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U.S. Citizenship
and Immigration
Services

DATE: **JUN 18 2014** OFFICE: CALIFORNIA 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,

for *Michael T. Kelly*
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a 350-employee in-home healthcare business¹ established in 2002. In order to employ the beneficiary in what it designates as a 30 hour per week financial administrator position at a salary of \$22.76 per hour² 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, concluding that the evidence of record does not demonstrate that the proffered position qualifies for classification as a specialty occupation.

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

We find that, upon review of the entire record of proceeding, the evidence of record does not overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. SPECIALTY OCCUPATION

We will now address the director's determination that the evidence of record has not established that the proffered position is a specialty occupation. Based upon our complete review of the record of proceeding, we find that the evidence fails to establish that the position as described constitutes a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as a "Financial Administrator" on a full-time basis. The petitioner stated at page 5 of the Form I-129 that the beneficiary would work part-time, and the petitioner stated on both the Form I-129 and the LCA that it would pay him a salary of \$22.76 per hour.

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 62311, "Nursing Care Facilities." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "62311 Nursing Care Facilities," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 27, 2014).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Accountants and Auditors" occupational classification, SOC (O*NET/OES) Code 13-2011.01, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

In its March 28, 2013 letter, the petitioner stated that the "Financial Administrator's functions at [REDACTED] include the following":

Finance/Operations Management-65%

- Prepare, track, and distribute large quantities of invoices to various agencies/customers, ensuring proper content of invoices, delivery and record-keeping
- Handle billing claims of sizeable proportions, which includes claims processing, responsibility for early detection of claim problems, and propose corrective actions
- Monitor financial details to ensure necessary requirements are met
- Track and record payments received from agencies and private insurance companies
- Manage case receipts and bank wire transfers of large sums and ensure accurate recording of transfers and payments in software and other internal systems
- Prepare financial statements and business activity reports for review of CEO
- Maintain regular communication with various health care providers and programs, including [REDACTED] and [REDACTED] to ensure timely delivery of invoices and correspondence and resolution of billing issues

Accounting Administration-20%

- Examine and prepare accounting records, including financial statements and reports
- Advise CEO and Associate Director of tax issues, resource utilization, and budget issues
- Provide support to external accountant, as needed, regarding complex financial reports
- Utilize computer technology to maintain accurate account records and identify technology advances to improve efficiency or compliance of current financial functions

- Develop and maintain reports comparing budgeted costs to actual costs
- Keep abreast of relevant accounting principles, programming and billing and operations software to carry out financial functions and identify areas of inefficiency

Compliance Functions-15%

- Oversee compliance of tax issues and proper recordkeeping of company with IRS
- Update and maintain agency personnel policies and procedures
- Contact Department of Human Services (DHS), other state and federal agencies, and private insurance providers to ensure receipts of payment and contact compliance
- Communicate concerns regarding finance, accounting, tax, or contract compliance to executive management

In an August 21, 2013 letter attached to counsel's August 23, 2013 response to the director's RFE, the petitioner provided further details regarding the proffered position:

As an initial matter, I wish to clarify the job title of the intended position. The position is Financial Administrator, which is within the Accounting field. This occupation was chosen under 13-2011.01 of ONET because it is the most accurate representation of the primary responsibilities of the position. As you can see, a search of the same online source under either 'financial' or 'administrator' does not reveal as close of a match to the intended duties or to the context of the company. For example, a search of 'administrator' results in an Administrative Services Manager (11-3011.00) that involves duties such as distributing mail and storing supplies. This could not be farther from the advanced and complex responsibilities required of the Financial Administrator supervisory position at [REDACTED]. The proffered position at [REDACTED] is akin to an Assistant Controller position although this particular title is unavailable on ONET. A search of 'controller' instead results in Treasurers or Controllers (11-3031.01) that require a Master's degree for entry, which does not comport with the education requirements of the position. . . .

Although the Financial Administrator will be working for [REDACTED] on a part-time basis, I also wish to be clear that this is not a bookkeeping-type position. Rather, it is a role of great complexity that requires the individual to apply specialized knowledge of accounting, finance, and business administration principles to oversee significant and large-scale finance and accounting functions, such as

analyzing large amounts of financial data to reconcile ledgers and statements, evaluating company assets and liabilities, preparing financial reports, advising on areas of inefficiency with respect to resource utilization, identifying opportunities to reduce costs, tracking purchase requisitions and invoices involving hundreds of thousands of dollars, influencing senior management to pioneer new finance-related approaches, communicating with various government agencies and insurance providers, and generally overseeing finance administration functions for our company that brings in millions of dollars each year. . . .

The Financial Administrator at [REDACTED] will directly supervise two other positions: (1) Billing Coordinator, Ms. [REDACTED] and (2) Administrative Assistant, Mr. [REDACTED] Ms. [REDACTED] (Billing Coordinator) holds a Master's degree in Business Administration and is currently working on a Doctorate of Business Administration. It would be absurd to think that critical billing work that Ms. [REDACTED] produces on behalf of the company with a Master's degree would be managed by someone who had anything less than a bachelor's degree.... The position also works alongside the Associate Director, Ms. [REDACTED] who also holds a Master's degree in Business Administration from [REDACTED] which further supports the need for the Financial Administrator to hold at least a college degree to coordinate on key operation issues. . . .

[T]he minimum education requirement for the Financial Administrator position at [REDACTED] is a bachelor's degree in business administration, accounting, finance, or related field. . . .

In support, the petitioner submitted a letter from [REDACTED] D.B.A., Professor of Management, Emeritus at [REDACTED] and Lecturer, [REDACTED] School of Public Health at [REDACTED] who made the following assertions:

Having reviewed the job description and the job duties of the position in question, I can easily attest that a bachelor's degree would be a *minimum* requirement to successfully carry out all of the duties and responsibilities for the position. . . .

* * *

Given my experience in the healthcare field, I feel quite confident in stating that someone with less than a bachelor's degree would not be able to successfully carry out the complex and challenging tasks for the position of Financial Administrator with the duties and responsibilities described above and listed in detail in Attachment A. . . .

We reviewed the letter in its entirety. However, as discussed below, the letter from Professor [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 Professor [REDACTED] possesses any knowledge of the petitioner's proffered position and its business operations: he states that he "reviewed the job description and the job duties of the position in question," but he does not indicate that he inquired deeper into the petitioner's business operations or the extent and complexity of the particular financial matters that the beneficiary would address. Professor [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, upon review of the letter, Professor [REDACTED] does 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. Furthermore, there is no indication that the petitioner and counsel advised Professor [REDACTED] that the petitioner characterized the proffered position as low and entry-level, for a beginning employee who has only a basic understanding of the occupation (as indicated by the Level I wage-level on the LCA). As we shall discuss in detail below, that prevailing wage-rate is appropriate for a position in which the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; will be closely supervised and his work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results. We find this to be a relevant aspect of the position, as it reflects an assessment that the proffered position is of relatively low complexity in relation to other jobs within the position's occupational group. In this respect too, we find that Professor [REDACTED]'s opinion is not based upon a sufficient factual foundation. Without this information, the petitioner has not demonstrated that Professor [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. Professor [REDACTED] has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Professor [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusion reached by Professor [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. The professor does not present an adequate factual foundation to support the opinion and we find that the opinion is not in accord with other information in the record. Therefore, we find that Professor [REDACTED]'s submission is not probative evidence towards satisfying any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We, in our discretion, may 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 its discretion we discount the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Further, the petitioner's and Professor [REDACTED]'s assertions that the position as described constitutes a specialty occupation materially conflict with the wage level designated in the LCA that the petitioner submitted with the petition. The LCA submitted by the petitioner in support of the instant

position specifies the occupational classification for the position as "Accountant," SOC (O*NET/OES) Code 13-2011.01, at a Level I (entry level) wage. The *Prevailing Wage Determination Policy Guidance*³ issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage-rates:

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

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

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proffered position's demands and level of responsibilities (such as, for example, the petitioner's claim, in its RFE-reply letter, regarding the "advanced and complex responsibilities" required of the proffered "supervisory position" as a "role of great complexity.") Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

³ Available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last visited May 27, 2014).

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁴ As noted above, the LCA that the petitioner submitted in support of this petition was certified for a job offer falling within the "Accountants" occupational category.

We find that the *Handbook's* entries for the "Bookkeeping, Accounting, and Auditing Clerks" and "Accountants and Auditors" occupational classifications both contain aspects of the proposed duties, and that both occupations require some understanding of accounting principles. However, the question to be addressed in this proceeding is not whether the proffered position requires some knowledge of accounting principles, but whether it is one that normally requires the level of knowledge of a body of highly specialized knowledge in accounting that is signified by attainment of at least a bachelor's degree, or its equivalent, in accounting or a closely-related specialty.

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

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

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

- Use bookkeeping software, 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

⁴ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.bls.gov/ooh>. Our references to the *Handbook* are from the 2014-15 edition available online.

- 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> (accessed May 27, 2014).

In its March 28, 2013 letter the petitioner stated that the beneficiary would spend 65 percent of his time preparing, tracking and distributing large quantities of invoices⁵, handling billing claims, monitoring financial details, tracking and recording payments, managing cash receipts and bank wire transfers, preparing financial statements and business activity reports and maintaining regular communication with various health care providers and programs. Thus, the beneficiary would spend more than one-half of his time performing tasks which, according to the *Handbook*, fall within those normally performed by bookkeepers and accounting clerks.

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

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.

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.

Id. at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (accessed May 27, 2014).

⁵ In the August 21, 2013 letter submitted in response to the director's RFE, the petitioner stated that the beneficiary would "[s]upervise Billing Coordinator and Administrative Assistant in [emphasis added] preparing, tracking, and distributing large quantities of invoices...." As we previously noted, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

These statements do not support a conclusion that a bachelor's degree in a specific specialty, or its equivalent, is normally required for employment as a bookkeeping, accounting, or auditing clerk. Thus, with regard to a significant portion (over one-half) of the beneficiary's anticipated work time, it appears that the beneficiary would be performing work normally performed by bookkeeping, accounting, or auditing clerks, an occupational category for which the *Handbook* indicates entry does not normally require at least a bachelor's degree, or the equivalent, in a specific specialty. As such, the *Handbook* does not support a finding that the proffered position qualifies for classification as a specialty occupation under the first criterion.

The remainder of the duties proposed by the petitioner, specifically Accounting Administration and Compliance Functions (35% as per the petitioner's March 28, 2013 letter) for the beneficiary are generally similar to those described in the *Handbook* as normally performed by accountants and auditors.

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

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

Accountants and auditors typically do the following:

- Examine financial statements to 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.

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-2> (last visited May 27, 2014).

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

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.

Id. at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited May 27, 2014).

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. First, the *Handbook* specifically states that "[m]ost accountants and auditors need at least a bachelor's degree in accounting or a related field.." 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 Accountant positions require at least a bachelor's degree, it could be said that "most" Accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." § 214(i)(1) of the Act.

Furthermore, the *Handbook* includes the following statement:

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.

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

As clear from the statements from the *Handbook* excerpted above, the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish the position as one for which a minimum requirement for entry is at least a bachelor's degree, or the equivalent, in accounting or a closely related specialty. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position being proffered would involve accounting services at a level requiring the theoretical and practical application of at least a bachelor's-degree level of a body of highly specialized knowledge in accounting.

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

Our determination that the accounting duties proposed for the beneficiary would not involve accounting services at a level requiring the theoretical and practical application of at least a bachelor's-degree level of a body of highly specialized knowledge in accounting is bolstered by the wage-level designated by the petitioner on the LCA. As indicated by the *Prevailing Wage Determination Policy Guidance* cited above, both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

Furthermore, the materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, we interpret 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. The Specialized Vocational

Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

Finally, we here refer the petitioner back to our earlier comments and findings with regard to Professor [REDACTED]'s letter. As noted above, we find that the letter from Professor [REDACTED] does not establish that the proffered position is a specialty occupation.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, the record contains no letters or affidavits from firms or persons in the industry attesting to such a requirement. Further, there is no evidence of a professional association having made a bachelor's degree in a specific specialty, or the equivalent, a minimum requirement for entry.

Nor do the 30 vacancy announcements submitted by counsel satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, we discount 26 of the vacancy announcements because counsel has failed to establish that the positions advertised are "parallel" to the proffered position⁶

⁶ For example, it is noted that work experience is required in 26 of the job vacancy announcements submitted. However, as noted above, the petitioner indicated by the wage-level in the LCA that its proffered position is a comparatively low, entry-level position relative to others within its occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. It is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to these positions described in these job vacancy announcements.

Further, the petitioner has failed to establish that a number of the vacancy announcements relate to the petitioner's industry, as would be required if those submissions were to be within this prong's zone of consideration.⁷ Nor has the petitioner established that the positions advertised in a number of the vacancy announcements require a bachelor's degree, or the equivalent, in a specific specialty.⁸ Again, the vacancy announcements submitted by the petitioner do not establish that the petitioner has met this prong of the regulations. Thus, further analysis regarding the specific information contained in each of the vacancy announcements is not necessary. That is, not every deficit of every vacancy announcement has been addressed.

Therefore, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as 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 (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.

Next, we find that the evidence of record 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."

The statements of counsel and the petitioner with regard to the claimed complex and unique nature of the proffered position are acknowledged. However, those assertions are further undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. We incorporate here by reference and reiterate our earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, as this factor is inconsistent with the level of relative complexity and uniqueness required to satisfy this criterion. Based upon the wage-rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be

⁷ For instance, with respect to Job IDs 1266569-NRC, 1262703-EQG, and 1265637-NRC, it is unclear what industry the hiring companies are in and whether they would be similar to the petitioner and, as such, it also cannot be determined whether the jobs would be considered parallel to that of the proffered position. The Financial Administrator vacancy announcement in New York, New York refers to a "prestigious advertising firm." One vacancy announcement is seeking a Financial Administrator II for "the Committee on African Studies...Harvard campus...." One vacancy announcement is for a "[s]uccessful South Metro Twin Cities Dealership. Another vacancy announcement seeking a Financial Administrator I is on behalf of the School of Chemistry and Biochemistry of the Georgia Institute of Technology. Yet another vacancy announcement is on behalf of Armour College.

⁸ For example, the vacancy announcements for Long Island Association for AIDs Care, Inc., Mississippi Division of Medicaid, Elim Care, Passport Health Communications, Inc., Europa Trust Company Ltd. and PeaceHealth specify a bachelor's degree but do not reference a specific specialty.

closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy.

Accordingly, given the *Handbook's* indication that there are positions located within the "Accountants and Auditors" occupational category which are performed by persons without at least a bachelor's degree in a specific specialty, or the equivalent, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* be so complex or unique that it could only be performed by a person with at least a bachelor's degree in a specific specialty or the equivalent. Even more fundamentally, the evidence of record does not establish that the proffered position possesses the relative complexity or uniqueness required to satisfy this program. In particular, we find that the record's descriptions of the duties said to comprise this position are limited to terms of generalized functions so broadly stated as to characterize accounting positions generally and regardless of their complexity or uniqueness relative to other accounting positions, including those not so complex or unique as to require the services of a person with at least a bachelor's degree, or the equivalent, in accounting or a closely related specialty. We note, for instance, that the evidence of record does not establish either the substantive nature of or the particular level of accounting knowledge that would be required to perform the required work on "financial reports," "financial statements," and "business activity reports." We also note that the record of proceeding nowhere develops the extent of the accounting matters that would be handled primarily by the "external accountant" mentioned in the duty descriptions.

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

As the evidence of record therefore fails to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) either.

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

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. Additionally, the record must establish that a petitioner's

imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.⁹

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's June 4, 2013 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The RFE included the following specific request for such documentation:

Position Announcement: To support the petitioner's contention that the position is a "specialty occupation," provide copies of the petitioner's present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires its applicant to have a minimum of a baccalaureate or higher degree or its equivalent in a specific specialty.

Past Employment Practices: Provide evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher in a specific specialty, to perform the duties of the proffered position....

Although the director provided the petitioner with the opportunity to establish a history of recruiting and hiring only individuals for this position¹⁰ with a bachelor's degree in a specific specialty, or the equivalent, the petitioner submitted no such evidence. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is not possible that an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. Even if the record contained such evidence, we would still find that the petitioner failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the record does not, as indicated above, establish that its

⁹ Any such assertion would be undermined in this particular case by the fact that the petitioner submitted an LCA that had been certified for a Level I wage-level, which is appropriate for use with a comparatively low, entry-level position relative to others within the same occupation.

¹⁰ Counsel submitted documentation in response to the director's RFE for [REDACTED] Operations Director, [REDACTED] Administrative Assistant and [REDACTED] who "performs administrative functions for company." The information provided does not establish employment practices for the proffered position, namely, Financial Administrator.

degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position, a determination which is strengthened by the petitioner's submission as the supporting LCA one that was certified for the lowest wage-level, which is appropriate for a comparatively low, entry-level position relative to others within its occupation.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, we find that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

As reflected in this decision's earlier discussion of the duty descriptions in relation to the second alternate prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the proposed duties as described in the record of proceeding contain no indication of specialization and complexity such that the knowledge they would require is usually associated with any particular level of education in a specific specialty. As generically and generally as they were described, the duties of the proposed position are not presented with sufficient detail and explanation to establish the substantive nature of the duties as they would be performed in the specific context of the petitioner's particular business operations. Also as a result of the generalized and relatively abstract level at which the duties are described, the record of proceeding does not establish their nature as so specialized and complex as to require knowledge usually associated with at least a bachelor's degree in a specific specialty, or the equivalent.

Additionally, we find that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

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

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

are indicators that a Level I wage should be considered [emphasis in original].

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 (last visited May 6, 2014).

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

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

Id.

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

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

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

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

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

Id.

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

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

Id.

Here we again incorporate our earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. As already noted, by virtue of this submission, the petitioner effectively attested to DOL that the proffered position is a low-level, entry position relative to others within the same occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

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

II. CONCLUSION AND ORDER

For the reasons discussed above, we conclude that the evidence of record does not satisfy 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.

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. The appeal will be dismissed and the petition denied for this reason.

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