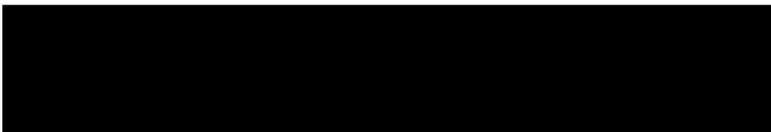


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

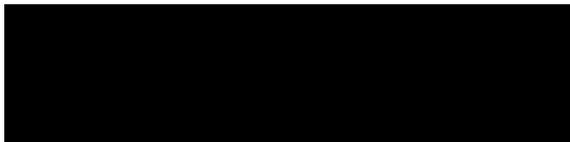
DATE: **DEC 16 2011** OFFICE: CALIFORNIA SERVICE CENTER

FILE:

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

The petitioner represented itself on the Form I-129 as a dental practice with three employees. It seeks to employ the beneficiary as a billing coordinator 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 basis of his determination that the petitioner failed to demonstrate that its proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's responses to the director's request for additional evidence; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate: (1) that the petition is supported by a certified labor condition application (LCA) which corresponds to it; and (2) that the beneficiary qualifies to perform the duties of the proposed position.

The Proposed Position Does Not Qualify for Classification as a Specialty Occupation

The first issue before us on appeal is whether the proposed position qualifies for classification 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 (5th 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 proposed 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 its May 27, 2009 letter of support, the petitioner stated that the duties of the proposed position would consist of the following:

- Computing dental charges and fees for billing purposes;
- Preparing all dental invoicing;
- Posting data;
- Keeping records;
- Following up on invoices;
- Matching payments with invoices;
- Maintaining appropriate accounting ledgers for accounts receivable and accounts payable;
- Overseeing all dental insurance transactions;
- Billing insurance companies;
- Following-up with insurance providers;
- Reconciling accounting discrepancies;
- Matching payments with invoices and posting them to appropriate ledgers; and
- Reconciling bank statements.

In making our determination as to whether the proposed position qualifies for classification as a specialty occupation, we turn first 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, a resource upon which we routinely rely 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)).

In reaching our conclusion regarding the degree requirements of the proposed position, we have relied upon the 2010-2011 edition of the *Handbook*, comparing the position's duties against those described for a range of occupations. Our review has found that virtually all of the proposed position's duties are listed among those described for billing clerks and bookkeeping, accounting, and auditing clerks. In pertinent part, the *Handbook* states the following regarding billing clerks, an occupation contained within its discussion of billing and posting clerks and machine operators:

Billing and posting clerks and machine operators—commonly called billing clerks—calculate charges, develop bills, and prepare them to be mailed to customers.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos277.htm> (last accessed December 2, 2011). The *Handbook's* discussion regarding the duties of bookkeeping, accounting, and auditing clerks also relates to the petitioner's proposed position, as follows:

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.

Id. at <http://www.bls.gov/oco/ocos144.htm>.

We do not agree with the generalized assertions of record suggesting that the duties of the proposed position are similar to those performed by accountants. As a preliminary matter, the petitioner's description of the duties of the proposed position lack the specificity required to support a finding that they resemble those of an accountant. Furthermore, the petitioner has failed to differentiate the duties of the proposed position that do involve accounting functions from those typically performed by bookkeeping, accounting, and auditing clerks.

The *Handbook* states the following with regard to the duties of accountants:

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.

Id. at <http://www.bls.gov/oco/ocos001.htm>. 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 proposed position, the focus of our analysis will be on whether the proposed 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.

Id. Under the *Handbook's* description it would appear to be unusual for a small business with three employees 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 would be 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 full-time basis. However, the petitioner has failed to do that. More importantly, the duties proposed by the petitioner for the beneficiary do not align with those described in the *Handbook* for accountants and auditors. Instead, they more closely align to those of billing clerks and bookkeeping, accounting, and auditing clerks.

Having made that determination, we turn next to the *Handbook's* discussion of the educational credentials necessary for entry into those occupations. The *Handbook* states the following with regard the educational requirements for billing clerks, which is contained within its discussion of the educational requirements for billing and posting clerks and machine operators:

Many billing clerks are hired at entry level. They generally need at least a high school diploma and basic software skills.

Id. at <http://www.bls.gov/oco/ocos277.htm>. In other words, a bachelor's degree in a specific specialty is not required to perform the duties of the proposed position that align with those of billing clerks. With regard to the educational requirements for bookkeeping, accounting, and auditing clerks, the *Handbook* states the following:

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.

Id. at <http://www.bls.gov/oco/ocos114.htm>. Thus, the *Handbook* specifically states that bookkeeping, accounting, and auditing clerks are not normally required to possess a bachelor's degree in a specific specialty. Thus, the duties of the proposed position that align with those of

bookkeeping, accounting, and auditing clerks do not require the attainment of a bachelor's degree in a specific specialty for their performance.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proposed position's title. The specific duties of the 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 beneficiary, 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 discussed, we have determined that virtually all of the proposed position's duties are listed in the *Handbook* among the occupations of billing clerks and bookkeeping, accounting, and auditing clerks. Our review has found that none of these occupations impose a normal minimum entry requirement of a bachelor's degree in a specific field of study as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). For all of these reasons, we find that the petitioner has failed to demonstrate that its proposed position qualifies for classification as a specialty occupation under the requirements of the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor do we find convincing counsel's citations to the Department of Labor's *Occupational Information Network (O*NET™ Online)*. *O*NET™ Online* is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as *O*NET™ Online's* JobZone assignments make no mention of the specific field of study from which a degree must come. As was noted previously, USCIS 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 proposed position. With regard to the Specialized Vocational Preparation (SVP) rating, we note that an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, USCIS 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 proposed position. For all of these reasons, the *O*NET™ Online* excerpt is of little evidentiary value to the issue presented on appeal.

We turn next to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed 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 proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree a minimum requirement for entry.

Finally, the petitioner's reliance upon the job vacancy advertisements is misplaced. First, it has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to the petitioner. There is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Few of the advertisements state the size of the employer, and there is no evidence in the record as to how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Simply 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)).

Furthermore, although the companies that placed these particular advertisements do require a bachelor's degree, their advertisements establish, at best, that although a bachelor's degree is generally required, a bachelor's degree, or its equivalent, *in a specific specialty*, is not required.

For all of these reasons, the petitioner has not satisfied 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 duties of the proposed position are similar to those of billing clerks and bookkeeping, accounting, and auditing clerks as outlined in the *Handbook*, and the *Handbook* does not indicate that a baccalaureate degree in a specific field, or its equivalent, is a normal minimum entry requirement for those positions. The duties proposed by the petitioner are no more complex or unique than those outlined by the *Handbook*; to the contrary, the duties proposed by the petitioner largely mirror those outlined in the *Handbook*. The duties discussed by the petitioner appear no more unique, complex, or specialized than those discussed in the *Handbook*. The evidence of record does not refute the

Handbook's information indicating that a bachelor's degree from a specific field of study is not the normal minimum entry requirement for positions such as the one proposed here.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, we normally review the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.¹ However, the record in this case contains no such evidence.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of its proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not a normal minimum entry requirement. The petitioner has failed to differentiate the duties of the proposed position from those described in the *Handbook* in and, as such, has failed to indicate the specialization and complexity required by this criterion. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of billing clerks and bookkeeping, accounting, and auditing clerks, none of which require or are usually associated with at least a bachelor's degree in a specific field. As a result, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The assertions made by the petitioner in its August 13, 2009 letter submitted in response to the director's request for additional evidence do not establish the proposed position as a specialty occupation under any of the criteria discussed above, as they lack any support. For example, the petitioner stated that maintaining the appropriate ledgers for accounts receivable and accounts payable is a senior-level task whose performance requires a bachelor's degree. However, as noted above, the *Handbook* indicates such duties are routinely performed by bookkeeping and accounting clerks, and the *Handbook's* discussion of accounting clerks even describes two occupations devoted solely to such tasks: accounts payable clerks and accounts receivable clerks. As noted, none of these occupations requires a bachelor's degree in a specific specialty. The petitioner's statements

¹ Even if a petitioner believes or otherwise assert that a proposed 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 job so 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 proposed 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 section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

that these and other duties are senior-level tasks whose performance requires a bachelor's degree lacks any support, as the petitioner did not explain *why* such tasks require a degree.

Finally, the letters from [REDACTED] and [REDACTED] do not establish the proposed position as a specialty occupation under any of the criteria discussed above. While both individuals stated that they employ degreed billing coordinators, neither specified whether they required the degrees to come from any particular field of study. Nor did they discuss their billing coordinator positions in any meaningful fashion that would have allowed us to examine whether their positions are truly comparable to the one proposed here. Finally, neither author submitted any evidence to back any of their assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). We may, in our 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, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and this petition was properly denied.

The Petitioner Has Not Demonstrated That The Petition Is Supported By An LCA Which Corresponds To It

Beyond the decision of the director, we find additionally that the certified LCA provided in support of the instant petition lists a Level II prevailing wage level. This indicates that the LCA, which is certified for a "qualified" position, is at odds with the statements by counsel and the petitioner regarding the complexity of the duties to be performed by the beneficiary. In particular, we note counsel's assertion on appeal that the proposed position is "intended by the Petitioner to be one of the most complex positions in her company other than her own" and the petitioner's statements in its August 13, 2009 letter that identified seven separate "senior level" tasks that will be performed by the beneficiary. However, according to guidance regarding wage level determinations issued by the Department of Labor (DOL) in 2009 entitled *Prevailing Wage Determination Policy Guidance*, at page 7,² Level II wage rates, which are labeled as "qualified," are assigned to job offers for qualified employees (as opposed to Level III "experienced" employees or Level IV "fully competent" employees) who "perform moderately complex tasks that require limited judgment." If the statements by counsel and the petitioner regarding the purported complexity of the duties of the proposed position are taken at face value, it is unclear how the beneficiary would be considered to be performing only "moderately complex" tasks whose performance requires only the exertion of "limited judgment." Given the assertions by counsel and the petitioner, and the fact that the LCA submitted in support of the petition is for a Level II wage, it is therefore unclear how the LCA corresponds to the proposed petition.

² This document is available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last accessed December 2, 2011).

While the 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, the following:

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.

(Italics added). The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has not demonstrated that the petition is supported by an LCA which corresponds to the petition, and the petition must be denied for this additional reason.

The Record Does Not Demonstrate That the Beneficiary Is Qualified To Perform the Duties of the Proposed Position

Beyond the decision of the director, the petition may not be approved for an additional reason, as the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of the proposed position. On the prevailing wage request it submitted to the California Employment Development Department, the petitioner stated that performance of the duties of its proposed billing coordinator position requires one year of experience. However, as the record does not establish that the beneficiary has the requisite year of experience as a billing coordinator, it is not clear how she qualifies to perform the duties of the proposed position.

Conclusion

The petitioner has failed to demonstrate to demonstrate that its proposed position qualifies for classification as a specialty occupation. Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate: (1) that the petition is supported by an LCA which corresponds to it; and (2) that the beneficiary qualifies to perform the duties of the specific position proposed by the petitioner.³ Accordingly, the beneficiary is ineligible for nonimmigrant classification under section 101(a)(15)(H)(i)(b) of the Act and this petition must remain denied.

³ 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 at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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The petition will remain 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, 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.