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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

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Date: Office: VERMONT SERVICE CENTER

FILE:

DEC 01 2011

IN RE: Petitioner:   
Beneficiary:

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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Vermont 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 a liquor store with five employees. It seeks to employ the beneficiary as an accounting and auditing clerk 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 director's RFE; (4) the director's denial letter; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The issue on appeal before the AAO is whether the proffered 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 [(1)] 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 [(2)] 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 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 an accounting and auditing clerk. The petitioner’s offer of employment letter dated March 26, 2009 and submitted with the initial filing indicates the proffered position would require the beneficiary to perform the following duties:

Access computerized financial information, analyze, understand, and report on findings. Compile budget data and documents based on estimated revenues, expenses

and previous budgets. Compile statistical, financial, accounting, or auditing reports and tables pertaining to such matters as cash receipts, expenditures, accounts payable and receivable, profits and losses, as well as make recommendations.

The submitted job posting notice states that the proffered position requires a bachelor's degree in accounting. The petitioner also submitted an evaluation of academics and work experience from Silvergate Evaluations Inc., the beneficiary's Bachelor of Commerce degree in financial accounting and auditing, transcripts from the University of Mumbai, and experience letters from the beneficiary's former employers as evidence that the beneficiary has the equivalent of a bachelor's degree in accounting from an accredited institution of higher education in the United States.

The submitted Labor Condition Application (LCA) was certified for an "Accounting and Auditing Clerk" to work at the petitioner's liquor store at an annual salary of \$24,000.

On June 11, 2009, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation.

Counsel's response provided a detailed statement of job duties dated July 15, 2009 from a manager of the petitioner, which provides the following details regarding the duties described in the offer of employment letter:

- Access computerized financial information, analyze, understand, and report on findings

[The beneficiary] takes care of the entire financial of the company and it's[sic] branch, he analyze[sic] the business and prepare[sic] reports on behalf of the company, he prepares financials[sic] statements to negotiate with financial institution for increasing line of credits for the company for it's[sic] future growth.

- Compile budget data and documents based on estimated revenues, expenses and previous budgets.

[The beneficiary] prepares budget for the company based on the sales and finance available to the company, he surveys market and projects revenue and expenses for the company, projects future growth for the company based on previous years budgets, he prepares business development plan for the company based on the budget costing, infrastructure requirement, fees and charges.

- Compile statistical, financial, accounting, or auditing reports.

[The beneficiary] prepares book of accounts for the company, prepares a[sic] audit reports, conducts checks on costing and pricing for creating profits for the company, he prepares comparison progress chart of the current sales to the previous year and makes recommendation.

- Create tables pertaining to such matters as cash receipts, expenditures, accounts payable and receivable, profits and losses, as well as make recommendations.

[The beneficiary] prepares books on the entire cash purchases, cash expenses he makes recommendation to improve purchases and reduce expenses for future growth, he at end of every month prepares account receivable and payable of the company as

well as it's[sic] branch[,] he prepares profit & loss for the company and its balance sheet ....

Additionally, counsel submitted another evaluation dated July 15, 2009 from Silvergate Evaluations Inc. and a copy of a job posting notice for the proffered position posted on March 19, 2009.

Counsel also submitted copies of print-outs for 43-3031.00 – Bookkeeping, Accounting, and Auditing Clerks from O\*NET OnLine and asserted that the detailed statement, job position posting, and O\*NET report show that a bachelor's degree in accounting is normal for this type of position and is normal for an employer to require the same.

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. In the denial, the director stated that the O\*NET report for bookkeeping, accounting and auditing clerks counsel provided is not probative, and that the O\*NET is not designed to assess the specialty occupation status of either occupations or the particular positions addressed in these reports. Instead, the director found that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2008-09 Edition, indicates that "most bookkeeping, accounting and auditing clerks are required to have a high school degree at a minimum" and that the petitioner did not submit any other job announcements that show a bachelor's degree is a common requirement to the industry in parallel positions among similar organizations or, in the alternative, evidence that this particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree or its equivalent in a specific field of study.

On appeal, counsel contends in the Form I-290B that the director erred in denying the petition. Specifically, counsel asserts that the director erred in concluding that O\*NET fails to be probative. Counsel also contends that a better title may have been internal auditor or accountant (O\*NET 13-2011), but in assessing the occupation, the job duties are dispositive. Counsel refers to an AAO decision (██████████) dated February 4, 1994 in support of this assertion.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, 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 notes that the proffered position title most closely resembles the position title of Bookkeeping, Accounting and Auditing Clerks in the *Handbook* and in the O\*NET. The *Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos144.htm> (last accessed November 30, 2011) describes the education and training for “Bookkeeping, Accounting and Auditing Clerks” as follows:

*Employers usually require bookkeeping, accounting, and auditing clerks to have at least a high school diploma and some accounting coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.*

*Education and training. 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.*

Once hired, bookkeeping, accounting, and auditing clerks usually receive on-the-job training. Under the guidance of a supervisor or another experienced employee, new clerks learn company procedures. Some formal classroom training also may be necessary, such as training in specialized computer software.

Other qualifications. Bookkeeping, accounting, and auditing clerks must be careful, orderly, and detail-oriented to avoid making errors and to recognize errors made by others. These workers also should be discreet and trustworthy, because they frequently come in contact with confidential material. They should also have good communication skills, because they increasingly work with customers. In addition, all bookkeeping, accounting, and auditing clerks should have a strong aptitude for numbers.

Experience in a related job and working in an office environment is recommended. Workers must be able to use computers, and knowledge of specialized bookkeeping or accounting software is especially valuable.

(Emphasis added).

Counsel solely relies on O\*NET to argue that the proffered position of Accounting and Auditing Clerk with the petitioner is a specialty occupation. O\*NET, available at <http://www.onetonline.org/link/summary/43-3031.00> (last accessed November 30, 2011), sets forth Job Zone Three for the title of Bookkeeping, Accounting and Auditing Clerks which means medium preparation needed. For the

description of education and training, O\*NET states that “Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Previous work-related skill, knowledge, or experience is required for these occupations. Employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers.”

In short, the descriptions provided in the *Handbook* and in O\*NET clearly show that Bookkeeping, Accounting and Auditing Clerks are not positions for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement. On appeal, however, counsel argues that the title does not control; instead, the duties are dispositive in assessing the occupation. The AAO agrees that the job duties control in assessing the occupational classification of a proffered position. That said the record does not contain sufficient documentary evidence showing that the proposed duties as described in the record should be classified as an internal auditor or accountant, as asserted by counsel for the first time on appeal. Instead, as quoted above, most proposed duties of the proffered position are covered by Bookkeeping, Accounting and Auditing Clerks pursuant to the description of the duties set forth for Bookkeeping, Accounting and Auditing Clerks provided in the *Handbook* and O\*NET.

As previously discussed, although the petitioner provided additional details for each of the main duties in response to the director's RFE, the proposed duties of the proffered position with the petitioner includes four main parts: (1) access computerized financial information and analyze, understand, and report on findings; (2) compile budget data and documents based on estimated revenues, expenses and previous budgets; (3) compile statistical, financial, accounting, or auditing reports; and (4) create tables pertaining to such matters as cash receipts, expenditures, accounts payable and receivable, profits and losses, as well as make recommendations.

The *Handbook* describes in pertinent part that:

Bookkeeping, accounting, and auditing clerks are financial recordkeepers. 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.

Bookkeeping, accounting, and auditing clerks handle financial records for many small businesses.

O\*NET also describes bookkeeping, accounting and auditing clerks in its Summary Report as follows:

Compute, classify, and record numerical data to keep financial records complete. Perform any combination of routine calculating, posting, and verifying duties to obtain primary financial data for use in maintaining accounting records. May also check the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers.

Sample of reported job titles: Accounting Clerk, Accounting Assistant, Accounts Payables Clerk, Bookkeeper, Account Clerk, Accounts Payable Clerk, Accounts Receivable Clerk, Account Receivable Clerk, Accounts Payable Specialist, Accounting Associate

O\*NET Online, available at <http://www.onetonline.org/link/summary/43-3031.00> (last accessed November 30, 2011).

For the tasks bookkeeping, accounting and auditing clerks perform, O\*NET states the following:

Operate computers programmed with accounting software to record, store, and analyze information. Check figures, postings, and documents for correct entry, mathematical accuracy, and proper codes. Classify, record, and summarize numerical and financial data to compile and keep financial records, using journals and ledgers or computers. Debit, credit, and total accounts on computer spreadsheets and databases, using specialized accounting software. Operate 10-key calculators, typewriters, and copy machines to perform calculations and produce documents. Receive, record, and bank cash, checks, and vouchers. Comply with federal, state, and company policies, procedures, and regulations. Compile statistical, financial, accounting or auditing reports and tables pertaining to such matters as cash receipts, expenditures, accounts payable and receivable, and profits and losses. Code documents according to company procedures. Reconcile or note and report discrepancies found in records.

*Id.*

The petitioner has set forth the duties for the proffered position based on the description of duties for bookkeeping, accounting and auditing clerks described in the *Handbook* and O\*NET. The description of the duties of the proffered position shows that the proffered position is petitioned as a bookkeeping, accounting and auditing clerk position and the beneficiary will perform the duties as a bookkeeping, accounting and auditing clerk for the petitioner. In this regard, the AAO has considered all of the assertions of counsel in support of the requirements of the position, but finds that they are not supported by documentation in the record.

While counsel asserts that based on the proposed duties, internal auditor or accountant (O\*NET 13-2011) may have been better title for the proffered position, counsel did not submit any evidence to establish that the beneficiary will perform substantially the duties normally performed by an internal auditor or accountant. In any event, the record does not contain any evidence showing that the beneficiary will perform any duties of 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As stated previously, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by bookkeeping, accounting and auditing clerks pursuant to descriptions in the *Handbook* and O\*NET, and based on the fact that neither the *Handbook* nor O\*NET indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this occupation, it cannot be found that the petitioner has satisfied the first criterion of 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.

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

As already discussed, the 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, and the petitioner failed to demonstrate that parallel accounting and auditing clerk positions for a small liquor store require a college degree in accounting or a closely related field for entry into the occupation. Therefore, the petitioner does not demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has 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. Neither the petitioner nor its counsel has provided evidence to distinguish the proffered position as unique from or more complex than bookkeeping, accounting and auditing clerk positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. The petitioner provided no information about its normal education requirements for the position. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>1</sup>

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<sup>1</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. To the extent that they are depicted in the record, the duties of the proposed position are not so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

It is further noted that the petitioner's LCA indicates that the proffered position is not a specialty occupation. More specifically, the LCA provided in support of the instant petition lists a Level II prevailing wage level (\$23,941 per year) for 43-3031, bookkeeping, accounting and auditing clerks in Bowling Green, KY MSA. Such a lower level bookkeeping, accounting and auditing clerk position offered to the beneficiary which, according to the petitioner's job posting, requires the incumbent to possess at least a bachelor's degree in accounting cannot be found to be parallel to the position described by the petitioner. Furthermore, the fact that on the LCA, the petitioner selected a lower level prevailing wage from the standard set forth for the title of bookkeeping, accounting and auditing clerks provides information inconsistent with counsel's assertion that the proposed duties indicate that the proffered position should be classified under the title of Internal Auditor or Accountant (O\*NET 13-2011). From the same resources, the Level II prevailing wage for O\*NET 13-2011 Accountants and Auditors in Bowling Green, KY MSA was \$47,216 per year at the time the LCA was certified. Counsel's assertion is therefore misplaced.

As noted above, given that the LCA submitted in support of the petition is for a bookkeeping, accounting and auditing clerk Level II wage, it must be concluded that either (1) the position is a low level bookkeeping, accounting and auditing clerk position and, thus, based on the statistics-based findings of the Handbook, the proffered position is not a specialty occupation; or (2) the LCA does not correspond to the petition. In other words, even if it were determined that the proffered position should be classified as an internal auditor or accountant and that such a position for a small liquor store would in fact be a specialty occupation, the petition could still not be approved due to the petitioner's failure to (1) submit an LCA certified for that occupation and (2) attest that it would pay the higher required wage for that position.

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

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed specialty occupation position, and the petition must be denied for this additional reason.

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 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. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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