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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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Date: **NOV 02 2011**

Office: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 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 states that it is a firm engaged in the provision of in-home health care services in the areas of nursing, physical, occupational, and speech therapy, medical social services, and dietetics with 20 employees and a stated gross annual income of approximately \$1.25 million. It seeks to employ the beneficiary as an accountant 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). 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 submitted by counsel. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue before the AAO 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 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 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 accountant. In the petitioner's letter dated May 9, 2009, the petitioner states that it wishes to hire the beneficiary to:

[A]pply principles of accounting to analyze financial information and prepare financial reports; compile and analyze financial information to prepare entries to accounts documenting business transactions; analyze financial information

detailing assets, liabilities, and capital; prepare balance sheets, profit and loss statements, and other reports to summarize current and projected company financial positions; select, revise, update, and interface accounting computer software to perform the relevant accounting tasks needed by the employer and train and oversee the employee(s) performing data entry using that accounting software; audit contracts, orders, and vouchers, and prepare reports to substantiate individual transactions prior to settlement; establish, modify, document, and coordinate implementation of accounting and accounting control procedures; devise and implement manual and computerized systems for general accounting.

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 *Occupational Outlook Handbook*¹ (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. 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. *Id.*

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." *Id.* 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)(I)), 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)).² 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 bookkeepers and accounting clerks who meet the education and experience

¹ Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/OCO> (last accessed October 25, 2011).

² For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant and auditor positions require at least a bachelor's degree in accounting or a related field, it could be said that "most" accountant and auditor positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

requirements set by their employers, can obtain junior accounting positions and advance to accountant positions by demonstrating their accounting skills on the job.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed October 25, 2011). 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 accounting knowledge that the beneficiary would have to apply to those matters. As discussed in greater detail, *infra*, 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 indicates the minimum requirements for the proffered position as a bachelor's degree in accounting or a closely related field.

The petitioner also submitted copies of the beneficiary's Bachelor of Commerce in Accounting from Suez Canal University, but did not include a foreign education credential evaluation.

On August 14, 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.

In response to the RFE, the petitioner did not provide any additional information pertaining to the proffered job duties. As evidence of its past employment practices hiring accountants, the petitioner submitted two newspaper advertisements dated October 14, 2007 and October 21, 2007, CalJOBS job listings dated October 3, 2007 and February 11, 2008, and a letter of certification from [REDACTED] stating that it searched online for an accountant for the petitioner from October 10, 2007 to November 9, 2007. The petitioner also submitted an H-1B approval notice for the individual who previously held the position of account with petitioner, along with her education credentials, quarterly tax returns, and W-2 forms for 2007 and 2008.³ The petitioner also provided a letter from [REDACTED], stating that

³ The petitioner noted that USCIS approved another petition that had been previously filed on behalf of another employee. The director's decision does not indicate whether she reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve

it employs an individual in a role similar to the proffered position, but did not indicate whether a bachelor's degree was required.

The petitioner also submitted an organization chart, which indicates that the petitioner employs an HR Coordinator, a Business/Office Manager, and a billing person in addition to the proffered position. Additionally, the petitioner submitted copies of invoices dated August 3, 2007, November 1, 2007, February 25, 2008, August 4, 2008, November 3, 2008, and May 18, 2009 to demonstrate fees paid for outside accounting services. The petitioner also provided details regarding the in-house accounting software that the proffered position requires, which includes Quickbooks, Excel spreadsheets, and Visitrack billing software with accounting. Finally, the petitioner submitted a sample invoice for patient services, the university transcript for the billing representative (who, along with the administrator, is currently performing the duties of accountant), accounts receivable for April 1, 2009 to June 30, 2009, 2008 Federal Income Tax Returns, Form DE-6, Quarterly Wage Reports for 2007-2009, business licenses, awards and promotional materials for the petitioner, and a Certificate of Membership in the California Association of Health Services at Home.

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 for the petitioner does not offer any argument as to why the proffered duties come under the section in the *Handbook on accountants and auditors*. In a letter dated May 8, 2009, the petitioner states that the proffered position is not that of a bookkeeper because the petitioner currently employs a bookkeeper. However, the organizational chart submitted with the RFE response lacks any indication that the petitioner employs a bookkeeper. Additionally, one of the proffered duties as previously described by the petitioner is for the beneficiary to "prepare balance sheets, profit and loss statements, and other reports to summarize current and projected company financial positions," tasks most closely related to that of a bookkeeper.

The petitioner also states that the beneficiary "will select, revise, update, and interface accounting computer software to perform the relevant accounting tasks needed by the employer and she will train and oversee the employee(s) performing data entry using that accounting

applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

software." In a letter dated September 24, 2009, counsel states that the accounting software refers to Quickbooks, Excel spreadsheets, and Visitrack billing software. The petitioner failed to provide any documentation showing how use of this accounting software requires at least a bachelor's degree level of knowledge in accounting of a related field.

Moreover, the petitioner submitted invoices documenting that it hired an outside accountant to prepare its quarterly or yearly tax returns in support of its assertion that it "found it necessary to spend substantial sums on outside accounting services." Additionally, in its letter dated May 8, 2009, the petitioner stated that it needed to pay for an outside accountant to handle "compilation of financial documentation and tax forms" until it hired [REDACTED] as an accountant in 2007. However, the documentation provided by the petitioner demonstrates that even with [REDACTED] on staff in 2007 and 2008, it still paid for an outside accountant to prepare and file its quarterly and annual income tax filings. Furthermore, the petitioner does not provide any evidence that the beneficiary will perform tax preparation duties as described anywhere in its petition. Additionally, counsel states in a letter dated September 24, 2009 that the in-house accounting work is currently being performed by [REDACTED] (billing) and [REDACTED] (administrator), individuals that the petitioner did not document as having bachelor's degrees in accounting or a closely related field. The petitioner failed to demonstrate that it has sufficient work and resources for the beneficiary to perform any complex duties on a full-time basis considering it outsources its tax preparation and filing (even when it employed a full time accountant), and the position duties are performed by two individuals without the allegedly required degree in a specific specialty while it is vacant, indicating that such a degree is not required to perform its duties.

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(p)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

by the Act and its implementing 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.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos144.htm> (last accessed October 25, 2011) (emphasis added).

As discussed above, it is clear that the petitioner already uses outside accountants and intends to continue doing so after hiring the beneficiary. Moreover, although the petitioner states that it employs a bookkeeper, no supporting evidence supporting this has been submitted. Additionally, the duties of the proffered position are currently being performed by individuals who have not been established as holding at least bachelor's degrees in accounting or a closely related field and who do not hold positions requiring bachelor's degrees in accounting or a closely related field. 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)).

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.

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.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed October 25, 2011). 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 the AAO will next analyze whether the proffered position, as described, would be 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.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos144.htm> (last accessed October 25, 2011). Under the *Handbook's* description, it therefore appears to be unusual for small businesses to employ a public or management accountant, since public accountants are usually CPAs with their own business or employed by accounting firms, while management accountants are usually part of executive teams and prepare financial reports for other entities in addition to their employer. Thus, it is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in accounting or a closely related specialty, or the equivalent, to perform the duties of an accountant on a full-time basis.

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

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

Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

Id. 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 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 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 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 letter provided by [REDACTED] fails to document that its in-house accountant possesses a bachelor's degree in accounting or a closely related field, and that it has an established practice of recruiting and hiring in-house accountants possessing bachelor's degrees in accounting or a closely related field.

For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than bookkeeping, accounting, or auditing clerk positions that require the application of accounting principles, but that are not at a level that requires the degree of highly specialized knowledge in accounting that is only acquired by the attainment of at least a bachelor's degree, or the equivalent, in accounting or a related specialty or its equivalent.

Next, while the petitioner did submit documentation demonstrating that it required an accounting degree when it recruited for a similar position in 2007 and 2008, 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. Additionally, the advertisements submitted state that the job duties include "comput[ing] taxes and prepar[ing] returns," tasks that are notably different from the proffered position and correspond to an accountant rather than a bookkeeper. Nevertheless, 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"). 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. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized and generic nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently

specialized and complex that their performance would require knowledge of accounting at a level usually associated with at least a bachelor's degree, or the equivalent, in accounting or a related specialty. Insufficient evidence was also provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than would normally be required of bookkeeping clerks, accounting clerks, auditing clerks, tax preparers, or other types of employees, including those bearing the title "accountant," who engage in some accounting duties and employ some accounting principles, but not at a level of an accountant applying theoretical and practical knowledge of accounting that is usually associated with at least a bachelor's degree in accounting or a closely related specialty or its equivalent.

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 satisfies any of the supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the proffered position does not qualify as a specialty occupation, and the AAO shall not disturb the director's denial of the petition for this reason.

Beyond the decision of the director, the AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of the beneficiary's foreign degree or sufficient evidence to establish that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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.