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



U.S. Citizenship
and Immigration
Services

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Date: JAN 09 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:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner operates a truck parts and chrome business, was established in 2000, employs eight personnel, and claims a gross annual income of \$1,900,000 when the petition was filed. It seeks to employ the beneficiary as an accountant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129, Petition for Nonimmigrant Worker, and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, counsel's supplemental brief, and previously submitted documents. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [1] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [2] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

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

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

In this matter, the petitioner seeks the beneficiary’s services as an accountant. In the petitioner’s letter in support of the petition dated October 30, 2009, the petitioner stated that it required the services of an accountant for the specified period of three years. The petitioner stated that in the proffered position of accountant, the beneficiary would:

- [Be] responsible for preparing, examining, or analyzing accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards.
- Analyze business operations, trends, costs, revenues, financial commitments, and other obligations in order to project future revenues and expenses and to provide advice.
- Report to management regarding the finances of the petitioner's business establishment and compute taxes owed and prepare tax returns.
- Ensure compliance with payment, reporting and all other tax requirements.
- [Be] responsible for developing, maintaining, and analyzing budgets, as well as preparing periodic reports that compare budgeted costs to actual costs.
- Prepare forms and manuals for accounting and bookkeeping personnel, and direct their work activities.
- Advise management about issues such as resources utilization, tax strategies, and the assumptions underlying budget forecasts.

In its support letter, the petitioner stated the proffered position is a specialty occupation requiring a minimum of a bachelor's degree in business or a related field. The petitioner noted the beneficiary had earned a bachelor of commerce degree from the University of Karachi in Karachi, Pakistan and had over 24 years of experience in accounting.

The petitioner also provided a position evaluation prepared by [REDACTED]

September 16, 2009. [REDACTED] opined: "[w]ith advanced responsibilities in such areas as financial information analysis, tax preparation, and forecasting, the position clearly includes professional-level accounting functions and is therefore distinct from a lower-level (non-qualifying) bookkeeping position." [REDACTED] noted the reasonableness of a business experiencing growth such as the petitioner to retain the services of a professional-level accountant. [REDACTED] indicated that in his position and past experience he had ample opportunity to observe standard industry hiring practices in the areas of business, financial analysis, and accounting and thus believed he was qualified to offer his opinion on the requirements for an accounting position. [REDACTED] opined further: "forecasting is a significant factor in distinguishing the position from a non-qualifying, sub-specialty-level accounting occupation" and added that the beneficiary in the proffered position would also "procure quotes from manufacturers and warehouses to obtain best prices and negotiate the cost of parts and inventory for the company's truck parts business" and engage in "logistical management [and] vendor relationship development and management." [REDACTED] concluded that an individual responsible for the duties he described would be required to demonstrate bachelor's level academic training in accounting, business, finance or a related area and that based on his teaching in this field, he had observed a common industry practice for companies from small businesses to international corporations to employ professional-level accounting personnel.

On November 13, 2009, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation, including a detailed job description and information regarding the petitioner's employees, among other things.

In response to the RFE, the petitioner provided its organizational chart showing the proffered position reporting to the general manager and supervising an accounts payable clerk and an accounts receivable clerk, who both had high school diplomas. Counsel for the petitioner referenced the position evaluation previously submitted and noted: “[h]aving the foundation that a bachelor’s degree provides, especially a bachelor’s degree in Business Administration or Management is the minimum level acceptable to [the petitioner].” Counsel revised the petitioner’s description of duties as follows:

- Prepare, examine and analyze accounting and financial records to access [sic] accuracy and conformance – 30 percent.
- Analyze business operations, trends, costs, revenues, financial commitments, and other obligations in order to project future revenue and tax obligations. Advise management of financial status – 25 percent.
- Prepare budget and financial statements to monitor sales, income and AP/AR to reconcile books – 15 percent.
- Prepare forms and manuals for accounting and bookkeeping personnel, and supervise clerks – 10 percent.
- Advise management on tax strategies in light of budget and forecast – 10 percent.
- Procure quotes from manufacturers and warehouses to obtain best prices and negotiate cost of parts and inventory – 10 percent.

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

Counsel for the petitioner referenced the Department of Labor’s *Occupational Outlook Handbook (Handbook)* and asserted the *Handbook* confirms that a baccalaureate degree in accounting or a related field is the minimum requirement to function as an accountant in the United States. Counsel also contended that the Department of Labor’s *Dictionary of Occupational Titles (DOT)* indicates that an accountant position has a specific vocational preparation (SVP) code of 8, which means that combined education and experience of four years and up is appropriate. Counsel also submitted seven job advertisements including: (1) a tire company with eight branch locations advertising for a senior accountant that listed a bachelor’s degree; (2) an auto leather company advertising for a staff accountant that listed a bachelor’s degree in accounting; (3) a plumbing and cabinet manufacturer advertising for a senior accountant that required a bachelor’s degree in accounting; (4) a publishing company advertising for a staff accountant that listed a bachelor’s degree in accounting; and (5) three advertisements from a placement company for three different positions including a staff accountant that did not list a required degree, a senior accountant that listed a degree in accounting but did not specify the type of degree, and a senior accountant that required a bachelor’s degree in accounting.

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

On appeal, counsel for the petitioner disagrees with the director's characterization of the duties of the position and asserts that the duties are not those of a bookkeeper. Counsel asserts that the director improperly considered the petitioner's size and asserts that a review of the duties of the position shows the position "includes complex and advanced accounting duties including the preparation of detailed financial reports for use in the considered and proper growth of the company." Counsel references the list of duties outlined in the Department of Labor's *Online Summary Report (O*NET)* associated with the occupation of accountant and avers that the proffered position is analogous to that of an accountant not a bookkeeper. Counsel again references the Department of Labor's SVP rating for an accounting position and the position evaluation provided by [REDACTED] as evidence that the proffered position is a specialty occupation. Counsel asserts that the proffered position includes developing the petitioner's accounting system almost from the ground up and that this is a unique and additional challenge for the petitioner's accountant. Counsel adds that the duties of the proffered position are specialized and complex as they include compiling financial information and that the petitioner requires an experienced accountant to handle its increasing presence and market share in the retail truck parts arena.

The AAO's first point with regard to its analysis of the proffered position is that, despite counsel's assumption to the contrary, accountants do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As will now be discussed, the *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed December 2011).

The "Accountants and Auditors" chapter in the 2010-2011 edition of the *Handbook* indicates that not every accountant position requires at least a bachelor's degree level of knowledge in accounting or a related specialty. *Id.*

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." *Id.* This, however, does not support the view that any accountant job qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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)).¹ Further, the "Education and training" subsection of the aforementioned section of the *Handbook* includes this statement:

¹ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if

Some graduates of junior colleges or business or correspondence schools, as well as bookkeeping and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to accountant positions by demonstrating their accounting skills on the job.

Id. In this context, the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting. This, the petitioner has failed to do.

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 AAO notes that, as reflected in the job descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, which, the AAO finds, do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of accounting knowledge that the beneficiary would have to apply to those matters. For example, the petitioner in this matter borrows liberally from the outline of duties set out in the *O*NET* report on the occupation of accountants. The following list of the petitioner's duties are taken verbatim from the *O-NET's* report: "responsible for preparing, examining, or analyzing accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards," "report to management regarding the finances of the petitioner's business establishment," "compute taxes owed and prepare tax returns," "ensure compliance with payment, reporting and all other tax requirements," and "analyze business operations, trends, costs, revenues, financial commitments, and other obligations in order to project future revenues and expenses and to provide advice." Such a general overview of the proffered position fails to convey the actual day-to-day duties of

merely 51% of accountant positions require at least a bachelor's degree in accounting or a related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

the position and thus is insufficient to establish that the proffered position requires accounting knowledge associated with at least a bachelor's degree level of knowledge in accounting.

Moreover, a review of the initial description of the duties of the proffered position does not include the duty of procuring quotes from manufacturers and warehouses, although that particular duty is referenced in [REDACTED] position evaluation. It thus appears that counsel for the petitioner included this additional duty in response to the director's RFE in an effort to conform the petitioner's position to the one outlined by [REDACTED]. Further, the petitioner does not explain how this additional duty encompasses the skills required of an accountant. We also note that [REDACTED] references the beneficiary's responsibility for "logistical management [and] vendor relationship development and management," duties that are not included in the beneficiary's description of the proffered position and also not clearly associated with the knowledge required of an accountant. 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).

As discussed in greater detail, *infra*, as the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal must be dismissed, and the petition denied.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As related in this decision's earlier discussion of the proposed duties in the context of the *Handbook's* information about accountants, the record of proceeding fails to establish that any accounting duties to be performed by the beneficiary would require the practical and theoretical application of a highly specialized accounting knowledge attained by at least a bachelor's degree, or the equivalent, in accounting, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation. The AAO has reviewed the position evaluation prepared by [REDACTED] and in addition to the inconsistencies in [REDACTED]'s rendition of duties with the petitioner's initial description noted above, [REDACTED] notes that "forecasting" is a significant factor in distinguishing the proffered position from a non-qualifying

position. However, the petitioner has not provided detail of the beneficiary's actual duties that relate to "forecasting" such that either [REDACTED] or USCIS could determine that the claimed duties require a baccalaureate or higher degree in a specific specialty as the normal minimum requirement for the proffered position. Upon review of the position evaluation prepared by [REDACTED] [REDACTED] the evaluation is not in accord with the petitioner's description of duties and [REDACTED] has not provided objective, independent evidence to support his opinion. [REDACTED] reliance on the petitioner's general description and his unsupported addition of duties, not only provide an inconsistent view of the position but also fail to establish the proffered position as a specialty occupation. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

In this matter it is noted that 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. In addition, the quote does not reference any specific specialty for the degree. Further, the *O*Net* survey indicates that 12 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 or a related field.

The AAO also finds that the *DOT* does not support the assertion that assignment of an SVP rating of 8 is indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system.² The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

² The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

Finally, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This claim is tantamount to an admission that the proffered position is not in fact a specialty occupation. 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). The director's decision must therefore be affirmed and the petition denied on this basis alone.

While the AAO acknowledges that some of the duties described by the petitioner are similar to those under the section on accountants and auditors in the *Handbook*, it here incorporates and reiterates by reference its earlier comments in this decision regarding the lack of evidence substantiating the nature and educational level of accounting knowledge that would be required for the actual performance of the beneficiary's work. As the *Handbook* indicates that the proffered position does not belong to an occupational classification for which there is a categorical requirement for at least a bachelor's degree in a specific specialty and as the duties of the proffered position as described in the record of proceeding do not indicate that the particular position proffered in this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As reflected in this decision's discussions regarding the *Handbook's* information, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. We, again, find [redacted] description of duties inconsistent with the petitioner's description and his opinion less than illuminating on the subject of an industry-wide degree standard for the occupation of accountant and for the proffered position in particular. The petitioner's reliance on the advertisements provided as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in retail industry, is misplaced. It is not possible to discern from the advertisements provided that the proffered position and those positions advertised are parallel positions. In addition, the advertising companies, if requiring a bachelor's degree, require that the degree is in the specific field of accounting, not in a general discipline such as business administration. Further, three of the advertisements did not specify that the bachelor's degree was either required or that the bachelor's degree must be in a specific discipline. Finally, the petitioner did not establish that it was similar in size or income to the companies which advertised for accounting positions. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

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

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree.” The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that require the application of accounting principles, but that are not at a level that require the degree of highly specialized knowledge in accounting that is only reached by the attainment of at least a bachelor's degree, or the equivalent, in accounting or a related specialty or its equivalent. The AAO acknowledges counsel's assertion that the beneficiary will develop the petitioner's accounting system and that the petitioner's increasing size and market share create unique challenges and require specialized and complex duties. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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). Moreover, the petitioner's generic description of duties does not incorporate sufficient detail to establish that its proffered position requires the theoretical and practical application of a body of highly specialized knowledge attained only through a bachelor's or higher degree in the specific specialty.

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d 384, 387 (5th Cir. 2000). In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge of accounting at a level usually associated with at least a bachelor's degree, or the equivalent, in accounting or a related specialty. Insufficient evidence was provided to demonstrate that the proffered position reflects

a higher degree of knowledge and skill than other types of employees, including those bearing the title "accountant," who engage in some accounting duties and employ some accounting principles, but not at a level of an accountant applying theoretical and practical knowledge of accounting that is usually associated with at least a bachelor's degree in accounting or a closely related specialty or its equivalent.

The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any one of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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

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