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

U.S. Citizenship and Immigration Services

D2

[redacted]

Date: FEB 0 2 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[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 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 for
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a textile manufacturer and claims to have eleven employees. It seeks to employ the beneficiary as an accountant. Accordingly, the petitioner endeavors to classify the beneficiary 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 denied the petition determining that the proffered position is not 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, with counsel's brief and accompanying evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 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 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, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (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.

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.

The petitioner claims to seek the beneficiary's services as an accountant. In its October 5, 2009 letter of support, the petitioner divided the beneficiary's job duties into three areas and described them as follows:

> **Financial Management**
>
> The company accountant will spend approximately **60%** of her work hours focused on achieving a healthy 'bottom-line' or profits for the company by setting financial directions, managing cost and yield. Specifically, her duties will include:
>
> - Analyzing and recording financial transactions; ensuring transactions are properly recorded and classified to present fairly the financial activities of the Company;
> - Developing and implementing Company's accounting reporting policies and procedures;
> - Accumulating, organizing and interpreting financial and quantitative data relevant to the activities of the Company;
> - Analyzing and interpreting financial statements such as balance sheet, income statement and statement of cash flows; Accurately and timely preparing complex accruals, revenue and expenditure allocations, fund adjustments and associated reports;
> - Designing and developing cost accounting systems, including measuring, analyzing and using information contained in our cost systems for retail/wholesale industry;
> - Supervising the maintenance of various subsidiary ledgers and reconciling them with the general ledger control accounts; reconciling the following subsidiary systems with the general ledger control accounts; accounts payable, activity management, asset management, accounts receivable and payroll and performing inventory control of our products;
> - Manage the company's fiscal and administrative systems, including operation and maintenance of all computerized and manual accounting records, budget development and reporting;
> - Define policy objectives and assess those that will most likely maximize the company objectives under expected future situations and allow our company to prosper in a dynamic setting.

- Provide expertise on the treatment of accounting transactions and related financial reporting and provide analysis on financial results (actual vs. budget, trends, performance metrics).

Forecasting and Analysis:

The accountant shall dedicate approximately **25%** of her time to the continuous analysis of company records of past and present operations; trends and cost; approximated and realized income; administrative commitments and obligations acquired to project future income and liabilities with the use of computerized accounting and inventory management system to aid the daily operation of [the petitioner]. Specifically, forecasting and analysis involves:

- Forecasting monthly and annual revenue and expense budgets for all operations consistent with short and long-term operations and financial goals.
- Developing monthly and other ad-hoc financial report analyses for management, performing cash management including, but not limited to the monitoring of bank/cash reconciliation and cash flow analysis.
- Providing management with financial analysis support on routine business issues and other responsibilities which will include preparation, maintenance and analysis of cost reports.
- Close consideration of past accounting information and its impact on financial planning, capital expenditure decisions, capital budgeting evaluation and short-term and long-term financial decision-making.

Audit and Control:

The final area of accounting will take up approximately **15%** of the accountant's time as follows:

- Evaluating our accounting books to establish schedules needed for internal and external audits;
- Preparing audit worksheets and handle governmental notices for the preparation of filing income tax forms;
- Developing a system that helps keep track of income and expenses to determine company growth;
- Recommending modifications to existing programs;
- Examining our current accounting system, evaluating management procedures, and reviewing company operations, ascertaining that records are accurate, and controls are established to protect against fraud and waste[.]

The petitioner further claimed that it required the incumbent to possess at least a bachelor's degree in accounting, finance, or other closely related field, and claimed that since the beneficiary possessed a

bachelor's degree in accounting from Central Luzon University in the Philippines, she was qualified to perform the duties of the proffered position.

In the RFE dated November 5, 2009, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed evidence demonstrating that the proffered position was a specialty occupation, including but not limited to information pertaining to the petitioner's business, its hiring practices, its accounting system, and its organizational chart. The director also requested evidence from industry-related professional associations, as well as firms or individuals in the industry, which regularly employed and/or recruited accountants.

In response, the petitioner submitted a letter dated December 7, 2009, in which it addressed the director's requests. The petitioner contended that the proffered position was most akin to the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook's (Handbook)* description of management accountants. The petitioner stated that its current accounting department consisted of two individuals: a controller/administration manager, and an accounts payable and accounts receivable manager. It further claimed that because a significant amount of its business is conducted in the Far East, it has experienced an increase in its accounting work and such work can no longer be conducted by these two individuals alone, thereby justifying the need for the beneficiary's services.

The petitioner also submitted a copy of its organizational chart, which indicated that the beneficiary, in the position of accountant, would oversee the accounts payable/accounts receivable manager, and would report to the controller and administration manager. In addition, the petitioner submitted a copy of its standard procedures manual, which demonstrated relevant parts of its accounting system which it claims was developed by international business management consulting firm in 1994. The petitioner also submitted additional documentation such as job postings for positions it claimed were similar to the proffered position, as well as payroll records, quarterly tax returns, and a statement regarding the petitioner's company profile. Though requested, the petitioner declined to submit evidence it described as "evidence of similarly sized businesses with similar annual incomes," as well as information pertaining to the petitioner's commercial transaction history, arguing that such evidence was either irrelevant and/or confidential.

On January 6, 2010, the director denied the petition. The director noted that the evidence of record failed to demonstrate that the proffered position was that of an accountant or that the petitioner's enterprise required the services of a full-time accountant. The director found that the duties of the proffered position were more akin to that of a bookkeeper, and ultimately concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's denial was erroneous. Specifically, counsel contends that the position is in fact an accounting position, and contends that the director ignored evidence in the record in reaching her decision. Counsel equates the proffered position to accountant as defined by the *Handbook* as well as O*Net Online, and contends that the director's conclusion that the proffered position was merely that of a bookkeeper was not warranted. Counsel

contends that the petitioner's response to the RFE clearly established the nature of the position and concludes by offering additional evidence in the form of documentation of degrees of the petitioner's previously-employed accountants.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)*, which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion 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.

The petitioner has stated that the proffered position is that of a management accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

> [r]ecord 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 . . . . They analyze and interpret the financial information that corporate executives need in order 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.[1]

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would more likely than not require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it apparently does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

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[1] *Occupational Outlook Handbook*, 2010-2011 Edition, at www.bls.gov/oco/ocos001.htm.

> Some graduates of junior colleges or business or correspondence schools, as well as bookkeepers 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.
>
> Most beginning accountants and auditors may work under supervision or closely with an experienced accountant or auditor before gaining more independence and responsibility.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

> Clerks who can carry out a wider range of bookkeeping and accounting activities will be in greater demand than specialized clerks. For example, demand for full-charge bookkeepers is expected to increase, because they can perform a wider variety of financial transactions, including payroll and billing. Certified Bookkeepers (CBs) and those with several years of accounting or bookkeeping experience who have demonstrated that they can handle a range of tasks will have the best job prospects.[2]

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant, as correctly noted by the director. 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. 728 (E.D. Mich. 2006). In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree or higher in accounting or its equivalent.

At the time of filing, the petitioner stated that it commenced operations as a textile converter and currently employed eleven persons. It further claimed to have a net annual income of approximately $1.8 million. However, the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation, for the years 2007 and 2008 demonstrate that an outside CPA, [redacted], prepared and filed the returns on behalf of the petitioner. Since the petitioner claims that its business is expanding and therefore requires the services of a full-time accountant, it is unclear why the petitioner must employ an independent CPA to prepare its income tax returns as well as two other employees in the petitioner's so-called accounting division. In addition, it is noted that the petitioner does not list any

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[2] *Occupational Outlook Handbook*, 2010-2011 Edition, at www.bls.gov/oco/ocos144.htm.

salaries or wages paid to employees on Line 8 of either of the submitted tax returns, therefore raising further questions regarding the legitimacy of the petitioner's claimed organizational structure. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS,* 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

In response to the request for evidence, the petitioner indicated that it has plans for further expansion and that it is the continuing growth of the company's business dealings in the Far East that necessitates a full-time management accountant in addition to the controller/administration manager and accounts payable/receivable and payroll manager. The AAO acknowledges that the process of expanding a business's operations could potentially establish financial and operational complexities that would require a degreed accountant. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose such a degree requirement on the beneficiary. However, the fact that an independent CPA is still preparing the petitioner's tax returns, coupled with the petitioner's refusal to submit evidence of its business transactions because it deems such information "irrelevant" precludes the AAO from examining the nature of the petitioner's business and thus fails to shed light on the complexity of the accounting work to be performed by the beneficiary. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Based on the discrepancies regarding the claimed nature of the position and the continued employment of an independent CPA to prepare annual tax returns and perhaps other critical financial reports or similar documents, it appears that the proffered position's duties will more likely than not be those of a bookkeeper.

The *Handbook* describes the position of bookkeeper as follows:

> 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.

This description of duties appears to accurately describe the duties of the proffered position.

The *Handbook* describes the educational requirements of a bookkeeper as follows:

> Employers usually require bookkeeping, accounting, and auditing clerks to have at least a high school diploma and some accounting coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.
>
> ***Education and training.*** Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

According to the *Handbook*, a bachelor's degree in a specific specialty is not required for entry into the proffered position.

Accordingly, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed accountant. As discussed above, and despite the petitioner's claims to the contrary, the proffered position appears more likely than not to be that of a bookkeeper, a position which does not require an individual who holds a degree in a specific specialty. Although the petitioner and counsel equate the proffered position to that of an accountant through a line-by-line comparison to the language contained in the *Handbook* and O*Net Online, merely adopting the language of such publications in the description of duties does not establish that the petitioner is offering a specialty occupation position to the beneficiary. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).[3]

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[3] It is noted that, even if the proffered position had been established as being that of a management accountant, a review of the *Handbook* does not indicate that such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation. Specifically, the *Handbook* only states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." The *Handbook* does not state that such a degree is a normal minimum entry requirement for all accountant and auditor positions.

Moreover, the AAO notes that the *O*Net* Summary Report for 13-2011.01 - Accountants only states that most but not all of these occupations require a four-year bachelor's degree. More importantly, however, the *O*Net* does not reference any specific specialty for the degree. Further, the *O*Net* survey currently indicates that 5 percent of respondents do not even have a bachelor's degree, much less a bachelor's degree in a specific specialty. As such, even if the proffered position were determined to be an accountant position, it cannot be concluded based on the *Handbook* or *O*Net* that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in accounting.

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. Factors considered by the AAO when determining this criterion include 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)). In the instant matter, the petitioner has not submitted evidence that sufficiently responds to either prong of the criterion.

The petitioner submitted several job postings in support of the petition. The first, for a staff accountant at American Eagle Outfitters, Inc., states that it requires a bachelor's degree in accounting. However, despite being engaged in an industry similar to that of the petitioner, this company claims to be "an international, multi-channel retail organization" with over 1,000 stores and four brands. Therefore, despite being engaged in the textile industry, this company is not similar in size and scope to the petitioner.

Next, the petitioner submitted a vacancy announcement for the position of senior accountant posted by [redacted] which was formed by uniting three of the industry leaders in accounting and finance staffing and recruitment. This posting, which seeks to place a senior accountant with a "major client," fails to disclose details regarding the nature of the client's business. Consequently, there is insufficient evidence in the record to demonstrate that this position is parallel to the proffered position.

Additionally, the petitioner submitted a posting for an accounting manager at [redacted] which states that it requires candidates to hold a bachelor's degree in accounting or finance. However, there is insufficient evidence in the record to demonstrate that the position offered by this company is parallel to the proffered position, especially since there is no evidence in the record upon which the AAO may determine whether Cutter Gloves, despite being engaged in the textile industry, is similar in size and scope to the petitioner.

Finally, it is noted that the Labor Condition Application (LCA) provided in support of the instant petition lists a Level I prevailing wage level for the proffered position. This indicates that the LCA, which is certified for an entry-level position, is at odds with the petitioner's claims that the proffered position "is considered to carry a very high level of responsibility" and that it requires a bachelor's degree in finance, accounting, or another closely related field to perform its duties. Referencing the DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009), for example, a high-level position including supervisory duties would appear to indicate at least a Level III wage level ("experienced") or more likely a Level IV position ("fully competent").

Another posting included in the record is for a staff accountant at Although it is a textiles company like this posting includes no information regarding the size and scope of that hiring company. Moreover, while this posting states that a bachelor's degree in accounting or finance is *preferred*, it is not mandated as a prerequisite for entry into the position.[4]

The petitioner also submits two confidential postings for the positions of accounting manager and financial analyst. These postings, however, do not satisfy the evidentiary requirements under this section, since there is no way to determine whether these confidential companies are in the same industry and whether they are similar in size and scope to the petitioner. Moreover, the posting for the posting for the position of financial analyst is not acceptable evidence under this criterion, since the position of financial analyst is not akin to the proffered position of accountant.

The AAO further notes that, while the director afforded the petitioner the opportunity to supplement the record with additional evidence under this criterion, the petitioner refused, asserting that "it is not practicable to provide evidence regarding 'similarly sized businesses with similar annual incomes.'" As previously stated, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner, therefore, has failed to satisfy the first prong of this criterion.

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner's failure to submit

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[4] Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the textile industry. *See generally* *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of accountant/bookkeeper for a textile converter with eleven employees required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

sufficient information related to its claimed business expansion plans and recent commercial transactions, and its failure to explain why it still requires the services of independent accountant to prepare financial returns and reports precludes it from establishing that the position's complexity or unique nature distinguish it from accounting-related employment that is performed with less than a four-year degree in a specific specialty or its equivalent. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, while the petitioner provided the names of two other employees in its alleged accounting division; namely, [redacted] and [redacted], neither of those persons was claimed to be employed in the proffered position of accountant. Moreover, although requested in the RFE, the petitioner did not supplement the record with evidence of their degrees until the appeal was filed.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8) and (12). Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Even if the diplomas were considered by the AAO, these persons are not and were not previously employed as accountants for the petitioner, but rather as controller/administration manager and accounts payable/receivable and payroll manager. Moreover, while the petitioner submits copies of its California State quarterly tax returns for 2009 which lists these persons as employees, the AAO is nevertheless skeptical of these documents, since the petitioner's 2007 and 2008 federal tax returns list no salaries or wages paid to employees. Since the petitioner claims that both of these persons have been employed by the petitioner for seven years and four years, respectively, this casts further doubt on the legitimacy of the petitioner's claims. As the petitioner has not established that it

previously employed a degreed accountant in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).[5]

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or a junior accountant. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant.

In reaching its decision, the AAO has again considered the petitioner's initial letter of support and its response to the RFE, as well as its supplemental letter submitted in support of the appeal. These letters, while providing a long list of duties to be performed, still only manage to give a vague and generalized overview of accounting duties. However, absent an explanation as to why critical but basic accounting tasks, such as preparing tax returns, are being outsourced to another company, there is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulations to qualify as a specialty occupation. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical bookkeeper or junior accountant or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree or its equivalent in accounting. The totality of the record does not establish the proffered position is a specialty occupation based on a claimed complex and unique nature as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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[5] 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 as the minimum for entry into the occupation as required by 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 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. *See id.* at 388.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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