

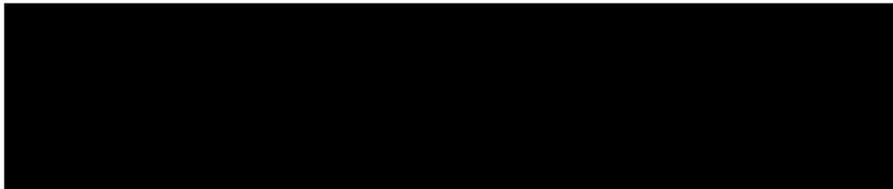
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



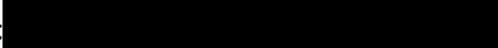
**U.S. Citizenship  
and Immigration  
Services**

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Date: **NOV 22 2011** Office: VERMONT 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:

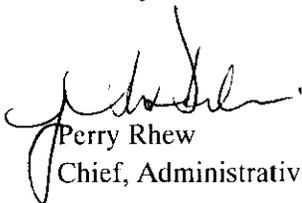
SELF-REPRESENTED

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, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner operates an online sports channel dedicated to paintball, was established in 2008, employs 8 personnel, and claims a gross annual income of \$117,000. It seeks to employ the beneficiary as an 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, Petition for Nonimmigrant Worker, 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, Notice of Appeal or Motion, and additional documents submitted by the petitioner. 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 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as an accountant. In the petitioner’s letter in support of the petition dated August 29, 2009, the petitioner stated that it needed an accountant on a part-time basis while the company is growing and that the individual in the proffered position would be:

Responsible for general ledger entries, monthly general ledger close, preparation of monthly financial statements, monthly account reconciliations, and preparation of monthly forecasts. The position also requires responsibility for annual budgets, billing, accounts receivables, accounts payables and banking.

In its support letter, the petitioner indicated that the beneficiary earned a bachelor's degree in international business administration, an associate's degree in accounting Kenya and that he passed the certified public accounting exam in Kenya. The petitioner noted that the beneficiary also earned a master's degree in technological entrepreneurship from Northeastern University in Boston, Massachusetts

On September 17, 2009, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation, including a detailed job description and information regarding the petitioner's employees, among other things.

In response to the RFE, the petitioner stated that it had not employed a full-time accountant since its inception in May 2008 until it employed the beneficiary in October 2008 during his optional practical training period. The petitioner listed the duties of the proffered position in pertinent part as:

1. 30% - Preparation and maintenance of general ledger.
2. 10% - Monthly general ledger close.
3. 15% - Preparation of monthly and annual financial statements, ensuring their completeness and accuracy. These statements include cash flow statement and analysis, balance sheet, and income statement.
4. 10% - Monthly and annual account reconciliations.
5. 10% - Preparation of monthly forecasts, these include: day by day cash forecast, revenue projections for each revenue stream, expenditure forecasts based on the main chart of accounts, and cash flow projections factoring in all cash inflows and out flows.
6. 5% - Developing, maintaining, and analyzing annual budgets.
7. 5% - Accounts payables
8. 5% - Accounts receivables
9. 5% - Banking activities including bank deposits, monitoring daily balances, keeping records of the deposits and copies of checks and credit card slips.
10. 5% - Other duties as assigned, including but not limited to participating in special projects, liaising with external tax advisors at ensuring tax compliance and the successful completion of income tax returns, and assisting in

developing and maintaining business and financial plans for fund raising and other purposes.

The petitioner also provided brief job descriptions for its current employees and an employment agreement with the beneficiary dated October 1, 2009.

Upon review of the proposed duties of the proffered position, the director noted that the duties included duties that could be performed by accountants, bookkeepers, and accounting clerks. The director determined that the petitioner had not established that the duties of the proffered position comprised the duties of a specialty occupation.

On appeal, the petitioner submits an employment agreement with another individual dated December 14, 2009 and claims that this individual will relieve the beneficiary from performing any non-qualifying duties. The petitioner also provides a two-sentence letter dated December 17, 2010, signed by [REDACTED] notes that he reviewed the petitioner's complete description of duties for the proffered position and opines: "the accountant's duties detailed herein, with the exception of duties 1, 2, 7, 8, and 9 needs to be performed by a qualified accountant holding a baccalaureate or equivalent." The petitioner also asserts that it is company policy to fill the accountant position with an individual holding a bachelor's degree.

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 Department of Labor's *Occupational Outlook Handbook (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. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed November 2011).

The "Accountants and Auditors" chapter at the 2010-2011 edition of the *Handbook* indicates that not every accountant position requires at 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 accountants and auditors need at least a bachelor's degree in business, 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).<sup>1</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.

*Id.* 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.

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 described fall under the *Handbook*’s section on bookkeeping, accounting, and auditing clerks. Furthermore, as related in this decision’s earlier

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<sup>1</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.”

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 November 2011) (emphasis added).

Although the petitioner on appeal provided an employment agreement with an individual it claims will perform the bookkeeping, clerical, and administrative functions that it initially had prescribed for the beneficiary, the employment agreement is dated subsequent to the filing date of the petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 ('Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Additionally, the proffered job duties as described by the petitioner are broad 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.

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 November 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 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.

*Id.* 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 while he would be employed in H-1B classification.

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. Upon review of the opinion of [REDACTED] submitted on appeal, [REDACTED] does not provide objective data supporting his opinion that some of the petitioner's described duties require the services of an accountant with a baccalaureate degree. [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. The AAO may, in its 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, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Moreover, [REDACTED] does not claim that the beneficiary must have a degree in a specific discipline to perform the accounting functions listed in the petitioner's description of duties. 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, 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 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 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. We, again, find [REDACTED] opinion less than illuminating on the subject of an industry-wide degree standard for the occupation of accountant and for the proffered position in particular. The petitioner has not provided letters or other information that refutes the *Handbook's* report regarding the lack of an industry-wide standard for positions parallel to the proffered position.

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

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

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. Moreover, 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 384, 387 (5th Cir. 2000). 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.

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 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 qualifies as a specialty occupation under any one of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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