a related field, the *Handbook* continues by stating the following:

In some cases, those with associate's degrees, 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited August 8, 2014).

Accordingly, the *Handbook* reports that some graduates with associate's degrees, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to accountant positions by demonstrating their accounting skills. That is, the *Handbook* reports that individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and then advance to accountant positions. The *Handbook* does not state that this education and experience must be the equivalent to at least a bachelor's degree in a specific specialty. Therefore, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

Moreover, we observe that although the *Handbook* states that most accountants and auditors need at least a bachelor's degree, this statement does not support the view that any accountant job qualifies as a specialty occupation as "most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent.⁵ More specifically, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a

⁵ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions need at least a bachelor's degree, it could be said that "most" of the positions need 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, which as previously discussed is designated by the petitioner as a Level I (entry) position in the LCA. 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.

bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The director reviewed the petitioner's job description and supporting evidence and found that the duties of the proffered position most closely resemble those described in the chapter "Bookkeeping, Accounting, and Auditing Clerks" of the *Handbook*. As will now be discussed, the *Handbook* also does not indicate that bookkeeping, accounting, and auditing clerks comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree, in a specific specialty, or its equivalent.

The *Handbook* states, in pertinent part, the following about this occupational category:

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

Duties

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

- Use bookkeeping software, online spreadsheets, and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) and income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared with income), income statements, and totals by account
- Check for accuracy in figures, postings, and reports
- 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 and balance billing vouchers, ensure that account data is complete and accurate, and code documents according to an organization's procedures.

Auditing clerks check figures, postings, and documents to ensure that they are mathematically accurate and properly coded. They also correct or note errors for accountants or other workers to fix.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Bookkeeping, Accounting, and Auditing Clerks, available on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited August 8, 2014).

The *Handbook* provides the following information in the subsection entitled "How to Become a Bookkeeping, Accounting, or Auditing Clerk" for this occupational category:

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

Education

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

Training

Bookkeeping, accounting, and auditing clerks usually get on-the-job training. Under the guidance of a supervisor or another experienced employee, new clerks learn how to do their tasks, including double-entry bookkeeping. (Double-entry bookkeeping means that each transaction is entered twice, once as a debit (cost) and once as a credit (income) to ensure that all accounts are balanced.)

Some formal classroom training also may be necessary, such as training in specialized computer software. This on-the-job training typically takes around 6 months.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Bookkeeping, Accounting, and Auditing Clerks, available on the Internet at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited August 8, 2014).

The *Handbook* does not report that "Bookkeeping, Accounting, or Auditing Clerks" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty for entry. The *Handbook* explains that most bookkeeping, accounting, and auditing clerks need a high school diploma. The *Handbook* continues by stating that some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. The *Handbook* further reports that workers usually receive on-the-job training. The *Handbook* does not indicate that at least a baccalaureate degree in a specific specialty (or its equivalent), is normally the minimum requirement for entry into the occupation.

In response to the RFE, the petitioner contends that O*NET assigns the accountants and auditors occupation a Job Zone Four rating, which groups it among occupations that require a four-year bachelor's degree, but **some do not** (emphasis added). Moreover, the O*NET does not report that for those occupations with an academic degree requirement, that such a degree must be in a specific

specialty directly related to the occupation. As previously discussed, 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 duties and responsibilities of the position. Further, as previously explained, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Notably, O*NET indicates that some of these occupations do not require a four-year bachelor's degree.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted a letter on appeal, dated April 24, 2013, from [REDACTED] Ph.D, Associate Professor of Finance, [REDACTED] Dr. [REDACTED] stated, "In conclusion, I believe that the subject position of "Financial Specialist" cannot be properly performed without bachelor's level training in Accounting, Finance, Business Administration, or a related field, and that professionals who will be working as Financial Specialists in connection with the duties specified above are required to demonstrate academic study in these areas." Dr. [REDACTED] also contends that the position of Financial Specialist is "distinct from lower-level bookkeeping or agent positions."

We reviewed the letter in its entirety. However, as discussed below, the letter from Dr. [REDACTED] is not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Upon review of the opinion letter, there is no indication that Dr. [REDACTED] possesses any knowledge of the petitioner's proffered position and its business operations beyond the information provided by the petitioner. Dr. [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. Moreover, Dr. [REDACTED] did not indicate that he visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Dr. [REDACTED] also fails to reference and discuss any studies, surveys, industry publications, other authoritative publications, or other sources of empirical information which he may have consulted in the course of whatever evaluative process he may have followed. In short, while there is no standard formula or "bright

line" rules for producing a persuasive opinion regarding the educational requirements of a particular position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of the particular position in question than Dr. [REDACTED] has done here.

Furthermore, there is no indication that the petitioner and counsel advised Dr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level financial specialist, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. It appears that Dr. [REDACTED] would have found this information relevant for his opinion letter. Without this information, the petitioner has not demonstrated that Dr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Dr. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusion reached by Dr. [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is an inadequate factual foundation established to support the opinion and the opinion is not in accord with other information in the record. Therefore, the letter from Dr. [REDACTED] does not establish that the proffered position is a specialty occupation.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

Upon review of the totality of the evidence in the entire record of proceeding, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, we review the record regarding 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. We incorporate by reference the previous discussion on the matter. 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.

In support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted a letter, dated April 24, 2013, from [REDACTED], Ph.D, Associate Professor of Finance, [REDACTED].

Based upon a complete review of Dr. [REDACTED] letter, we note that although Dr. [REDACTED] may be a recognized authority on various topics, he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. That is, he has not established his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how Dr. [REDACTED] education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of companies engaged in financial services (as designated by the petitioner in the Form I-129) or similar organizations, for parallel positions. Dr. [REDACTED] opinion letters does not cite specific instances in which his past opinions have been accepted or recognized as authoritative *on this particular issue*. There is no indication that Dr. [REDACTED] has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

Also, it appears that Dr. [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. As previously noted, we may, in our discretion, use as an advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791

(Comm'r 1988). The letter from Dr. [REDACTED] does not establish that the degree requirement is common to the petitioner's industry in parallel positions among organizations similar to the petitioner.

Thus, based upon a complete review of the record, we find that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner. Therefore, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We 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 shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

As noted earlier, we incorporate, and adopt into the analysis of this prong, the earlier comments and findings with regard to the evidentiary deficiencies of the descriptions of the proposed duties and the position that they are said to comprise. As noted and reflected in those comments and findings, the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the accounting duties as described in this record of proceeding comprise a position that requires the theoretical and practical application of such an educational level of a body of highly specialized knowledge in a specific specialty that only a person with a bachelor's or higher degree in a specific specialty or its equivalent can perform it.

We also find that the LCA submitted by the petitioner in support of the instant petition is materially inconsistent with a claim that the petitioner has established the relative complexity or uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, we incorporate by reference and reiterate our earlier discussion regarding the fact that the petitioner submitted as the supporting LCA one that had been certified for a Level I (entry level) wage. This designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the

services of a person with at least a bachelor's degree in a specific specialty.

The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other accounting positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner did not submit evidence relating to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position. Rather, the petitioner noted that the proffered position is a new position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

As noted earlier, we here, too, incorporate and adopt into the analysis of this prong, this decision's earlier comments and findings with regard to the evidentiary deficiencies of the descriptions of the proposed duties and the position that they are said to comprise. As reflected in those comments and findings, the evidence in this record of proceeding does not establish relative specialization and complexity as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, we again incorporate into this analysis our earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Accountants and Auditors" and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

As the evidence in the record of proceeding has not established that the nature of the duties of the position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its

equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered 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. Therefore, we need not address the beneficiary's qualifications further.

III. CONCLUSION

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).

The petition will be denied and the appeal dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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