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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**

82

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

FEB 02 2011

IN RE: [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)

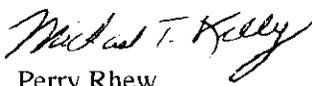
ON BEHALF OF PETITIONER:

**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,

*for*   
Perry Rhew  
Chief, Administrative Appeals Office

**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 international recycling material trade company with seven employees and a stated gross annual income of \$942,844. 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 along with supporting materials. 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions 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 October 6, 2008, the petitioner states that it wishes to hire the beneficiary to analyze financial information and prepare financial reports to determine and maintain the petitioner’s record of assets, liabilities, profit and loss, and tax liability. The petitioner stated that the beneficiary:

[w]ill be responsible for preparing, examining, and analyzing accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards. She will compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting and other tax requirements. She will report to management regarding the finances of company [sic]. [The beneficiary] will also assist in analyzing business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses and to provide advice.

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.

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<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."

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 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 accountant positions in general usually require a bachelor's degree, but does not state that it requires this degree or equivalent experience for the proffered position, nor does it state that the bachelor's degree must be in a specific specialty.

The petitioner also submitted a copy of the beneficiary's diploma indicating that the beneficiary has a U.S. Bachelor of Arts degree in Business Administration. The petitioner did not provide copies of the beneficiary's transcripts.

On January 24, 2009, 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 provided an organizational chart, which lists the beneficiary as the accounting department and another employee as the accounting assistant. The other positions include [REDACTED] and Shipping Assistant. The petitioner does not appear to employ anyone with the job title of bookkeeper. Therefore, it is not clear who, besides the beneficiary and the accounting assistant, would perform the duties of a bookkeeper. Moreover, even though the chart indicates that the accounting assistant would be directly supervised by the beneficiary, counsel states that the beneficiary has no managerial responsibility.

Further, counsel states: "We purchased [REDACTED] [REDACTED]s included in the package) in 2008. . . . Two people, i.e. [the beneficiary and the person filling the role of accounting assistant in the organizational chart], use the system on a daily basis."

Therefore, not only does the organizational chart contradict the statements made by counsel, but also the evidence fails to demonstrate that the beneficiary's responsibilities would differ significantly from the accounting assistant (currently employed by the petitioner as an accountant) who does not have at least a bachelor's degree or the equivalent in a specific

specialty.

In response to the RFE, counsel stated that the beneficiary was the first accountant employed by the petitioner, but then states that prior to the beneficiary, the person filling the role of accounting assistant in the organizational chart:

[w]ho has no accounting degree, was our lead accountant since 2007. . . .

Prior to [employment of the person filling the role of accounting assistant in the organizational chart], we used outside help, which we found both inefficient and expensive.

The reason for us to hire an in-house accountant with an accounting degree is that it has become obvious to us that [the person filling the role of accounting assistant in the organizational chart] could not handle the work due to her lack of educational background. The decision was made in a board meeting. . . .

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Additionally, counsel submitted copies of advertisements from other businesses, only one of which is from a company that is parallel to the petitioner. This advertisement is for an "Assistant Controller and Bookkeeper," which is not the same job as the one proffered here.

Counsel also submitted copies of the petitioner's meeting minutes in which it decided to hire an accountant. The minutes, which are dated September 15, 2008, state as follows with respect to hiring someone to fill this position:

Resolved and approved to hire a qualified accountant to assist the company document accurate financial records, prepare accurate financial statements, evaluate and assessing internal controls, prepare detailed budget, and managerial reports. The accountant should have public company auditing experience and is familiar with Sarbanes-Oxley.

Although they list the requirements for the accountant, the meeting minutes do not state that the accountant must have at least a bachelor's degree or equivalent experience in a specific specialty. The minutes also state that the petitioner is planning to go public in 2011 or 2012.

An internal announcement posted by the petitioner for the proffered position requires a Bachelor's degree in Accounting. This announcement does not state that a bachelor's degree in business administration, which is the degree held by the beneficiary, is also acceptable.

Additionally, counsel submitted an expert opinion letter from [redacted] who states he has more than 25 years of accounting experience. [redacted] states that he has provided accounting services for the petitioner for approximately seven years, despite counsel's statement in response to the RFE that "[w]e currently hire no outside consulting firm for accounting

purposes.”

letter states:

Due to the recent business expanding, the company needs an accountant with at least a bachelor degree.

The reason for the above statement is because there are many accounting challenges with [the petitioner].

was implemented. is an operations and financial reporting system designed to help international commodity brokers handling paper, pulp, lumber and metals. The function of the software includes order management, operations, and logistics, documentation, accounting and reporting. The accounting and reporting function also needs to be integrated with two affiliated accounting and Microsoft Business Financials. Due to the complexity of the software, accounting experience and professional judgment is required to be able to perform accurate financial records.

The company is expanding, and the business transactions have been doubled during the past two years. The company is in the shape of opening another operational facility and now needs [a] degreed accountant to prepare monthly performance report, operational expense analysis, financial projection analysis, prepare and track annual financial budgets, evaluate and assess the company's internal control, presents cost reduction recommendations to the management [sic].

From my experience and expertise in the accounting industry, this is an advanced position. Qualified accountant requires having strong accounting background, professional judgment skills, supervising skills, interpersonal skills, and must possess at least a bachelor's degree to be able to perform these duties. . . .

Although states that a bachelor's degree is required for the proffered position, he never states that the bachelor's degree must be in a *specific specialty*.

Counsel further states on appeal that the petitioner will be opening a packaging factory as well as seeking financing through a public offering, which cannot be handled by an accountant without an accounting degree. Again, this statement would exclude the beneficiary from qualifying for the proffered position as the petitioner failed to demonstrate that she holds the equivalent of an accounting degree. Therefore, the AAO questions the accuracy of counsel's statement, especially given that no evidence was submitted to support counsel's argument that a bachelor's degree in accounting is required. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. Counsel further argues that the expansion of the petitioner's business is sufficient to justify the hiring of an accountant with at least a bachelor's degree. Again, on appeal, counsel never states that the petitioner requires an accountant with at least a bachelor's degree in a *specific specialty*.

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 while other duties fall under the *Handbook's* brief description of tax preparers. 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 at 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 failed to demonstrate that the duties the beneficiary would perform are more advanced than those of the accountant/accounting assistant it already employs. The petitioner did not provide a detailed job description for the accountant/accounting assistant it already employs. 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.

Additionally, the *Handbook* states that tax preparers “[p]repare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant.”

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 for 20 hours per week.

The AAO understands that the petitioner has expanded its business and intends to eventually go public. However, the AAO also notes that even though counsel argues on appeal that this is a primary justification for the petitioner requiring an accountant with an accounting degree to fill the proffered position, the *Handbook* states that “[a]ny accountant filing a report with the Securities and Exchange Commission (SEC) is required by law to be a Certified Public Accountant (CPA).” As the petitioner has not provided evidence that the beneficiary is a CPA, the AAO doubts that the petitioner would be able to hire the beneficiary to fulfill this role. Although the petitioner appears to no longer intend to use the external CPA that it used in the past, the petitioner has failed to demonstrate that the beneficiary could legally perform all of the duties that can be performed by a CPA in conjunction with the petitioner's intention to go public. It therefore appears that, regardless of whether or not the beneficiary is employed, the petitioner will have to hire or consult with a CPA who is legally authorized to file a report with the SEC. Therefore, despite counsel's and the petitioner's claims that the petitioner is hiring the beneficiary to take over and expand the role of its external CPA in order for the company to go public, it does not appear that the petitioner would be legally authorized to hire the beneficiary to perform all the duties of a CPA. The petitioner has therefore failed to demonstrate that it will be able to bring all of the duties of a CPA in-house to be performed by the beneficiary in conjunction with making a public offering. Instead, it appears that, regardless of whether or not the beneficiary is employed, the petitioner eventually will be required to either employ a CPA or contract with a CPA in addition if it intends to go public as claimed.

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 advanced duties described by counsel are those that could only be performed by a CPA, which the beneficiary is not, 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 and/or the brief section on tax preparers.

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.

The *Handbook* further provides that tax preparers usually get on-the-job training and does not indicate that at least a bachelor's degree in a specific specialty is required. 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 assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that 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 the proffered position requires 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, auditing clerk, or tax preparation 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 states that it has hired one other person in this position, this person does not have at least a bachelor's degree or the equivalent in a specific specialty. The petitioner argues that the proffered position's duties differ from the duties of the accountant currently employed, but no evidence was provided to demonstrate this. 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. Further, the AAO finds that the petitioner failed to provide sufficient evidence that it would hire the beneficiary to perform the advanced duties that go along with making a public offering given that the beneficiary is not a CPA and does not even have a degree in accounting. 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 petitioner states only that the proffered position requires a bachelor's degree, not that it requires at least a bachelor's degree or the equivalent in a *specific specialty*. 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 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.

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