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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



b2

Date: **FEB 08 2012**

Office: CALIFORNIA 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a technology consulting firm with six employees and a stated gross annual income of \$682,751.00. Seeking to employ the beneficiary as an accountant, the petitioner filed this H-1B petition in an endeavor to continue to classify him 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE) dated October 16, 2009; (3) the petitioner's response to the RFE dated November 24, 2009 with supporting materials; (4) the director's RFE dated December 10, 2009; (5) the petitioner's response to the RFE dated January 15, 2010 with supporting materials; (6) the director's denial letter; and (7) the Form I-290B and brief submitted by counsel along with supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO concurs with the director that the petitioner has not established that the proffered position qualifies as a specialty occupation within the meaning of the controlling statutory and regulatory provisions. Accordingly, the decision will be affirmed, and the petition will be denied.

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 requiring the following:

- (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 the following:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social

sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such

occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary's services as an accountant. In a supporting letter dated July 24, 2009, the petitioner states the following as a summary of the beneficiary's job duties:

- Implement and maintain the accounting and financial system of the petitioner on an ongoing basis (15%).
- Prepare detailed accounting reports including consolidated balance sheets to reflect business assets, liabilities and capital, and profit and loss statements (15%).
- Prepare supporting work papers for all accounts including fixed asset depreciation and amortization, and accruals. Prepare summaries of financial reports for review by company investors (20%).
- Analyze data of past and present financial operations and project future revenues and expenditures using statistical procedures such as correlation and regression analysis. Prepare annual budget (20%).
- Advise management of the effects of the financial transactions of the organization and of the state of the accounting and financial health of the business (15%).
- Prepare annual and quarterly Federal and State Tax returns and provide support to outside auditors in preparing audited tax returns (15%).

The AAO notes that the counsel provided additional details for the job duties and revised the percentage of the time spent on the duties in the response to a Request for Evidence dated January 15, 2010. While the revision did not offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities, the record did not contain supporting materials from the petitioner at the time of submission. The assertions of counsel will not satisfy the petitioner's burden of proof without documentary evidence. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director denied the petition on February 2, 2010, finding that the petitioner had not satisfied the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualified for classification as a specialty occupation. Further, the director indicated that although the petitioner had titled the proffered position as an accountant, an analysis of the proposed job duties and evidence reflected the duties were more closely associated with the duties of a Bookkeeper, as listed under the title Bookkeeping, Accounting and Auditing Clerks in the Department of Labor's *Occupational Outlook Handbook (Handbook)*.

However, a review of the duties of the proffered position demonstrates that, contrary to the director's finding and the petitioner's claim, the proposed job duties are most akin to the duties of a financial manager in the *Handbook*.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The *Handbook's* description of financial managers provides in pertinent part:

The duties of financial managers vary with specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. *Controllers* direct the preparation of financial reports, such as income statements, balance sheets, and analyses of future earnings or expenses, that summarize and forecast the organization's financial position. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers and finance officers* direct their organization's budgets to meet its financial goals. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support the firm's expansion, and deal with mergers and acquisitions...

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of their firm. For example, cash flow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash can be invested. *Risk and insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations...Risk managers control financial risk by using hedging and other techniques to limit a company's exposure to currency or commodity price changes...

Financial managers play an important role in mergers and consolidations and in global expansion and related financing.

Since the proffered job duties as described by the petitioner are generalized and generic, the AAO reviewed the work product submitted as a part of the response to the Request for Evidence on November 24, 2009 to determine whether the proffered position is an accountant or a financial manager. A review of the work product demonstrates that the beneficiary engaged in preparing financial business plan projections that included preparing operating and capital budgets to forecast revenue, preparing profit and loss projections and cash flow statements,

¹ All of the AAO's references are to the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

which appears to correlate to the duties of a controller as described by the *Handbook* instead of an accountant. While the AAO acknowledges that some of duties above may overlap with duties of a management accountant, there is 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. Therefore, even if viewed as falling within the general occupational subcategory of management accountant, the petitioner has failed to establish that the beneficiary's actual work in that capacity would require at least a bachelor's degree, or the equivalent, in accounting or a closely related specialty.

In fact, the petitioner states in its support letter that the proffered position requires a Bachelor's degree in Accounting, Business Administration or a related field with course work in Accounting, Finance, and Management Information System. The fact that the petitioner listed various discipline as a requirement for the proffered position validates the fact that the position does not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in accounting or any other specific specialty. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Further review of the work product reveals that the position most closely resembles duties of a financial manager. The beneficiary prepared the financial business plan for California Software Co. Ltd. (Calsoft), which has since acquired the petitioner's company according to the press releases submitted by counsel. This is consistent with the *Handbook's* description of a financial manager, who, as stated in the duties above, plays an important role in mergers and consolidations and in global expansion and related financing. The beneficiary also compiled cost/benefit analysis, project profitability analysis, project exploring alternative funding methods, financial evaluation of project projects and more, which resemble the duties of treasurer and finance officers in the *Handbook*.

The AAO also finds inconsistencies in the record that contradict the petitioner's claim that the proffered position is an accountant, but instead appears to indicate that the beneficiary's position is a financial manager. A part of the business plan submitted to Calsoft that identifies the petitioner's team in the United States lists the job title of the beneficiary as a finance manager. In one of the quarterly wage reports submitted to the Virginia Employment Commission on July 22, 2008, the beneficiary signed the document and identified himself as a controller. In another quarterly wage report ending September 30, 2007, the beneficiary identified himself as a finance manager. In addition, the beneficiary listed his occupation as a finance manager on the Form 1040, U.S. Individual Income Tax Return, in 2007 and 2008.

Moreover, contrary to the petitioner's claim that the beneficiary spends 15% of the time preparing annual and quarterly tax returns as stated in its support letter, the petitioner appears to hire an outside accounting firm to prepare their annual tax returns. Form 1020, U.S. Corporation

Income Tax Returns, in 2007 and 2008, which would have been prepared during the beneficiary's employment, was prepared by [REDACTED], an accounting firm located in Redwood City, California. The petitioner did not provide evidence that the beneficiary assisted in preparation or review of the annual tax return or provided support to outside auditors in preparing audited tax return.

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

The petitioner did not provide sufficient evidence that the beneficiary has been and will perform the duties of an accountant, and did not justify the discrepancies in the record.

As will now be discussed, the AAO finds that the director's determination that the petitioner did not establish the proffered position as a specialty occupation was correct. 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).

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 in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

As previously discussed, a review of the duties of the proffered position demonstrates that the duties of the proffered position are most akin to the *Handbook's* discussion of a financial manager. However, financial managers do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook's* chapter on financial managers states "[m]ost financial managers need a bachelor's degree, and many have a master's degree or professional certification." "Most" is not indicative that a particular position within the wide spectrum of financial managers normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular financial manager 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)).

Further, the "Education and training" subsection of the aforementioned section of the *Handbook* includes the following statement: "[a] bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers." The fact that the *Handbook* does not designate a specific specialty demonstrates that the position of a financial manager does not qualify as a specialty occupation.

Moreover, despite the petitioner's assumption to the contrary, accountants also do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty. The *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook's* chapter on accountants states "[m]ost accountants and auditors need at least a bachelor's degree accounting or a related field." *Id.* This does not support the view that any accountant job qualifies as a specialty occupation. Similar to analysis on financial managers, "most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).² Further, the "Education and training" subsection of the aforementioned section of the *Handbook* includes the following 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.

In this context, the fact that a person may be employed in a position designated as that of an accountant and may apply some 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 would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in accounting. To make this determination, the AAO turns to the record for information regarding the duties and the nature of the petitioner's business operations. 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 knowledge that may be obtained only through a baccalaureate degree or higher in accounting or its equivalent.

The AAO notes that the job duties of the proffered position are described in terms of general 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. Furthermore, the record of proceeding fails to establish that the duties to be performed by the beneficiary

² 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."

would require the practical and theoretical application of a body of 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.

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 proffered position 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)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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. at 1102).

As reflected in the discussion above, 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. Furthermore, the petitioner has not provided any documentation to indicate that the industry's professional association has made a degree a minimum entry requirement.

Counsel claims that "the requirement of a baccalaureate degree or higher is common minimum requirement," and submits several job postings for an accountant. A review of the documents provided does not demonstrate that organizations are similar in size and scope to the petitioner. For example, a review of [REDACTED] website reveals that the company employs over 150 professionals, which far exceeds the petitioner's size of six employees. Counsel states that "the need for the services of an accountant should not be judged by the size of the company or number of other employees. Instead, it should be judged by the demands of the business of the company." However, the job postings are devoid of any information regarding the size, scope, scale of operations, business efforts and expenditures of the companies, thereby rendering it impossible to conduct a legitimate comparison to determine whether the business demands of the companies are similar to the petitioner.

The documents provided do not establish that a degree in accounting is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to

the petitioner. 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 AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation. However, the petitioner failed to provide sufficiently detailed information or documentary evidence to distinguish the proffered position as more complex or unique than other financial management or accounting positions that require the application of accounting principles, but not at a level that requires at least a bachelor's degree, or the equivalent, in accounting or a closely related specialty. Accordingly, the petitioner failed to establish that the position is so complex or unique that it can only be performed by an individual who has attained at least a bachelor's degree, or the equivalent, in accounting or a related specialty or its equivalent. Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion entails an employer demonstrating that it normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

In the instant matter, the petitioner has not indicated that it had previously hired an internal accountant, and there is no record of the employees who previously held the position. However, the petitioner submitted a job announcement posted on JobAdsUSA.com in March 2006 for a management accountant. While the minimum education requirement is a bachelor's degree, the posting does not require a specific specialty; instead, it lists varied and generalized studies such as a degree in Accounting or Business Administration with coursework in Accounting, Finance, and Management Information Systems. Therefore, the evidence 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. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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.

Counsel points to the beneficiary's work product to show that the position should not be confused with that of a bookkeeper since the proffered position is "eminently incomparable to that of a bookkeeper due to the specialized and complex nature of the beneficiary's job duties." However, a review of the beneficiary's work product revealed that the duties of the beneficiary are most skin to a financial manager instead of an accountant. The AAO incorporates by reference and reiterates its earlier discussion about the duties of the beneficiary most closely resembling that of a financial manager. The petitioner failed to meet its burden of proof to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or

higher degree. 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 appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the petitioner has not submitted a certified labor condition application (LCA) which corresponds to the petition.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

[E]very application, petitioner, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions...being hereby incorporated into the particular section of the regulations requiring its submission...

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. §§ 214.2(h)(4)(i)(B) and 214.2(h)(4)(iii)(B)(1). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a labor certification application with the DOL when submitting the Form I-129.

Moreover, while DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) therefore requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

In this case, the petitioner filed the Form I-129 with USCIS on September 10, 2009. The LCA provided at the time of filing was certified (1) for an accountant, (2) pursuant to occupational

code, 13-0000, business and financial operations occupations, (3) within Oakland-Fremont-Hayward, California metropolitan division, and (4) at a prevailing wage of \$50,960 a year. It is also noted that while this wage is Level 1, the petitioner checked "N/A" on the wage level.

Since the AAO found that the proffered position is for a financial manager, the LCA should have been certified for (1) a financial manager, (2) pursuant to occupational code, 11-0000, management occupations, (3) within Oakland-Fremont-Hayward, California metropolitan division, and (4) at a prevailing wage of \$78,374 a year. Although the LCA was certified for proper metropolitan statistical area (MSA), it does not otherwise correspond to the proffered position.

Thus, the record establishes that, at the time of filing, the petitioner had not obtained a certified LCA in the occupational specialty for the requested employment for the beneficiary. Therefore, the petitioner has failed to comply with the filing requirements at 8 C.F.R. §§214.2(h)(4)(i)(B) and 214.2(h)(i)(2)(B) by providing a certified LCA that corresponds to the instant petition. For this additional reason, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed, and the petition will be denied.

ORDER: The director's decision is affirmed. The petition is denied.