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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 01 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 Director, California Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Wholesale Trade" business which was established in 2004 and employed 4 persons in the United States when the petition was filed. The petitioner seeks to employ the beneficiary in what it designates as an "Accountant" position on a part-time basis from October 1, 2013, until September 13, 2016. Accordingly, the petitioner endeavors to classify the beneficiary as an H-1B 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, determining that the record did not establish that the job offered qualifies as a specialty occupation.

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

I. Law

The principle issue in this matter is whether the director correctly determined that the petitioner failed to establish that the proffered position is a specialty occupation. To meet its burden of proof on this issue, 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:

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

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, supra*. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), United States 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.

II. Facts and Procedural History

A. The Petitioner and Its Business Operations

On the Form I-129, the petitioner states that it is in the "Wholesale Trade" business and that it earned \$1,645,593 in gross annual income when the petition was filed.

The petitioner listed its North American Industry Classification System (NAICS) Code on the Form I-129 H-1B Data Collection Supplement, Part A, Question 6, as 4236, "Household Appliances and Electrical and Electronic Goods Merchant Wholesalers."²

In its March 29, 2013 letter filed in support of the Form I-129 the petitioner indicated it was established in 2004 as a wholly-owned subsidiary of [REDACTED], Ltd., [REDACTED] located in Ningbo, China. The petitioner explained that it specialized in premium flashlights and related lighting products while [REDACTED] manufactured and produced the products through its six production plants in China. The petitioner noted that since its establishment in 2004, it "has successfully grown in the market, doubling its gross sales from approximately \$500,000 to over \$1.6 million dollars in the North American markets."

² U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "4236 Household Appliances and Electrical and Electronic Goods Merchant Wholesalers," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

In its August 12, 2013 response to the director's RFE, the petitioner stated that it specialized in the sales and distribution of LED lights, premium flashlights and related lighting products and that it "has watched its gross sales grow from approximately \$500,000 in 2004 to over \$10 million dollars in annual sales in 2012." The petitioner also indicated that it is focusing on company expansion and has already partnered with U.S. national chain companies such as [REDACTED]'s and [REDACTED].

The petitioner submitted a copy of its Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for 2008, 2010, 2011, and 2012. The IRS Form 1120 for 2008 shows gross annual receipts/sales of \$986,301; the IRS Form 1120 for 2010 shows gross annual receipts/sales of \$2,643,231; the IRS Form 1120 for 2011 shows gross annual receipts/sales of \$6,321,573; and the IRS Form 1120 for 2012 shows gross annual receipts/sales of \$10,137,315. None of the IRS Forms are signed by the petitioner and none have been certified. Each IRS Form 1120 indicates it was prepared by "[REDACTED]"

The record also contained the petitioner's organizational chart showing a general manager and the beneficiary's proposed position of "accountant" and a budget analyst position reporting to the general manager. The chart also noted the employment of one sales specialist and the vacancy for another sales specialist position. The record before the director included a number of invoices and purchase orders from 2011, 2012, and 2013. The petitioner provided a copy of its catalog and a printout of its website.

The record of proceeding also reflects that as part of its business operations the petitioner employs an outside firm for accounting purposes. That third-party entity is variously referred to as an accounting firm and a CPA firm. The record does not provide a comprehensive statement of the work that the firm performs for the petitioner. However, the petition does attest (1) that the firm accountant produces monthly, quarterly, and annual reports, and (2) that the beneficiary would (a) verify them and (b) use them to "perform the required financial analysis and recommendations to [the petitioner]." The record of proceeding, however, does not include substantial information about the content of the accounting/CPA firm's reports, or about the analyses in which the beneficiary would engage in verifying them and in preparing whatever "financial analysis" that it is claimed that the beneficiary would present to the petitioner's management.

Our review of the total record of proceeding of course included the RFE-response's copies of documents generated in the course of the petitioner's business that reflect accounting aspects of its operations. Counsel's cover letter to the RFE response identified these by enclosure number and general description as follows: "7. [The petitioner's] Cost Analysis and Accounts" receivable and payables [sic]"; "8. [The petitioner's] Purchase Orders."³ However, we find nothing in those documents, considered alone or in the aggregate, that shows what either their production or their use would require in terms of a minimum level of education and/or

³ It should be noted that the AAO's review of the totality of the evidence of record encompassed every accounting-related document submitted into the record, regardless of how they may have been labelled or categorized by the petitioner.

educational equivalency in accounting or a closely related specialty. On appeal, counsel for the petitioner resubmitted the documents initially provided as well as the documents submitted in response to the director's RFE. Counsel did not submit any new documentation.

B. The Proffered Position

On the Form I-129, the petitioner specified "Accountant" as the proffered position's job title. The petitioner also submitted a Labor Condition Application (LCA) that had been certified for use with a job opportunity within the "Accountant" occupational group, SOC (ONET/OES) Code 13-2011, at a Level I (entry-level) wage.⁴ The LCA was certified on March 21, 2013 for a validity period from September 14, 2013 to September 13, 2016.

In its March 29, 2013 letter in support of the petition, the petitioner stated that its "Accountant" will perform the following duties:

- Compile and analyze financial information to prepare statements including monthly and annual accounts;
- Ensure all financial reporting deadlines are met and will ensure the accuracy and timeliness of monthly, quarterly, and year end close;
- Ensure accurate and appropriate recording and analysis of revenues and expenditure trends, financial commitments, and future revenues;
- Perform cost accounting, and review standard and actual costs and validate cost of goods; and
- Provide reports on break even points, margins, periodic variances, and cost accumulation.

[Paraphrased and bullet points added for clarity.]

The petitioner asserted that the "highly specialized and demanding position of Accountant requires an individual with, at a minimum, a Bachelor's Degree in Accounting or related field."

Upon review, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE.

In a response dated August 12, 2013, the petitioner provided additional information regarding the duties of the proffered position. As will be seen below, the petitioner divided the duties into four sets, each of which was assigned estimated percentages of work time. We shall now quote those sections verbatim.

⁴ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The Accountant will ensure all financial reporting deadlines are met, and ensure the accuracy and timeliness of monthly, quarterly, and year end close (20%)

- Financial statement including income [s]tatement, cash flow and the balance sheet. The accountant will review the monthly, quarterly and annually report submitted from the CPA firm. The accountant has the responsibility report to the executives during the annual meeting regarding the business trend, data information and the potential risk reflected from the statement.
- Cash Flow, overdue payment list, the accountant will review the account receivable and generate the overdue payment list to the general manager.
- Payroll Summary, the accountant needs to review the payroll summary submit from the CPA firm.
- Tax return, the accountant needs to work with the CAP [sic] firm for the tax preparation.

The Accountant will ensure accurate and appropriate recording and analysis of revenues and expenditure trends, financial commitments, and future revenues (35%)

- Cost Analysis, the accountant will generate the cost analysis statement and report to the general manager in a regular basis.
- Return Record, the accountant will generate the return/defective report to the general manager in a regular basis.
- Duty code, shipping cost, the accountant has the responsibility to exam [sic] the duty code and shipping cost to see if they are matching the record.
- Order Status, the accountant has the responsibility to generate the order status report to the general manager in a regular basis.
- Lost Shipment, the accountant has the responsibility to record the lost shipment and ensure the validation of the lost shipment.
- Review quotes from Vendor, the accountant needs to review the quotations before submit to the general manager.

The Accountant will perform Cost Accounting, and review standard and actual costs and validate cost of goods (25%)

- Cost analysis, the accountant will make the cost analysis report and submit to the general manager in a regular basis. The report will contain the data to represent the business trend and potential risk with different customers.
- Return, defective rate, the accountant will make the product return/defective report and report to the general manager for quality control purpose.

- Currency exchange, the accountant will keep monitoring the current exchange rate and report to general manager in a regular basis.
- Duty regulation, the accountant will keep monitoring the updated duty regulations related to the current products.

The Accountant will compile and analyze financial information to prepare statements including monthly and annual accounts (20%)

- Account Receivable, invoice, the accountant will generate the invoice to customer when the shipment receipt has been confirmed. Then the accountant needs to record the invoice amount and due date to the account receivable book.
- Accountable, proforma Invoice, the accountant will review the proforma invoice sent by the supplier to ensure the information matches. Then the accountant needs to record the invoice amount and due date to the account payable book.
- Purchase order from customer, the accountant needs to review the purchase order to ensure the #/price/due dates are valid.
- Purchase order to Supplier, the accountant will issue the purchase order to the vendor in China to ensure all specification, item, cost and due date are valid.
- Shipping cost, the accountant needs to review the invoice from shipping carrier in a regular basis to ensure the shipping cost is under company required shipping margin.
- Duty cost, the accountant needs to review the invoice form the custom broker to in a regular basis to ensure the duty cost is under company required margin.
- Profit Margin, the accountant needs to calculate the profit the margin in a regular basis to ensure the net profit is under company required margin.
- Consistency, the accountant needs to check the purchase order from customer, purchase order to vendor, account payable and account receivable are having the matching information in a regular basis. For example, purchase order number, invoice number and proforma invoice number should be matching in order to trace the shipment status from the beginning to the end.

We recognize that the above listing ascribes more than two dozen major and subordinate duties to the proffered position, and that they all appear to relate, to some extent or other, to accounting. We also find that many - though not all - of the duties appear to involve the application of accounting concepts or principles. Many of the duties (such as checking purchase orders from customers, reviewing invoices, and making accounts-payable entries) appear to be clearly within the scope of bookkeeping and accounting clerks as described in the related chapter in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Other duties (such as, for instance, "responsibility to report to the executives during the annual meeting regarding the

business trend, data information and the potential risk reflected from the [CPA's] statement" and "ensure accurate and appropriate recording and analysis of revenues and expenditure trends, financial commitments, and future revenues") are too broadly stated and insufficiently explained to establish any particular level of education in accounting principles and concepts that they would require. Further, the record of proceeding does not supplement such descriptions with substantial explanations and documentation of what such functions would involve in substantive actual work and associated educational requirements when they would be actually performed by the beneficiary within the petitioner's particular business operations. Consequently we conclude that neither any individual duty description nor the duty descriptions in the aggregate establish that performance of the proffered position would require the theoretical and practical application of at least a bachelor's degree level of a body highly specialized knowledge in accounting or a closely related specialty, as would be required to establish the proffered position as a specialty occupation in accordance with the governing statutory and regulatory framework, which will be discussed below. We also note that the petitioner has not adequately described the substantive work products that the outside accounting firm produces for it, and has not provided a persuasive explanation of why an in-house accountant would be required in light of the petitioner's use of the outside account firm.

Upon review of the totality of all of the evidence that the petitioner has submitted into the record we also find that the record of proceeding does not provide sufficient evidence with regard to the proffered position and its substantive duties to develop relative specialization, complexity, and/or uniqueness as distinguishing features of the proffered position or its duties, let alone as aspects that would elevate them above accounting positions that do not require at least a bachelor's degree or higher in a specific specialty.

Because of their material relevance, the petitioner should regard the above comments and findings as incorporated into our analysis of each of the specialty occupation criteria later in this decision, whether or not specifically referenced again.

The petitioner listed its personnel and provided an overview of each individual's responsibilities as follows:

General Manager - responsible for the daily operations of the company, implementing the parent company's plans, negotiating contracts, monitoring sales activities, and participating in developing the company goals.

Business Accountant – the beneficiary's proposed position.

Budget Analyst – responsible for establishing and preparing the company's budget and assessing the allocation and distribution of funds and resources.

Specialists (two positions, one currently vacant) – responsible for communicating with agents in China while arranging orders, and researching on product expansion.

The petitioner also provided the Internet printout from the Department of Labor's *Occupational Outlook Handbook (Handbook)* for the occupation of accountants and auditors. The petitioner also submitted thirteen advertisements from different companies for accounting positions.

Upon review, including the petitioner's response to the RFE, the director determined that the record did not establish that the proffered position is a specialty occupation. The director found that the proffered duties are similar to the duties of a bookkeeper or accounting and auditing clerk and even if the duties of the position included some accounting duties, this occupation does not require a bachelor's degree in a specific specialty as a minimum for entry. The director also found that the advertisements submitted were not from companies that are similar to the petitioner. The director noted that four of the advertisements did not require a bachelor's degree in accounting to perform the duties of the advertised position.

On appeal, counsel for the petitioner references the *Handbook's* chapters on "Accountants" and on "Bookkeeping, Accounting, and Auditing Clerks." Counsel noted the *Handbook's* report that bookkeeping clerks' responsibilities are less demanding and complex than the accountants' responsibilities, as bookkeeping clerks check the accuracy of basic mathematical calculations to make sure no mistakes are made. Counsel claims that the duties of the proffered position require "the verification of financial data, in order for the accountant to perform the required financial analysis and recommendations to the company." Counsel asserts that the petitioner's accountant will generate various financial statements, review the statements with the general manager, and analyze and advise on the potential financial risks with customers, as well as keep current on domestic and foreign laws and regulation. Counsel claims that the petitioner's CPA firm performs the bookkeeping duties and the accountant reviews the work of the CPA firm for accuracy. Counsel also contends that the director disregarded the size and scope of the petitioner's operations. Counsel asserts that the petitioner has demonstrated by a preponderance of the evidence that the proffered position is a specialty occupation.

III. Analysis

A. Standard of Review

In the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

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

* * *

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

* * *

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

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

Id. at 375-76.

Again, the AAO conducts its review of service center decisions on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d at 145. In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, the AAO finds that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that the director's determination in this matter was correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the AAO finds that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the petitioner's claims are "more likely than not" or "probably" true.

B. Specialty Occupation

At the outset the AAO finds that, as reflected in our comments and findings above about the evidentiary deficiencies in the record's presentation of the proffered position and its constituent duties, the AAO concurs with the director's determination that many of these duties appear to fall within the purview of bookkeeping, accounting, and auditing clerks. Further, the evidence of record does not describe any of the listed functions in sufficient detail to either establish the substantive nature and associated complexity or specialization of the petitioner's matters that the beneficiary would have to address, or to establish whatever training, education, or education-equivalence level that performance of those functions would require, let alone that the performance would require the practical and theoretical application of at least a bachelor's degree

level of knowledge in accounting or a related specialty, as would be required to establish the proffered position as a specialty occupation.

Also, the record's descriptions of the proposed duties and the position that they are said to comprise are not sufficiently detailed and concrete to establish either the duties or the proffered position as particularly complex, unique, and/or specialized in comparison to other accounting positions. Rather, the AAO finds, the proffered position, and its constituent duties, are described in functional terms that do not demonstrate whatever academic and/or experience-derived level of accounting knowledge the beneficiary would have to apply to the petitioner's business matters if this petition were approved. Additionally in this regard, we find that, while the documentary evidence submitted into the record as examples of the type of work product generated in the proffered position indicates a need for close attention to detail and some knowledge of general accounting principles, that evidence does not itself demonstrate the need for at least a bachelor's degree level of education of accounting or any other specific specialty, and the petitioner has not supplemented that evidence with persuasive explanations of how it is that those work-product samples indicate such a need. That being said and with the understanding that we are incorporating these comments and findings as part of our basis of the analysis of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii), we shall now separately address each of those criteria.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. The AAO recognizes the Department of Labor's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵

Although counsel implicitly asserts that the "the verification of financial data, in order for the accountant to perform the required financial analysis and recommendations to the company" is more complex than the duties of a bookkeeping clerk who checks the accuracy of basic mathematical calculations, counsel offers no analysis or evidence in support of this assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

A reading of the duties of the proffered position demonstrate that the petitioner believes that the holder of the proffered position would review the accounts receivable; review and issue purchase orders including those from customer to vendor; generate and record invoices, including invoices from the shipping carrier and custom broker; generate the overdue payment list, the older status report, and the return/defective report; examine the duty code and shipping cost to see if they match the record; match the purchase order number, invoice number and proforma invoice

⁵ The AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

number in order to trace the shipment status from the beginning to the ends; and record lost shipments and ensure the validation of the lost shipment. The petitioner fails to provide any evidence that would establish these duties require more than performing routine bookkeeping, accounting-clerk, or auditing-clerk duties.⁶

Counsel also asserts that the CPA firm employed by the petitioner performs the bookkeeping duties and the accountant reviews the work of the CPA firm for accuracy. However, the petitioner does not provide any evidence that the CPA firm routinely reviews the petitioner's invoices, purchase orders, matches the purchase order numbers, invoice numbers and proforma invoice numbers or generates any of the standard reports outlined in the petitioner's description of duties of the proffered position. The petitioner has not provided any documentary evidence demonstrating the parameters of its CPA firm's duties, such as invoices from the CPA firm for work completed or contractual agreements establishing that the CPA firm will perform the routine, daily clerical bookkeeping tasks associated with operating the petitioner's business. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner also states that its "accountant" will review the monthly, quarterly, annual reports prepared by the CPA firm, as well as the payroll summary and will work with the CPA firm on the petitioner's tax returns. The petitioner has not explained or otherwise detailed how the review of these reports and the payroll summary requires more than checking the accuracy of the calculations at a bookkeeper's or accounting clerk's level of competency. The petitioner's statement that its "accountant needs to work with the [CPA] firm for the tax preparation" does not detail what that work will entail. Accordingly, it is not clear that the petitioner's "accountant" would be doing anything more than supplying the numbers from the petitioner's records so that the CPA firm may prepare the tax returns. Although the petitioner states that its "accountant" will make a cost analysis report, will monitor the current exchange rate, and monitor the duty regulations regarding its products, the petitioner does not provide evidence that these duties require the practical and theoretical application of at least a bachelor's degree level of knowledge in accounting or a related specialty.

When the record is reviewed in its totality, the petitioner has not established how much of the beneficiary's time can actually be devoted to accounting duties above those usually performed by a junior accountant or a bookmaking, auditing, or accounting clerk. Doubt cast on any aspect of

⁶ The *Handbook* reports that most bookkeeping, accounting, and auditing clerks need a high school diploma. In other words, a bachelor's degree in a specific specialty is not required for bookkeeping, accounting and auditing clerk positions. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Bookkeeping, Accounting and Auditing Clerks," at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (April 21, 2014).

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition to the insufficiency and inconsistent information regarding the petitioner's business and the proffered position, the AAO has also reviewed the information in the *Handbook* regarding the occupational category "Accountants."

We observe that the *Handbook* states only that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Accountants and Auditors," at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited April 21, 2014). The *Handbook* does not indicate that such a degree is a normal minimum entry requirement for all accountant and auditor positions. 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." See section 214(i)(1) of the Act. Moreover, the *Handbook* indicates that some without a bachelor's degree or even a postsecondary degree may "advance to accountant positions by demonstrating their accounting skills on the job." *Id.* In this matter, even if the proffered position is an accounting position, the petitioner has failed to establish that any accounting duties to be performed by the beneficiary would require the practical and theoretical application of highly specialized accounting knowledge attained by at least a bachelor's degree, or the equivalent, in accounting, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As already discussed, the *Handbook* does not report an industry-wide requirement for at least a bachelor's degree in a specific specialty for the proffered position. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree in a specific discipline is a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry.

We do note, however, that the record of proceeding contains several job announcements.

On the Form I-129, the petitioner states generally that it is a "Wholesale Trade" business. Here the petitioner submitted advertisements from organizations in the medical industry, grocery industry, navigation industry, heating and air conditioning industry, manufacturing industry, forestry industry and energy industry. Several advertisements did not include sufficient information to identify the advertisers' industry. The AAO therefore finds that the advertisements fall outside the scope of evidence for consideration under this criterion, for the regulation clearly limits its reach to evidence of recruiting and hiring practices within the petitioner's industry.

Additionally, the petitioner did not present any evidence establishing that any of the advertising organizations are similar to the petitioner in type, scope of operations, or level of revenue or staffing. For the petitioner to establish that the organizations advertising for accounting positions are similar to its organization, it must also demonstrate that it and the organization share the same general characteristics. Such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). The job postings submitted did not include any from a wholesale distributor with four employees. Thus the petitioner did not present probative evidence establishing that these organizations are similar to the petitioner in type, scope of operations, level of revenue or level of staffing.

Moreover, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. 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 is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As discussed above, the petitioner 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 few 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).

As such, even if the content of the job announcements had satisfied the requisite foundational elements for consideration under this alternative prong (i.e., that (1) the advertising organizations were in the petitioner's industry, (2) those organizations were similar to the petitioner, (3) they routinely required a bachelor's or higher degree in a specific specialty or its equivalent for the positions advertised, and (4) those advertised positions are parallel to the one proffered in this

petition – none of which is the case here – absent persuasive documentary evidence substantiating the proposition, it is not evident that those job advertisements represent an industry-wide recruiting and practice that would satisfy this alternative prong.

In sum, the evidence of record does not established that a requirement for at least a bachelor's degree in a specific specialty is the norm, in the petitioner's industry, for positions that are (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to 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."

As noted earlier, we here incorporate into our analysis of this prong our earlier comments and findings regarding the record's descriptions of the proffered position and the duties comprising it. As reflected in our earlier discussions, the evidence of record fails to develop relative complexity or uniqueness as an aspect of its claimed accountant position, let alone as an aspect that would elevate it above accounting positions that involve some application of accounting principles but not at a level requiring a person who has at least a bachelor's degree in accounting or a closely related specialty.

Additionally, although counsel for the petitioner asserted that the petitioner's accounting position is complex and demanding, the implicit claim that the beneficiary must operate at an advanced level is undermined by the Level I prevailing-wage-rate in the certified LCA that the petitioner submitted into the record. That Level I salary is inconsistent with such a claim.⁷

⁷ The *Prevailing Wage Determination Policy Guidance* issued by 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].

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.

As the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than accounting or clerical positions that can be performed by persons without 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).

Turning to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO observes that the petitioner has not stated that it previously employed anyone to perform the duties of the proffered position. The record does not identify any other employees that held the position, or contain evidence of their degrees, duties, and wages paid. Accordingly, as the petitioner has not presented evidence pertinent to this criterion, the evidence of record cannot satisfy this particular criterion.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties whose nature is so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

We refer the petitioner again to our earlier comments and findings with regard to the record's presentation of the proposed duties, which we again incorporate into our analysis. Relative specialization and complexity simply have not been developed by the petitioner as dimensions of the proposed duties, let alone as so elevated as to distinguish the nature of the proposed duties from the nature of the duties of other accounting positions that do not require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty. In other words, the proposed duties as described do not show that they are more specialized and complex than a junior accounting or bookkeeping position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Aside from and in addition to the record's lack of sufficiently detailed evidence to satisfy this criterion, the petitioner's submission of an LCA certified for a Level I (entry level) wage rate is inconsistent with a claim to have satisfied this particular criterion, for that wage rate is appropriate for an entry-level position for a person who has only basic understanding of the occupation.⁸

Moreover, the Level I wage rate is only appropriate for positions in which the beneficiary would perform routine tasks requiring limited, if any, exercise of independent judgment; the beneficiary's work would be closely supervised and monitored; and he would receive specific instructions on required tasks and expected results; and his or her work would be reviewed for accuracy. See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Both on

⁸ 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.

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.

For 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).

Counsel also contends that the director disregarded the size and scope of the petitioner's operations. In this matter, the job description provided both initially and in response to the director's request for evidence identifies generic duties that appear to include primarily routine bookkeeping and auditing duties. The record lacks sufficient detail regarding any actual analytical duties the beneficiary will perform. Moreover, the petitioner has not definitely detailed its actual need for an individual to perform higher-level accounting duties. As discussed above, the record does not include any independent documentary evidence to support a finding that the duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed accountant. More fundamentally, the petitioner has the burden to show how its size and scope of operations would impact upon the substantive nature of the beneficiary's work and the nature and level of substantive knowledge required to perform that work. This the petitioner did not do.

The current record does not establish that the petitioner has satisfied the statutory requirement for a specialty occupation found at section 214(i)(1) of the Act and further has failed to satisfy any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

IV. Conclusion

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to conclude that it requires a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Thus, we do not reach the question of the beneficiary's qualifications and whether his coursework in obtaining his degree qualifies him to perform the duties of the position because the record does not establish that the proffered position is a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *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.