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



U.S. Citizenship  
and Immigration  
Services

DATE: **MAY 22 2014** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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

Thank you,

*N.R.*  
*for*

Ron Rosenberg  
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a gasoline station and convenience store established in 2005, with 4 employees. In order to continue to employ the beneficiary in what it designates as a "staff accountant" position, the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted a timely appeal of the decision. On appeal, the petitioner asserts that the director's denial was erroneous. In support of this assertion, counsel for the petitioner submits a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of decision; (5) the petitioner's Notice of Appeal or Motion (Form I-290B) and supporting documentation; (6) the director's decision; and, (7) the petitioner's second Form I-290B and supporting documentation. We reviewed the record in its entirety before issuing our decision.

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

## I. FACTUAL AND PROCEDURAL HISTORY

The petitioner indicated on the Form I-129 and in supporting documentation that it seeks the beneficiary's services in a position titled "staff accountant," to work on a part-time basis at a salary of \$18.50 per hour.

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

In a letter of support, dated September 13, 2011, the petitioner stated that the beneficiary will be responsible for the following duties:

We are still currently in need of a Staff Accountant to prepare, analyze and reconcile

the company's monthly and annual income statement and balance sheets, including bank, accounts receivables, accounts payables, assets and accruals. The Staff Accountant will continue to prepare cash flow and budgets via spreadsheets to anticipate potential shortfalls. The Staff Accountant will also continue to develop, maintain and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs.

Additionally, the Staff Accountant will continue to develop, implement, modify and document record keeping and accounting stems, making use of current computer technology. Other duties will continue to include the survey of operations to ascertain accounting needs and to recommend, develop and maintain solutions to business and financial problems. Further, he will continue to meet with the company's principal officers to provide financial status updates.

In light of our company's present investment goals, and to improve our efficiency in the present economic situation considering the competitive market conditions, we continue to require the services of a professional in-house Staff Accountant, on a part-time basis. In view of our company's potential for further expansion, the need for a part-time Staff Accountant is still pressing. The continued employment of a part-time Staff accountant is crucial and invaluable in the pursuit of the company's expansion endeavors.

There is no written contract between the petitioner and the beneficiary. Please note that the Staff Accountant's services will be required on a part-time basis, 30 hours per week.

In its letter of support, the petitioner also stated that the proffered position requires "the application of theoretical and knowledge of economics and accounting in which is obtained through a Bachelor['s] degree in Business." The petitioner goes on to state that "[c]oursework in Financial Management, Management Accounting, Finance, Finance Strategy, Cost Accounting, Financial Accounting, Management Economics, Investment Strategy and Business Management is necessary, all of which courses the beneficiary has taken in the course of her [sic] studies."

The petitioner stated that the beneficiary has a Bachelor of Commerce degree from [REDACTED] of Bombay. The record contains a copy of a document entitled, "Evaluation Report," dated March 14, 2008, prepared by [REDACTED] of [REDACTED] Inc., asserting that the beneficiary has attained the equivalent of a U.S. bachelor's degree in business administration in accounting from an accredited university or college in the United States.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on January 26, 2012. The director noted that the petitioner submitted an extension petition and stated that "if [the petitioner's] previous petition was approved based upon the same evidence contained in this record, the approval would constitute gross USCIS error." The director



requested that the petitioner provide evidence to establish that the proffered position qualifies as a specialty occupation, including, that a bachelor's degree in a specific field of study is required to perform the duties of the position, and that the beneficiary will not be performing non-qualifying duties due to the small number of individuals that the petitioner employs.<sup>1</sup> The director's RFE also noted that the proffered position, as described by the petitioner, appeared to be that of a bookkeeper, accounting and auditing clerk rather than an accountant. The director outlined some of the specific types of evidence that could be submitted.

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

Assessment of Investment Opportunities: (65%)

It is for this reason that our company initially sought to employ an Accountant. The company has reached a level where it wishes to expand operations. In order to assess potential investment opportunities and advise management, the Accountant will review and analyze the financial records of the company's prospective investments including the accuracy of those records, management procedures, and internal controls. The Accountant will also assist the owner of the company with strategic planning and help determine cost effectiveness of the future investments through market analysis, financial research and detailed business projections. The Accountant will facilitate the preparation of the necessary financial documentation for the purchase of the investment properties. Furthermore, the Accountant will assess the assets, liabilities, profitability and cash flow of the prospective additional locations.

Financial Transactions: (20%)

Due to the increased price of gasoline and the present status of the U.S. economy the gasoline station and convenience store industry has become inordinately competitive. Due to increased prices at the pump customers are reluctant to shop inside the convenience store when buying gasoline. These "inside sales" are the life-blood of the gasoline station and convenience store business. In order to thrive in these conditions a gasoline station and convenience store business must find a way to streamline its operating expenses and focus on potential for expansion.

Having an Accountant on staff will allow the company to function more efficiently and thereby ensure its present and future success. The Accountant will streamline

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<sup>1</sup> The director's RFE also requested information regarding the petitioner's activity and the beneficiary's prior nonimmigrant status; however, these issues were resolved and will not be addressed in this decision.



the company's existing operating procedures by assessing its current assets, liabilities, profitability and cash flow. He will also prepare daily internal financial reports, payroll and banking transactions. Furthermore, he will advise management on marketing and promotional campaigns.

Regulatory Compliance: (15%)

With the addition of an Accountant the company will not need to rely upon outside firms to handle its accounting tasks. The Accountant will handle the duties that would otherwise be performed by outside firms such as filing the company's quarterly and annual federal and state tax returns.

On May 8, 2013, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel for the petitioner submitted a timely appeal of the denial of the H-1B petition.

On appeal, counsel for the petitioner contends that the petitioner clearly established that the proffered position is a specialty occupation. Counsel also argues that the proffered duties come under the section in the U.S. Department of Labor's *Occupational Outlook Handbook* on accountants and auditors. In addition, counsel also states that the petitioner has grown since the filing of the instant petition as it now has 14 employees and owns four businesses in Texas.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. The director denied the petition on November 23, 2012. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition, and supporting documentation.

## II. LAW AND ANALYSIS

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 evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* 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.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Applying the preponderance of the evidence standard and based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence of record fails to establish that the position as described constitutes a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

It is important for the petitioner to understand that the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his



or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting. This, the petitioner has failed to do.

The AAO finds that, as reflected in the duty descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, which, the AAO finds, do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of accounting knowledge that the beneficiary would have to apply to those matters. The AAO will provide a few illustrative examples. While the petitioner claims that the beneficiary's time will be devoted to "prepare, analyze and reconcile the company's monthly and annual income statement and balance sheets, including bank, accounts receivables, accounts payables, assets and accruals;" "prepare cash flow and budgets via spreadsheets to anticipate potential shortfalls;" and, "develop, maintain and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs," the petitioner provides neither substantive information about, nor documentary evidence illustrating, the nature of the "financial information" that the beneficiary would be preparing and analyzing, or the types of reports the beneficiary would prepare, the nature of the analysis that the beneficiary would have to apply, or particular accounting applications that the beneficiary would employ.

Also, the petitioner stated that the beneficiary will spend 65 percent of his time assessing investment opportunities. The petitioner stated that the beneficiary will "review and analyze the financial records of the company's prospective investments including the accuracy of those records, management procedures, and internal controls." However, the petitioner did not explain the type of investments and quantity of investments the petitioner will pursue. The AAO notes that the petitioner fails to provide substantive evidence with regard to either the nature and level of analysis that the beneficiary would have to apply to the investment opportunities, or with regard to the range and depth of "review" that the beneficiary would bring to bear upon the aforementioned investment opportunities, or with regard to any accounting dimensions of the strategy upon which the beneficiary would be required to make recommendations.

It should also be noted that, while the AAO acknowledges the claims of counsel and the petitioner that the accountant position would be central to the petitioner's achieving its plans for expansion, the AAO finds that the record of proceeding provides limited evidence documenting the specific expansion planning and substantive progress that the petitioner had made in that area by the time the petition was filed, or details on the specific roles that the beneficiary would play in any such plans. The petitioner provided a generic business plan that did not provide specific information and evidence regarding the petitioner's expansion plans. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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

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

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

The AAO will review the record of proceeding in relation 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 normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in an accountant position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally* *Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes 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 that it addresses.<sup>2</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Accountants and Auditors." The director found that the position offered falls under the occupational category "Bookkeeping,

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



Accounting, and Auditing Clerks."

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

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

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

#### **Duties**

Accountants and auditors typically do the following:

- Examine financial statements to ensure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures
- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

In addition to examining and preparing financial documentation, accountants and auditors must explain their findings. This includes face-to-face meetings with organization managers and individual clients, and preparing written reports.

Many accountants and auditors specialize, depending on the particular organization that they work for. Some organizations specialize in assurance services (improving the quality or context of information for decisionmakers) or risk management



(determining the probability of a misstatement on financial documentation). Other organizations specialize in specific industries, such as healthcare.

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

The following are examples of types of accountants and auditors:

**Public accountants** perform a broad range of accounting, auditing, tax, and consulting tasks. Their clients include corporations, governments, and individuals. They work with financial documents that clients are required by law to disclose. These include tax forms and balance sheet statements that corporations must provide potential investors. For example, some public accountants concentrate on tax matters, advising corporations about the tax advantages of certain business decisions, or preparing individual income tax returns.

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

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

**Management accountants**, also called *cost, managerial, industrial, corporate*, or *private accountants*, record and analyze the financial information of the organizations for which they work. The information that management accountants prepare is intended for internal use by business managers, not by the general public. They often work on budgeting and performance evaluation. They also may help organizations plan the cost of doing business. Some may work with financial managers on asset management, which involves planning and selecting financial investments such as stocks, bonds, and real estate.

**Government accountants** maintain and examine the records of government agencies and audit private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by federal, state, and

local governments ensure that revenues are received and spent in accordance with laws and regulations.

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-2> (last visited May 21, 2014).

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

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

When reviewing the *Handbook*, the AAO must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.<sup>3</sup> This designation is indicative of a

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

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



comparatively low, entry-level position relative to others within the occupation.<sup>4</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

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

In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited May 21, 2014).

The *Handbook* reports that some graduates with associate's degrees, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to

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See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

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

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

*Id.*



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

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

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

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<sup>5</sup> For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions need at least a bachelor's degree, it could be said that "most" of the positions need such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner, which as previously discussed is designated by the petitioner as a Level I (entry) position in the LCA. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." § 214(i)(1) of the Act.

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

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

### **Duties**

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

- Use bookkeeping software, online spreadsheets, and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) and income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared with income), income statements, and totals by account
- Check for accuracy in figures, postings, and reports
- Reconcile or note and report any differences they find in the records

The records that bookkeeping, accounting, and auditing clerks work with include expenditures (money spent), receipts (money that comes in), accounts payable (bills to be paid), accounts receivable (invoices, or what other people owe the organization), and profit and loss (a report that shows the organization's financial health).

Workers in this occupation have a wide range of tasks. Some in this occupation are full-charge bookkeeping clerks who maintain an entire organization's books. Others are accounting clerks who handle specific tasks.

These clerks use basic mathematics (adding, subtracting) throughout the day.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software, spreadsheets, and databases. Most clerks now enter information from receipts or bills into computers, and the information is then stored electronically. They must be comfortable using computers to record and calculate data.

The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, billing, purchasing (buying), and keeping track of overdue bills. Many of these functions require clerks to communicate with clients.

**Bookkeeping clerks**, also known as **bookkeepers**, often are responsible for some or all of an organization's accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income).

They also produce financial statements and other reports for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying receipts, and sending cash, checks, or other forms of payment to the bank.

In addition, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

**Accounting clerks** typically work for larger companies and have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do.

Often, their responsibilities vary by level of experience. Entry-level accounting clerks may enter (post) details of transactions (including date, type, and amount), add up accounts, and determine interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may add and balance billing vouchers, ensure that account data is complete and accurate, and code documents according to an organization's procedures.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Bookkeeping, Accounting, and Auditing Clerks, available on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited May 21, 2014).

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

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



## Education

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

## Training

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Bookkeeping, Accounting, and Auditing Clerks, available on the Internet at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited May 21, 2014).

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

In response to the RFE, counsel provided a copy of the O\*NET OnLine Summary Report for the occupation "Accountants," as supporting the assertion that the proffered position qualifies as a specialty occupation. On appeal, the petitioner's new counsel stated that the O\*NET Summary Report indicates that "79 percent require a bachelor's degree and 9 percent require a master's degree." As previously discussed, the petitioner has not established that the proffered position falls under the occupational category "Accountants." Nevertheless, the AAO reviewed the report but finds that the petitioner and counsels' reliance on the report is misplaced.

The AAO will now discuss O\*NET's SVP rating of "7.0 < 8.0" for the occupation of "Accountant." The AAO finds that an assignment of an SVP rating of 7.0 to 8.0 is not indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.<sup>6</sup> The section reads:

## II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);

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<sup>6</sup> The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (last visited May 21, 2014).

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. 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).



d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 through 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP information is not probative of the proffered position being a specialty occupation.

Furthermore, O\*NET assigns this occupation a Job Zone Four rating, which groups it among occupations that are described as follows: "[m]ost of these occupations require a four-year bachelor's degree, but **some do not**" (emphasis added). O\*NET does not report that for those occupations with an academic degree requirement, that such a degree must be in a specific specialty directly related to the occupation. As previously discussed, USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the duties and responsibilities of the position. Further, as previously explained, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Notably, O\*NET indicates that some of these occupations do not require a four-year bachelor's degree.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide

persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted a letter on appeal, dated December 19, 2012, from [REDACTED] Ph.D., from [REDACTED] Mr. [REDACTED] stated that "the industry standard for apposition such as Accountant for [the petitioner], is to be filled through recruiting a college graduate with the minimum of a Bachelor's Degree in Accounting or a related field, or the equivalent." The AAO reviewed the letter in its entirety. However, as discussed below, the letter from Mr. [REDACTED] are 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 Mr. [REDACTED] possesses any knowledge of the petitioner's proffered position and its business operations beyond the information provided by the beneficiary. Mr. [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. Furthermore, Mr. [REDACTED] discusses the new businesses the petitioner entered into after the instant petition was filed, and thus, may not be considered for this petition.

Moreover, upon review of the letter, Mr. [REDACTED] did not indicate that he visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Furthermore, there is no indication that the petitioner and counsel advised Mr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level staff accountant, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. It appears that Mr. [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Mr. [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. Mr. [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. Also, Mr. [REDACTED] does not provide a sufficiently substantive and analytical basis for their opinions.



In summary, and for each and all of the reasons discussed above, the AAO concludes that the opinion letter rendered by Mr. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusion reached by Mr. [REDACTED] lacks the requisite specificity and detail and is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusion. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record. Therefore, the AAO finds that the letter from Mr. [REDACTED] does not establish that the proffered position is a specialty occupation. As such, neither the authors' finding nor his ultimate conclusion are worthy of any deference, and the opinion letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is 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 the AAO discounts the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

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

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a

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

The petitioner also provided several job vacancy announcements to support their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a four-person retail business. Thus, the record is devoid of sufficient information regarding the advertising companies to conduct a meaningful comparison of each of these firms to the petitioner. Without such evidence, job advertisements submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and another organization share the same general characteristics, 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) may be considered. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

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. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Upon review of the documents, the AAO finds that they are not probative evidence that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for positions parallel to the proffered position.

For instance, the advertisements include a position with [REDACTED] described in the advertisement that it has "a retail and wholesale network of more than 9,000 points of sale in over 45 counties on 5 continents." Thus, [REDACTED] is not a similar organization to the petitioner and is not in the same industry. The petitioner and counsel also submitted advertisements for other organizations that do not appear to be similar to the petitioner or in the same industry such as the [REDACTED] (a leading retail company), [REDACTED] (consumer specialty finance company), [REDACTED] Holdings, Inc. (specialty retailer and wholesale distributor of designer perfumes, fragrances and other related products, etc. Without further information, these advertisements appear to be for organizations dissimilar to the petitioner and in different industries, and the petitioner has not provided any probative evidence to suggest otherwise.



The record is devoid of sufficient information regarding the advertising organizations to conduct a meaningful comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Moreover, some of the advertisements appear to be for more senior positions and/or do not appear to be for parallel positions. For instance, the staff accountant III position advertised by [REDACTED] requires "5+ years of experience." Similarly, the accounting manager position with [REDACTED] (stationery and social expression retailer) states that it requires "7+ years experience at a manager level." As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position. Furthermore, some of the positions do not appear to have similar duties to the proffered position.

Again, the advertisements 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 job postings is not necessary. That is, not every deficit of every job posting has been addressed.

In support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted (1) a letter, dated December 19, 2012, from [REDACTED], Ph.D. from [REDACTED]; and (3) a letter from [REDACTED] Member, of [REDACTED] LLC, dated April 20, 2012.

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

Also, it appears that Mr. [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the beneficiary. As previously noted, the AAO may, in its discretion, use as an advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not

required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Therefore, the AAO finds that the letter from Mr. [REDACTED] does not establish that the degree requirement is common to the petitioner's industry in parallel positions among organizations similar to the petitioner.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner also submitted a letter from [REDACTED] Member, of [REDACTED] LLC, dated April 20, 2012. Mr. [REDACTED] explained that the company "owned and operated a Retail Store in [REDACTED] Kentucky from 2007 through February 2012." Mr. [REDACTED] also said that during the course of operation, the company "typically employed a total of four to five employees and has annual gross revenues of at least \$2,000,000 per year." Mr. [REDACTED] also stated that from 2008 until 2011, the company employed a Staff Accountant to "review and analyze all of our financial information, prepare and file required documentation, and importantly, assist us in our investment endeavors." In addition, Mr. [REDACTED] stated that "[w]e required that a Staff Accountant with our company must possess a degree in a related field."

In reviewing the letter, the AAO noted that Mr. [REDACTED] did not describe the evidence he reviewed in order to write his opinion letter. In addition, Mr. [REDACTED] stated that he owned a retail store but he failed to provide any evidence to support the notion that [REDACTED] LLC is similar to the petitioner. Moreover, Mr. [REDACTED] did not provide documentation to evidence the size of his company, the gross annual profits, or the organizational structure to indicate where the position of Accountant falls within his company's structure and if the position has subordinates, as a few examples, to determine if in fact [REDACTED] LLC is a company that is similar to the petitioner. Also, while Mr. [REDACTED] stated that his company "required that a Staff Accountant with our company must possess a degree in a related field," Mr. [REDACTED] did not provide evidence of the job duties for that position to determine if it is similar to the job duties of the proffered position, nor any documentary evidence of the individuals his company has hired in the past, their job duties, and copies of their educational credentials. 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, at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

As discussed above, the AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is 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 the AAO discounts the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letters into each of the bases in this decision for dismissing the appeal.

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Therefore, the petitioner has not



satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

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

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

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

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other accounting positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the

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

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

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

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

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

As the evidence in the record of proceeding has not established that the nature of the duties of the position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are



relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not address the beneficiary's qualifications further.

Finally, it is noted that the petition at issue was filed to continue the beneficiary's H-1B employment with this petitioner. However, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition cited by the petitioner was approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

### III. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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

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