

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship and Immigration Services

D2



FILE: WAC 09 144 50522 Office: CALIFORNIA SERVICE CENTER Date: APR 05 2011

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Michael T. Kelly*

Perry Rhew  
Chief, Administrative Appeals Office

*for*

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

The petitioner is an Indian restaurant with seven employees and a stated gross annual income of \$863,483. It seeks to employ the beneficiary as a part-time accountant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

The primary issue the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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, the 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, 8 U.S.C. § 1184(i)(1), 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 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd 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), 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. 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, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a part-time accountant. In the petitioner’s letter dated March 9, 2009, the petitioner states that it wishes to hire the beneficiary to:

- Prepare and analyze accounting records and financial statements as well as implement the accounting and financial system of the company (30% of the beneficiary’s time);

- Prepare detailed accounting reports including balance sheets as well as profit and loss statements using financial and accounting software (30% of time);
- Apply accounting principles to analyze data and financial operations as well as project future revenues and expenditures (15% of time);
- Advise the owner of the company's financial health and present plans to maximize profits (10% of time);
- Evaluate costs and benefits of expenditures (10% of time); and
- Negotiate with representatives from food supply companies to cut costs (5% of time).

The AAO's first point with regard to its analysis of the proffered position is that, despite the petitioner's assumption to the contrary, accountants do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> As will now be discussed, the *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

The "Accountants and Auditors" chapter at the 2010-2011 edition of the *Handbook* indicates that not every accountant position requires least a bachelor's degree level of knowledge in accounting or a related specialty.

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." This does not support the view that any accountant job qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular accountant 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)).<sup>2</sup> Further, the "Education and training" subsection of the aforementioned section of the *Handbook* includes this statement:

Some graduates of junior colleges or business or correspondence schools, as well as bookkeeping and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to accountant positions by demonstrating their accounting skills on the job.

In this context, 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

---

<sup>1</sup> All references are to the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

<sup>2</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree."

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 notes that, as reflected in the job description 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 level accounting knowledge that the beneficiary would have to apply to those matters. 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). Accordingly, the appeal must be dismissed, and the petition denied.

In its support letter, the petitioner states that the proffered position requires at least a Bachelor's degree in Accounting, Business Administration or a related field.

The petitioner also submitted copies of the beneficiary's foreign degree in Commerce along with a credential evaluation finding that the beneficiary's foreign education, together with a little over three years of experience, is equivalent to a U.S. Bachelor of Science degree in Accounting.

On May 8, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation, including evidence that a bona fide job offer for an accountant position exists.

Counsel for the petitioner stated that the reason the petitioner is hiring the beneficiary is because it needs the beneficiary to act as a liaison between the petitioner and Bains Accountancy Corp., CPA. In other words, the petitioner already uses a CPA and intends to continue using the CPA after the beneficiary is hired. Further, counsel states that the petitioner uses Bains Accountancy Corp. to file the petitioner's federal income taxes, but the day-to-day accounting tasks, including cash-flow monitoring, revenue forecasting, and cost control analysis are currently the responsibilities of the petitioner's President. The petitioner has failed to produce any evidence that the petitioner's President holds a U.S. Bachelor's degree or the equivalent in Accounting, Business Administration or a related field, which the petitioner alleges is required to perform the duties of the proffered position.

Counsel has submitted an invoice from Bains Accountancy Corp., which has charged \$700 for tax return preparation. If the beneficiary will act as a liaison between the petitioner and Bains Accountancy Corp. as counsel alleges, it is not clear how this would engage the beneficiary on a year-round basis as Bains Accountancy Corp. is only responsible for preparing the petitioner's tax returns.

Additionally, counsel provided an organizational chart, which lists the beneficiary as the part-time accountant. The other positions include the President, Secretary, Chef, Cook, Busboys, and Waiters. The petitioner does not appear to employ anyone with the job title of bookkeeper. Therefore, it is not clear who, besides the beneficiary, would perform the duties of a bookkeeper.

Additionally, counsel submitted copies of four advertisements from other businesses, only one of which requires at least a bachelor's degree in accounting. The other advertisements state that either a bachelor's degree is only preferred or that only a degree is required, without specifying that the degree must be at least a bachelor's degree or the equivalent. The one advertisement that requires a bachelor's degree in accounting is not from a company that is parallel to the petitioner. Even though the company placing the advertisement is in the restaurant industry, it has sales of over \$100 million, 32 restaurants, and over 2300 employees. Therefore, as the company placing the ad is substantially larger and generates much more revenue than the petitioner, it is not parallel to the petitioner.

Additionally, counsel submitted an expert opinion letter from Jassie Dhillon, Manager for another Indian restaurant. Mr. Dhillon's letter states that it is "common practice for businesses within the Restaurant and Food Service industry to require the services of an Accountant who holds at least a Bachelor's degree in Finance, Accounting, Commerce, or a related field." However, Mr. Dhillon does not state that it is normal for a restaurant similar to the petitioner to employ an accountant *in-house* who holds at least a bachelor's degree in a specific specialty. The AAO notes that the petitioner already uses a CPA firm that it intends to continue using even after the beneficiary is hired. Moreover, Mr. Dhillon does not state that his restaurant employs an Accountant in-house with at least a bachelor's degree in a specific specialty.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal counsel argues that the proffered duties come under the section in the *Handbook* on accountants and auditors.

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)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO finds that some of the duties fall under the *Handbook's* section on bookkeeping, accounting, and auditing clerks. Furthermore, as related in this decision's earlier discussion of the proposed duties in the context of the *Handbook's* information about accountants, the record of proceeding fails to establish that any accounting duties to be performed by the beneficiary would require the practical and theoretical application of a body of highly specialized accounting

knowledge attained by at least a bachelor's degree, or the equivalent, in accounting, as required by the statutes and regulations regarding a position's qualification as an H-1B specialty occupation.

The *Handbook's* description of bookkeeping, accounting, and auditing clerks provides in pertinent part:

Bookkeeping, accounting, and auditing clerks are financial record keepers. *They update and maintain accounting records, including those which calculate expenditures, receipts, accounts payable and receivable, and profit and loss.* These workers have a wide range of skills from full-charge bookkeepers, who can maintain an entire company's books, to accounting clerks who handle specific tasks. All these clerks make numerous computations each day and must be comfortable using computers to calculate and record data.

In small businesses, bookkeepers and bookkeeping clerks often have responsibility for some or all the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. Additionally, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large companies, accounting clerks have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. In addition, their responsibilities vary by level of experience. Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures.

Auditing clerks verify records of transactions posted by other workers. They 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.

*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. The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll.*

*procurement*, and billing. Many of these functions require these clerks to write letters and make phone calls to customers or clients.

(Emphasis added.)

As discussed previously, the petitioner already uses a CPA firm and counsel has stated that the petitioner will continue to use the CPA firm after hiring the beneficiary. Additionally, the petitioner has failed to provide evidence that the President, who currently performs some of the proffered duties, has at least a bachelor's degree in a specific specialty. Moreover, the petitioner does not employ a bookkeeper and has not explained who would perform bookkeeping and accounting clerk functions after the beneficiary is hired. Additionally, the proffered job duties as described by the petitioner are vague and generic. As such, they do not establish that their performance requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Therefore, the petitioner failed to demonstrate that it has sufficient work as an accountant for the beneficiary to work exclusively in that occupation. Also, the fact that the petitioner did not indicate in its organizational chart or anywhere else that it employs a bookkeeper means that the beneficiary is likely to perform at least some duties that fulfill its bookkeeping functions.

According to the *Handbook* section on accountants and auditors:

Accountants and auditors help to ensure that firms are run efficiently, public records kept accurately, and taxes paid properly and on time. They analyze and communicate financial information for various entities such as companies, individual clients, and Federal, State, and local governments. Beyond carrying out the fundamental tasks of the occupation—providing information to clients by preparing, analyzing, and verifying financial documents—many accountants also offer budget analysis, financial and investment planning, information technology consulting, and limited legal services.

Specific job duties vary widely among the four major fields of accounting and auditing: public accounting, management accounting, government accounting, and internal auditing.

Under the *Handbook's* description of accountants and auditors, government accountants work in the public sector, and internal auditors check for mismanagement, waste or fraud. Since these descriptions of accountants clearly do not apply to the proffered position, the focus of the AAO's analysis will be on whether the proffered position is that of a public or management accountant.

According to the *Handbook*:

Public accountants perform a broad range of accounting, auditing, tax, and consulting activities for their clients, which may be corporations, governments, nonprofit organizations, or individuals. For example, some public accountants concentrate on tax matters, such as advising companies about the tax advantages and disadvantages of certain business decisions and preparing individual income

tax returns. Others offer advice in areas such as compensation or employee healthcare benefits, the design of accounting and data processing systems, and the selection of controls to safeguard assets. Still others audit clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported. These accountants are also referred to as external auditors. *Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.*

\* \* \*

Management accountants . . . record and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Under the *Handbook's* description, it therefore appears to be unusual for small businesses to employ a public or management accountant, since public accountants are usually CPAs with their own business or employed by accounting firms, while management accountants are usually part of executive teams and prepare financial reports for other entities in addition to their employer. Thus, it is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in accounting or a closely related specialty, or the equivalent, to perform the duties of an accountant on a part-time basis.

While the AAO acknowledges that some of the duties described by the petitioner are similar to those under the section on accountants and auditors in the *Handbook*, it here incorporates and reiterates by reference its earlier comments in this decision regarding the lack of evidence substantiating the nature and educational level of accounting knowledge that would be required for the actual performance of the beneficiary's work. Further, as discussed above, because the petitioner did not provide supporting evidence to demonstrate that it has sufficient work in a specialty occupation for the beneficiary to perform and because the petitioner already uses a CPA whom it intends to continue to use after the beneficiary is hired, the AAO finds that the proffered *occupation is not that of an accountant or auditor. Instead, it more closely resembles the positions described under the Handbook section on bookkeeping, accounting, and auditing clerks.*

With respect to education and training requirements for bookkeeping, accounting, and auditing clerks, the *Handbook* states:

Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required

for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

In other words, a bachelor's degree in a specific specialty is not required for the proffered position.

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.

As the *Handbook* indicates that the proffered position does not belong to an occupational classification for which there is a categorical requirement for at least a bachelor's degree in a specific specialty, and as the duties of the proffered position as described in the record of proceeding do not indicate that the particular position proffered in this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry, the petitioner failed to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 alternatively 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As reflected in this decision's discussions regarding the *Handbook's* information, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

The accountant job-vacancy advertisements submitted by the petitioner are not probative of the proffered position being a specialty occupation, for the reasons described earlier in this decision.

Additionally, the expert letter never states that it is normal for restaurants similar to the petitioner to hire accountants in-house who have at least a bachelor's degree in a specific specialty.

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." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than bookkeeping, accounting, or auditing clerk positions that require the application of accounting principles, but that are not at a level that requires the degree of highly specialized knowledge in accounting that is only attained by the attainment of at least a bachelor's degree, or the equivalent, in accounting or a related specialty.

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Although the petitioner indicates the President has performed some of the proffered duties, the petitioner has not provided evidence that the President has at least a bachelor's degree or the equivalent in a specific specialty related to accounting. Further, the petitioner did not provide a detailed position description for the President to determine whether the President's position is similar to the one proffered to the beneficiary. 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 its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized and generic nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge of accounting at a level usually associated with at least a bachelor's degree, or the equivalent, in accounting or a related specialty. Insufficient evidence was also provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than would normally be required of bookkeeping clerks, accounting clerks, auditing clerks, tax preparers, or other types of employees, including those bearing the title "accountant," who engage in some accounting duties and employ some accounting principles, but not at a level of an accountant applying theoretical and practical knowledge of accounting that is usually associated with at least a bachelor's degree in accounting or a closely related specialty.

Additionally, the AAO notes that the petitioner stated that the bachelor's degree it allegedly requires for the proffered position could be in business administration. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A

petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The AAO, therefore, concludes that the proffered position failed to satisfy 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 the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the 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 that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an education evaluation as required for a foreign degree or other sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) as the credential evaluation submitted does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires that the evaluation be written by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. As such, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied. 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. Here, that burden has not been met.

WAC 09 144 50522

Page 13

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