



U.S. Citizenship
and Immigration
Services

[REDACTED]

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Date: **NOV 21 2012** Office: VERMONT 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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the previously approved nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will remain revoked.

On the Form I-129 petition, the petitioner claims to be a financial services company seeking to employ the beneficiary as an accountant as a nonimmigrant worker in a specialty occupation 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 revoked the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A), noting that an administrative site visit to the claimed work location of the beneficiary demonstrated that the beneficiary was not employed in the capacity specified in the petition.

After issuance of a Notice of Intent to Revoke (NOIR) and review of the petitioner's submissions in response to this notice, the service center director revoked approval of the petition on November 30, 2010.

The AAO turns first to the basis for the director's revocation, and whether this basis provided the director with sufficient grounds for revoking the H-1B petition under the language at 8 C.F.R. § 214.2(h)(11)(iii)(A), the regulation outlining the circumstances under which an H-1B Form I-129 petition's validity will be rescinded.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

(A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1)* The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2)* The statement of facts contained in the petition or on the application for a temporary labor certification was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
- (3)* The petitioner violated terms and conditions of the approved petition; or
- (4)* The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5)* The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The AAO finds that the content of the NOIR comported with the regulatory notice requirements, as it provided a detailed statement that conveyed grounds for revocation encompassed by the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(A), and allotted the petitioner the required time for the submission of evidence in rebuttal that is specified in the regulation at 8 C.F.R. § 214.2(h)(11)(iii)(B). As will be discussed below, the AAO further finds that the director's decision to revoke approval of the petition accords with the evidence in the record of proceeding (ROP), and that neither the response to the NOIR nor the submissions on appeal overcome the grounds for revocation indicated in the NOIR. Accordingly, the AAO shall not disturb the director's decision to revoke approval of the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's NOIR, dated May 24, 2010; (3) the petitioner's response to the NOIR dated June 23, 2010; (4) the director's November 29, 2010 notice of revocation (NOR); and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

A brief summary of the factual and procedural history between the approval and the decision revoking it follows below.

On April 3, 2009, the petitioner filed the Form I-129 (Petition for a Nonimmigrant Worker) to employ the beneficiary in H-1B classification for the period from April 4, 2009 to April 3, 2010. The director initially approved the petition. Upon receipt of new information made available to USCIS after an administrative site visit, the director issued an NOIR on May 24, 2010. Specifically, the director noted that the beneficiary appeared to be performing non-qualifying duties in addition to the claimed accounting duties of the position, thereby raising questions regarding the legitimacy of the claimed specialty occupation position for which the petition had been approved. The director also noted that the beneficiary was not being paid the prevailing wage as stated on the certified Labor Condition Application (LCA) that accompanied the petition. The petitioner was afforded the opportunity to respond to the director's stated grounds for revocation.

In a response dated June 23, 2010, the petitioner addressed the issues identified by the director. The petitioner contended that, contrary to the director's contentions, the beneficiary was in fact earning the stated prevailing wage and was working in the specialty occupation position of accountant on a full-time basis. The petitioner submitted additional documentation, including paystubs and daily/weekly reports, in support of these assertions.

The director found the petitioner had failed to overcome the concerns outlined in the NOIR, and on November 29, 2010, the director sent a decision revoking approval of the petition.¹ The director found that, contrary to counsel's assertions, there was insufficient evidence to establish that the petitioner had sufficient H-1B work for the beneficiary, and further noted that the beneficiary was not performing the duties of a specialty occupation.

On appeal, counsel argues that the petitioner has clearly established that the beneficiary is performing the duties of an accountant, and asserts that the fact that the petitioner is a small business unfairly impacted the director's decision in this matter. Counsel concluded that the petition did not warrant revocation.

To meet its burden of proof in this regard, the petitioner must establish that the job offered 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 an occupation 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] 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 [(2)] 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, a proposed position must also meet one of the following criteria:

¹ A review of the record indicates that the issue of whether the prevailing wage was paid to the beneficiary, although raised in the NOIR, was not cited as a basis for revocation of the petition's approval. While not explained by the director, the AAO's review of the beneficiary's paystubs and his gross pay included therein reveals that, as contended by the petitioner in response to the NOIR, the beneficiary was in fact receiving the stated prevailing wage. Therefore, this issue need not be discussed further.

- (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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

On the Form I-129 petition, the petitioner claimed that it had been established in 1999 and currently had five employees. In a letter of support dated March 19, 2009, which was appended to the petition, the petitioner explained that it was in the business of check cashing and financial services, and claimed to operate three financial services stores. It further claimed to require the services of an accountant in order to meet the expectations of its customers. Regarding the duties of the proposed position, the petitioner stated as follows:

[The beneficiary] will continue to direct the financial activities of the corporation applying principles of accounting, finance, and business. He will continue to prepare financial reports and will continue to ensure compliance with tax and regulatory requirements. He will continue to oversee the flow of cash and financial instruments, monitor the extension of credit, and assess the risk of transactions. He will continue to prepare budgets by analyzing past and present financial operations and will continue to estimate future revenues and expenditures to prepare budget. He will continue to maintain budgeting systems to provide control of expenditures. He will also continue to prepare reports, which summarize and forecast corporation business activity and financial positions in the areas of income, expenses, and earnings based on past, present, and expected operations.

The petitioner concluded by claiming that the proffered position required an individual who held at least a bachelor's degree or its equivalent in accounting, finance, or other closely related field.

The director initially approved the petition on May 30, 2009. However, after a post adjudicative site visit was conducted on September 14, 2009, it was determined that the beneficiary was not actually employed in the capacity claimed in the petition. Specifically, when questioned by the USCIS officer, the beneficiary claimed that, in addition to preparing financial reports, tax returns, and performing related functions, the beneficiary also performed customer service tasks. The beneficiary further indicated that in addition to the petitioner's owner, who was not engaged in the day-to-day operation of the business, there was only one other employee at this location.

After articulating these findings in the NOIR, the director afforded the petitioner the opportunity to respond. In a letter dated June 23, 2010, the petitioner addressed the director's concerns, claiming that the beneficiary was in fact employed as a full-time accountant and that "although [the beneficiary] may occasionally help our sales staff if the transaction involves large amounts of money, this work amounts to no more than a few hours a week, if at all." The petitioner continued by asserting that a check cashing business such as that of the petitioner routinely handled between \$50,000 to \$200,000 on a daily basis, thereby requiring the services of a full-time accountant.

The petitioner expanded upon the above explanation with the following list of the beneficiary's daily tasks:

- At the end of each day, [the beneficiary] prepares a report for the day detailing all transactions by type (i.e., wire transfers, money orders, check cashing, lotto, phone cards, stamps, etc)

- He ensures that each transaction as entered by the sales clerk matches to the actual money transaction.
- He then reconciles all transactions, including that transactions have been done in accordance with timeframes and rules and regulations of each vendor (bank, Western Union, etc.)
- He prepares and analyzes daily reports with opening and closing cash amounts
- He records all reports in Excel spreadsheets and translates them into monthly report
- He performs bi-weekly reconciliation with vendor data and company accounts and instructs the person at the company who is authorized to sign on the account and wire the money as necessary
- He enters transactional data into Quickbooks so that reports are generated
- He reviews reports and investigates any inaccuracies between transactions reported and actual funds
- He prepares monthly income statements and balance sheets for my (the President's) review
- He analyzes and reports financial changes and trends with President
- He determines and maintains the record of assets, profit, liability and other financial activities
- He ensures compliance with financial and securities regulations on a local, state, and federal level, as well as ensures the veracity of records
- He prepares comprehensive quantitative analyses of financial information, and preparation of financial projections based on past trends
- He prepares budgets for the company and reviews overhead costs with the President to determine how to maximize profitability
- Analyzes business operations as a whole to project future revenues and expenses and potential costs
- He performs other financial duties as requested by President (who is a CPA)

The petitioner also submitted "examples" of the beneficiary's work product, which included daily and weekly reports displaying the intake and output of cash, lottery ticket sales, and wire transfer purchases.

A review of the duties of the proffered position reveals similarities to the occupation entitled "Bookkeeping, Accounting, and Auditing Clerks" as described in the U.S. Department of Labor's *Occupational Outlook Handbook*, upon which the AAO routinely relies for information regarding whether a particular position qualifies as a specialty occupation. Specifically, the *Handbook* states:

Bookkeeping, accounting, and auditing clerks typically do the following:

- Use bookkeeping software as well as online spreadsheets and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers

- Put costs (debits) as well as income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared to income), income statements, and totals by account
- Check figures, postings, and reports for accuracy
- Reconcile or note and report any differences they find in the records

The records that bookkeeping, accounting, and auditing clerks work with include expenditures (money spent), receipts (money that comes in), accounts payable (bills to be paid), accounts receivable (invoices, or what other people owe the organization), and profit and loss (a report that shows the organization's financial health).

Workers in this occupation have a wide range of tasks. Some in this occupation are full-charge bookkeeping clerks who maintain an entire organization's books. Others are accounting clerks who handle specific tasks.

These clerks use basic mathematics (adding, subtracting) throughout the day.

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. They must be comfortable using computers to record and calculate data.

The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, billing, purchasing (buying), and keeping track of overdue bills. Many of these functions require clerks to communicate with clients.

Bookkeeping clerks, also known as **bookkeepers**, often are responsible for some or all of an organization's accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income).

They also produce financial statements and other reports for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying receipts, and sending cash, checks, or other forms of payment to the bank.

In addition, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

Accounting clerks typically work for larger companies and have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do.

Often, their responsibilities vary by level of experience. Entry-level accounting clerks may enter (post) details of transactions (including date, type, and amount), add up accounts, and determine interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may add up and balance billing vouchers, ensure that account data is complete and accurate, and code documents according to an organization's procedures.

Auditing clerks 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited November 20, 2012).

A review of the more detailed, expanded duties of the proffered position in comparison to those of a bookkeeping, accounting, or auditing clerk as described by the *Handbook* above demonstrates that the proffered position is most akin to this occupational category. However, a review of the *Handbook*'s discussion of the educational requirements for entry into such an occupation reveals that it is not one which requires a baccalaureate or higher degree in a specific specialty or its equivalent for entry. Specifically, the *Handbook* states:

Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. In 2009, 25 percent of these workers had an associate's or higher degree.

Id. at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited November 20, 2012). Since the proffered position is one for which a baccalaureate or higher degree in a specific specialty or its equivalent in a specific specialty is not normally required for entry into the occupation, the petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) based on the information provided by the *Handbook*.

Furthermore, according to the information obtained after the administrative site visit, the petitioner employs the beneficiary and a sales clerk, and the petitioner's president does not participate in the day-to-day operations of the business. Although the petitioner claimed on the Form I-129 petition that it employed 5 persons, there is no documentary evidence to support this claim. Therefore, the evidence before the AAO demonstrates that one sales clerk is tasked with operating the petitioner's business, although the beneficiary may, according to the petitioner, infrequently assist the sales clerk if a transaction involves a large amount of money. Moreover, other than the beneficiary, there is no evidence demonstrating that the petitioner employs a bookkeeper or accounting clerk who performs the company's general, financial record keeping, such as recording the petitioner's financial

transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeper and/or accounting clerk which are also duties attributed to the beneficiary in the petitioner's response to the NOID), who would relieve the beneficiary from performing such non-qualifying duties. Therefore, the absence of a bookkeeper or accounting clerk, coupled with the nature of the petitioner's business and the fact that it employs only one sales clerk to operate its enterprise, demonstrates that the beneficiary is more likely than not performing, at least in substantive part, non-qualifying duties such as general financial record keeping normally attributed to a bookkeeper or accounting clerk as well as customer service tasks.

In addition, the AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. Here, the petitioner has also failed to establish that the financial transactions of a check cashing business with 2-5 employees and a gross annual income of less than \$659,000 requires the services of more than a bookkeeper or accounting clerk. Therefore, the AAO finds insufficient evidence that the proffered position is anything more than a bookkeeper or accounting clerk, a non-specialty occupation. Consequently, the AAO concludes that the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

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.

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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. The petitioner submits no evidence that responds to the first prong of this criterion.

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the

beneficiary's educational background and extensive experience in the industry as an accountant will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Neither the petitioner nor counsel explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor has the petitioner satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the position. To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees in a specific specialty or its equivalent. *See id.* at 388. The record contains no information regarding the petitioner's past hiring practices. As the petitioner submits no evidence demonstrating that it previously recruited and employed only specialty degreed individuals for the proffered position, the petitioner has failed to satisfy this criterion.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than bookkeeping or accounting clerk positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(A)(4), an approved petition is revocable if the petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of 8 C.F.R. § 214.2. For the reasons set forth above, the petitioner has failed to overcome the basis of revocation in this matter. Therefore, the appeal will be dismissed and the petition will remain revoked.

Beyond the decision of the director, the AAO notes that, had the petitioner demonstrated that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty, it would then have been obliged, in order for the petition to be approvable, to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent in that specific specialty. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based in part on experience, there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the matter would be remanded and the approval of the petition would have to be revoked on notice for this reason even if the stated grounds for revocation had been overcome on appeal.

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's approval is revoked.