



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: DEC 19 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 service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "Jewelry Stores" firm established in [REDACTED]. 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, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in his 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.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation.

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), 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.

III. EVIDENCE

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, from the Occupational Information Network (O*NET).¹ The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a Bachelor of Commerce degree from [REDACTED] in India. Counsel also submitted the beneficiary's résumé, which contains a history of the beneficiary's claimed employment experience and education. An evaluation in the record, dated April 3, 2013 and prepared by [REDACTED] states that the beneficiary has the "equivalent of three years of university-level credit from a regionally accredited

¹ We observe that SOC code 13-2011.00 is a summary report for Accountants and Auditors, and that Accountant positions are discussed at SOC code 13-2011.01.

college or university in the United States" and that the beneficiary's degree and employment experience, considered together, are equivalent to a U.S. bachelor's degree in accounting.²

The beneficiary's résumé states that he received a "Diploma in Gem Specialists" from [REDACTED] for study during 2000 and 2001. It states that he worked as a bookkeeper for [REDACTED] in [REDACTED] from June 2001 to November 2004, as an accounting clerk for [REDACTED] in [REDACTED] from February 2005 to June 2006, as an operations accountant for [REDACTED] in [REDACTED] from June 2006 to January 2009, and as an account manager for [REDACTED] in [REDACTED] from February 1, 2009 to the unknown date of that résumé. We observe that much of the beneficiary's employment experience has been with jewelers and jewelry stores, and that the petitioner operates jewelry stores.

Counsel also provided a letter, dated April 1, 2013, from [REDACTED] the petitioner's managing director. The letterhead identifies the company as "[REDACTED]." That letter states that the petitioner expanded its operations to Alaska in 2000 and referred to "[REDACTED] in [REDACTED]" as its "affiliate." As to the duties of the proffered position, that letter states:

As an Accountant with [the petitioner], [the beneficiary] will be responsible for:

- ☐ Performing professional accounting functions involving the application of established accounting standards, principles and practices.
- ☐ Prepare monthly intercompany rechargeable cost schedules.
- ☐ Review and post all accounts receivable invoices.
- ☐ Perform daily and monthly reconciliations.
- ☐ Maintain adequate fixed assets records by timely recording approved capital acquisitions whereby matching the purchase order with the approved fixed asset.
- ☐ Preparing and maintaining financial reports.
- ☐ Preparing of tax returns.
- ☐ Budgeting and cash flow analyses.
- ☐ Perform year closings.

As to the educational requirement of the proffered position, the petitioner's managing director stated that the proffered position requires a bachelor's degree.

On August 30, 2013, the service center issued an RFE in this matter. The service center requested evidence that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent and evidence that the beneficiary has a minimum of a bachelor's degree or its

² We note that the evaluation was not accompanied by any indication that [REDACTED] has authority to award, for employment experience, college credit in accounting at an institution with a program for awarding such credit for employment experience.

equivalent in that specific specialty. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted, *inter alia*: (1) a list of [REDACTED] jewelry store locations; (2) a printout of a portion of the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) chapter pertinent to Accountants and Auditors; (3) 13 vacancy announcements; (4) an evaluation, prepared by [REDACTED] and dated November 18, 2013, of the beneficiary's qualifications; (5) a letter, dated September 19, 2012 and prepared by Dr. [REDACTED], Dean of the [REDACTED] School of Business; (6) employment verification letters; (7) a letter, dated November 21, 2013, from counsel; (8) an evaluation pertinent to the education and employment experience of [REDACTED] and (9) pay statements pertinent to [REDACTED] and a computer printout pertinent to amounts paid to him.

The list of [REDACTED] jewelry stores includes five total stores, of which two are in [REDACTED] and three of which are in [REDACTED]

[REDACTED] November 18, 2013 evaluation of the beneficiary's qualifications states that the beneficiary's education and work experience, considered together, are equivalent to a U.S. bachelor's degree in accounting. The September 19, 2012 letter from Dr. [REDACTED] states:

In his capacity as Director of Graduate Studies and Senior Lecturer in the School of Business, Dr. [REDACTED] is authorized and qualified to grant "life experience" credits through the [REDACTED] IDEAL ("Innovative Degree Excellence in Accelerated Learning") degree completion program offered through the School of Continuing and Professional Studies.

The employment verification letters provided state that the beneficiary worked for [REDACTED] as an accountant from July 2006 to January 2009 and for [REDACTED] as an account manager from February 2009 to May 2013.³

In his November 21, 2013 letter, counsel stated:

The Accountant's job duties at [the petitioner] are broken into the following two major categories:

- (1) Preparation
- (2) Analyzing and Monitoring

³ We observe that the dates reported in those letters vary somewhat from those reported in the beneficiary's résumé.

Each category is divided into numerous subsets. A Bachelor's degree in Accounting or related field is the minimum requirement for entry into the position. Please see below for a detailed explanation.

(1) Preparation

- The Accountant will perform professional accounting functions involving the application of established accounting standards, principles and practices;
- The Accountant will prepare assigned daily financial reports, and other general accounting duties;
- The Accountant will arrange month-end journal entries and accounts reconciliation;
- The Accountant will prepare quarterly and annual financial reports;
- The Accountant will prepare monthly internal and external financial statements to support close schedules for timely review by executives and management;
- The Accountant will conduct variance analysis for all [of the petitioner's] locations [REDACTED]
[REDACTED]
[REDACTED] and other ad hoc reporting (see company locations in EXHIBIT 1);
- The Accountant will assist with the preparation of tax returns;
- The Accountant will gather financial data in preparing reports;
- The Accountant will assist with the preparation of the [petitioner's] annual budget and quarterly forecasts; and
- The Accountant will participate in the development and implementation of sound internal control policies to ensure the [petitioner's] financial statements are in compliance with all accounting and regulatory standards.

Approximately 60% (24 hours/week) of the Accountant's time will be spent on financial document preparations. The Accountant has a high level of responsibility in carrying out the above-mentioned responsibilities with minimal supervision from the president. A baccalaureate in accounting or its equivalent is required to perform the duties. The Beneficiary possesses the background equivalent of that of an individual with a bachelor's degree in accounting from a regionally accredited college or university in the United States (Exhibit 1 [which refers to the November 18, 2013 an evaluation prepared by [REDACTED]]). Specifically, the beneficiary completed courses in business economics; accountancy and financial management; mathematics and statistics; commerce; accountancy II, economics II; Finance etc. (EXHIBIT 2 [the beneficiary's transcripts]). The beneficiary's educational background clearly relates to the professional position of accountant with [the petitioner].

(2) Analyzing and Monitoring

- The Accountant will evaluate activities on major retail and corporate accounts;
- The Accountant will be responsible for analyzing product costing;
- The Accounting will review entries made on financial documents;
- The Accountant will analyze changes in account balances, explaining account fluctuations;
- The Accountant will reconcile financial related and other balance sheet accounts monthly and post journal entries;
- The Accountant will monitor performance indicators, highlighting trends and analyzing causes of unexpected variances;
- The Accountant will conduct financial analysis to assist the President in making sound business decisions;
- The Accountant will collaborate with the President, Vice-President, Director of Operations, and Director of Sales to analyze and measure performance; identify operating and performance opportunities and capture costs savings or efficiency enhancements.

Approximately 30% (12hours/week) of the Accountant's time will be spent on analyzing financial documents. The Accountant has a high level of responsibility in carrying out the above-mentioned responsibilities with minimal supervision from the President. A baccalaureate in accounting, commerce, business or its equivalent is required to perform the duties. The Beneficiary possesses the background equivalent of that "of an individual with a bachelor's degree in accounting from a regionally accredited college or university in the United States[.]" (EXHIBIT 1). Specifically, the beneficiary completed courses in business economics, accountancy and financial management; mathematics and statistics; commerce; accountancy II, economics II; Finance (EXHIBIT 2). The beneficiary's educational background clearly relates to the professional position of accountant with [the petitioner].

Counsel cited the *Handbook*, information from O*NET, and the vacancy announcements as evidence that the proffered position qualifies as a specialty occupation position. Counsel stated that [REDACTED] worked in the proffered position from November 2010 to February 2013. Counsel also cited the evidence pertinent to [REDACTED] as evidence that the petitioner normally requires a degree for the proffered position. Counsel cited the evaluation of Dr. [REDACTED] as evidence that the beneficiary is qualified for the proffered position.

The June 8, 2010 evaluation of [REDACTED] qualifications finds that his education and employment experience, considered together, are equivalent to a U.S. bachelor's degree in accounting.

The pay statements pertinent to [REDACTED] are for pay periods beginning June 2012 and ending December 2012. They also show that, at some point during 2012, but prior to June of that year, some amounts paid to [REDACTED] were for commissions earned, rather than for salary or wages. They show gross wages of \$1,500 twice per month.

The computer printout pertinent to amounts paid to [REDACTED] show that he received payment from the petitioner at least as early as January 15, 2011 and as late as February 2013, and that the payments were sometimes in irregular amounts for irregular periods.⁴

The director denied the petition on January 27, 2014, 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, counsel submitted (1) a letter, dated July 15, 2009, from [REDACTED] director of [REDACTED]; (2) 14 additional vacancy announcements; (3) a March 25, 2014 letter from a certified public accountant (CPA); (4) a 2012 Form 1120 U.S. Corporation Income Tax Return; and (5) a brief.

In his July 15, 2009 letter, [REDACTED] stated that [REDACTED] worked as an accountant for [REDACTED] from 2002 to 2009.

The March 25, 2014 CPA's letter states:

Due to recent growth and new plans for company expansion, we have strongly recommended that the [petitioner] retain the full[-]time services of an in[-]house accountant to perform professional accounting functions"

It further states: "Given the scope and nature of the business, the accountant with the [petitioner] must be a professional and must have a bachelor's degree in accounting or related field," and:

Our firm has many similarly situated employers in terms of scope and size that are engaged in similar businesses as the [petitioner] and we personally know that most of them retain the in[-]house services of a professional accountant that we work closely with.

Among the statistics the CPA provided pertinent to the petitioner, he stated that the petitioner had gross sales of \$5,994,297 during 2012.

⁴ The record does not explain why, if [REDACTED] worked as the petitioner's accountant during that period, he was sometimes paid irregular amounts at irregular intervals, or why some of the amounts due to Mr. [REDACTED] were commissions.

The 2012 Form 1120 tax return provided is for [REDACTED] of [REDACTED] in [REDACTED].⁵ We observe that location is one of the [REDACTED] locations on the list previously provided.

In the appeal brief, counsel asserted that the evidence submitted demonstrates that the proffered position satisfies each of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

IV. ANALYSIS

As a preliminary matter, we observe that the petitioner has not effectively asserted that the proffered position is a specialty occupation position, as it has never indicated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

That is, in his April 1, 2013 letter, the petitioner's managing director asserted that the proffered position requires a bachelor's degree, but not that the degree must be in any specific specialty.

In his November 21, 2013 letter, counsel initially stated that the proffered position requires a bachelor's degree in accounting or a related field, but did not delineate the fields that would be considered sufficiently closely related that a degree in those subjects would be considered a sufficient preparation for the proffered position. However, in that same letter, counsel clarified that an otherwise unspecified bachelor's degree in business would be a sufficient educational qualification for the proffered position.

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.

Counsel's assertion that an otherwise unspecified bachelor's degree in business would be a sufficient educational qualification for the proffered position indicates that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a

⁵ That Form 1120 tax return indicates that the [REDACTED] store on [REDACTED] has a Federal Employer Identification Number that is different from the petitioner's. Further, that return shows that the [REDACTED] store had gross sales of \$6,015,641, an amount different from the petitioner's gross sales during 2012. Those facts demonstrate that the petitioner is not the same company as that [REDACTED] location. As such, the record contains insufficient indication that the existence of that [REDACTED] in any way complicates the proffered position. The return also shows that [REDACTED] retained [REDACTED], of [REDACTED], a CPA firm in [REDACTED], to prepare that return. The record contains insufficient evidence to show that the beneficiary, or any employee of the petitioner, was involved in its preparation.

specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2011, Accountants and Auditors from O*NET. In his November 21, 2013 letter, counsel stated, ". . . O*NET has designated the position of market research analyst . . . [in] Job Zone 4 where a baccalaureate degree is required." We assume that counsel intended to make that assertion about accountant positions and observe that O*NET categorizes Accountant positions at 13-2011.01, and also includes them in Job Zone 4.

However, a Job Zone "Four" rating merely groups accountant positions among occupations of which "most," but not all, "require a four-year bachelor's degree."⁶ Further, O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

⁶ 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.

We recognize the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷ We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Accountants and Auditors," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of accountants and auditors:

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:

- Examine financial statements to ensure 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 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.

⁷ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

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., "Bookkeeping, Accounting and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited Dec. 17, 2014).

The *Handbook* states the following with regard to the duties of bookkeeping, accounting, and auditing clerks:

What Bookkeeping, Accounting, and Auditing Clerks Do

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," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited Dec. 17, 2014).

Accountant positions are similar to bookkeeping or accounting clerk positions, in that both are responsible, to some degree, for a company's financial records. Both positions also involve some degree of analysis.

The distinction between the duties of an accountant or auditor and the duties of a bookkeeping, accounting, or auditing clerk appears to be the complexity of analysis required by those duties. Counsel stated that the duties of the proffered position include analyzing product costing and changes in account balances, in addition to financial analysis. However, the record contains insufficient evidence to demonstrate the complexity of the requisite analysis.

The duties the petitioner's managing director attributed to the proffered position are consistent with those of bookkeeping, accounting, and auditing clerk positions as described in the *Handbook*. We find no flaw in the director's finding that the petitioner failed to show, by a preponderance of the evidence, that the proffered position is an accountant position.

The petitioner in the instant case is a company that operates one or more jewelry stores. The evidence indicates that the petitioner outsources some of its accounting to a CPA firm. Further, the evidence does not indicate that the petitioner employs a bookkeeping or accounting clerk. Because the record contains insufficient evidence to show that the beneficiary would be relieved from performing the company's general, financial record keeping, such as recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeping clerk and/or accounting clerk), it appears more likely than not that the beneficiary is being hired to perform, at least in substantial part, these duties.⁸

We find, by a preponderance of the evidence, that the proffered position is a bookkeeping or accounting clerk position. We further observe that such positions do not qualify as specialty occupation positions because they do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. *Id.* at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited Dec. 17, 2014). The appeal will be dismissed and the visa petition denied on this basis.

⁸ Additional reasons exist to doubt that the petitioner would employ the beneficiary as an accountant if the visa petition were approved. Those additional reasons will be discussed in some detail below.

However, although the evidence is insufficient to demonstrate that the proffered position is an accountant position, as claimed, we will momentarily assume, *arguendo*, that the proffered position qualifies as such a position, so as to reach counsel's assertions pertinent to such positions.

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, 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.

Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

Licenses, Certifications, and Registrations

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. Many employers will often pay the costs associated with the CPA exam.

CPAs are licensed by their state's Board of Accountancy. Becoming a CPA requires passing a national exam and meeting other state requirements. Almost all states require CPA candidates to complete 150 semester hours of college coursework to be certified, 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 (AICPA). 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 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) to 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 (CFSA) 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 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 ABV requires a written exam and completion of at least six business valuation projects that demonstrate a candidate's experience and competence. The CITP requires 1,000 hours of business technology experience and 75 hours of continuing education. Candidates for the PFS also must complete a certain amount work experience and education, and pass a written exam.

Advancement

Some top executives and financial managers have a background in accounting, internal auditing, or finance.

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 and auditors 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited Dec. 17, 2014).

The *Handbook* reports that some graduates from junior colleges or business or correspondence schools, 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 equivalent to at least a bachelor's degree in a specific specialty. The *Handbook* does not indicate, therefore, that at least a bachelor's degree in a specific specialty or its equivalent 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. Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Where, 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 this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a 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." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further still, we find 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 in bookkeeping and accounting fields, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Even assuming that the proffered position is a specialty occupation position, 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. Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, we find 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Counsel did provide the March 25, 2014 letter from a CPA that states that most "similarly situated" companies "in terms of scope and size that are engaged in similar businesses" retain an in-house accountant. However, he did not indicate that he was speaking only of retail jewelers, or even limiting his survey to retailers in general. He did not state that his survey included only jewelers with one or two locations, nor even state how many locations the petitioner has. He did not state that he was speaking only of companies with net sales in, for instance, the \$500,000 to \$1 million range. In short, he did not state any of the parameters of his survey or the number of businesses he considered in his sample, except that they are "many." That CPA's assertion that the companies he considered are "similarly situated" "in terms of scope and size" and that they are engaged in "similar businesses" to the petitioner's is conclusory. While we are willing to consider the CPA's conclusion, if it were demonstrably supported by relevant evidence, we are not willing to adopt his conclusion as a demonstrated fact, absent such evidence.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). In this case, we will accord very little weight to the CPA's statement that companies similar to the petitioner usually employ in-house accountants.

As was noted above, the petitioner did provide 27 vacancy announcements. Some of the vacancy announcements, however, were not placed by companies in the petitioner's industry.⁹ Further, although one of the vacancy announcements was placed by a company that sells jewelry, it is a television and Internet home shopping network, and not, therefore, otherwise similar to the petitioner. Other vacancy announcements do not make clear whether the companies that placed them are jewelers and otherwise similar to the petitioner.

The petitioner stated on the LCA that the proffered position is a Level I position, that is, an entry level position for an employee who has only basic understanding of the occupation.¹⁰ However, some of the vacancy announcements are for positions with job titles like Senior Accountant, Senior Cost Accountant, Accounting Manager, Accounting and Finance Manager, Cost Accountant II. Those do not appear to be positions parallel to the proffered position, if it is correctly classified as a Level I, entry-level, position.

Further, most of the vacancy announcements state an experience requirement, and some state a requirement of a considerable amount of very specific experience. That is not consistent with those positions being Level I, entry level, positions. As such, those vacancy announcements also do not appear to be for positions parallel to the proffered position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and 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 27 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.¹¹

⁹ One of the vacancy announcements was placed by a company that provides accountants to other companies, and seeks a senior accountant to work for a restaurant/grocery store company. Other vacancy announcements were placed by or for footwear companies, an "international luxury goods company," a "luxury apparel and accessories distributor and retailer," and a leather goods company. One announcement states that it was placed by the world's largest retailer of musical instruments with "250+" retail stores and annual revenues exceeding \$2 billion.

¹⁰ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *supra*.

¹¹ USCIS "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

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner, and does not satisfy the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Finally, as was also noted above, the LCA submitted is approved for employment of 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. Even assuming that the proffered position is an accountant position, that classification 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 specific bachelor's degree, especially as the *Handbook* suggests that some accountant positions do not require such a specialized bachelor's degree.

Therefore, even assuming the proffered position to be an accountant position, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of educational

is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

qualifications acceptable for such positions, including degrees not in a specific specialty and degrees that are less than a bachelor's degree. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We 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 minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.¹²

Counsel stated that [REDACTED] worked in the proffered position from November 2010 to February 2013. However, that appears to be inconsistent with the fact that, during much of that period, the petitioner paid [REDACTED] irregular amounts at irregular intervals, and that some amounts paid to him were commissions. Further, the petitioner stated on the visa petition that it was established in 1999. The period of time during which the petitioner allegedly employed [REDACTED] as its accountant is only a small portion of the period during which the petitioner has been in business. Even if the petitioner were to establish that it employed [REDACTED] as its accountant from November 2010 to February 2013, that would not, in itself, establish that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further, the evaluation of [REDACTED] degree was not accompanied by any evidence that the evaluator had authority to award, for employment experience, college credit in accounting at an institution with a program for awarding such credit for employment experience. Therefore, the evidence does not establish that [REDACTED] has the equivalent of a bachelor's degree in accounting, or any specific specialty, within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the regulation salient to establishing an equivalence of a minimum of a bachelor's degree in a specific

¹² 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").

specialty through a combination of education and experience. As such, [REDACTED] was not shown to have a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains insufficient evidence that the petitioner has ever hired anyone else to fill the proffered position, and the petitioner has not, therefore, provided sufficient evidence to satisfy criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we 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. The duties of the proffered position, such as performing accounting functions, preparing monthly cost schedules, reviewing and posting accounts receivable, performing reconciliations, preparing tax returns and financial reports, etc., contain no indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of account positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Finally, 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. Even assuming that the proffered position is an accountant position, 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 the reasons discussed above, the evidence of record does not satisfy 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.

V. ADDITIONAL BASES

The record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

A. BENEFICIARY QUALIFICATIONS

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 specialty or its equivalent. Absent a 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 specific degree or its equivalent. This would ordinarily preclude an analysis of whether the beneficiary is qualified to work in the proffered position.

However, in the instant case, the combined evaluations of the beneficiary's education and work experience submitted by the petitioner are insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in *any* specific specialty. Specifically, the claimed equivalency was based in part on experience, and there is insufficient evidence that the evaluators have authority to grant college-level credit for training and/or experience in accounting at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in accounting through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in *any* specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established. The visa petition must be denied for this additional reason.

B. NON-CORRESPONDING LCA

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

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

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion

model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

[Italics added]

Several reasons exist for finding that the LCA submitted in this case does not correspond to the visa petition. The LCA states that the proffered position is a Level I position. Level I employees "work under close supervision and receive specific instructions on required tasks and results expected."¹³ However, counsel stated, in his description of the duties of the proffered position, that the beneficiary would carry out his responsibilities with minimal supervision. The conflict between the petitioner's classification of the proffered position as Level I and counsel's assertion that, in the proffered position, the beneficiary would work with minimal supervision is plain, and is a sufficient reason to find that the LCA does not correspond to the visa petition.

Further, the petitioner operates jewelry stores. Much of the beneficiary's previous employment experience is with jewelry stores. The beneficiary's résumé indicates that he received a "Diploma in Gem Specialists" from "[REDACTED]". This suggests that the beneficiary's experience may actually have been more closely related to jewels than to accountancy, and that the petitioner may intend to employ the beneficiary in a position more closely related to a jeweler position than to an accountant position.

Further still, although the petitioner asserted that it previously employed [REDACTED] in the proffered position, evidence shows that [REDACTED] pay was in irregular amounts at irregular intervals and included commissions. This reinforces the inference that the petitioner may not intend to employ the beneficiary as an accountant.

For all of these reasons, the petitioner has failed to show, by a preponderance of the evidence, that the LCA submitted corresponds to the visa petition. The petition will be denied on this additional basis.

VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated

¹³ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *supra*.

grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.