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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
and Immigration  
Services



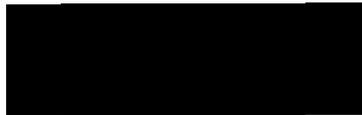
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Date: **JUL 03 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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.

On the Form I-129 visa petition the petitioner stated that it is a landscaping firm. To employ the beneficiary in what it designates as an accountant position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means 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 a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

With the visa petition, counsel provided evidence sufficient to show that the beneficiary received a bachelor's degree in business studies from Tribhuvan University in Kathmandu, Nepal. Counsel also submitted some evidence pertinent to the beneficiary's employment experience, and an evaluation, dated October 20, 2009, stating that the beneficiary's education and his employment experience, taken together, are equivalent to a U.S. bachelor's degree in business administration with a concentration in accounting.

Finally, counsel submitted a letter, dated November 19, 2009, from the petitioner's CEO. That letter contains the following description of the duties of the proffered position:

- Maintenance, analysis and research of various general ledger accounts.
- Prepare journal entries and standard accruals for month end closings.
- Record and reconcile inter-company accounts and resolve variances/Reconcile bank statements.
- Prepare monthly financial reports and supplemental schedules.
- Perform billing and administration of the company's real estate subleases.
- Participate in the year-end audit Perform ad-hoc analysis and reporting for management as required.

The petitioner's CEO also stated that the proffered position requires a bachelor's degree in accounting.

On December 21, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response to the RFE, counsel provided a vacancy announcement and his own letter, dated March 18, 2010. The vacancy announcement provided will be described below.

Counsel's March 18, 2010 letter includes the following revised description of the duties of the proffered position:

- Operate all financial function including general ledger maintenance, accounts payable, accounts receivable, fixed asset accounting, bank reconciliation's, [sic] cost allocation by program and revenue source., marketable securities accounting.
- Preparation of monthly and quarterly financial reports for the President.
- Administer all payroll functions including review of payroll journals and quarterly and year[-]end tax reports for accuracy and completeness.
- Tracking of payments to contractors and consultants and preparation of 1099's.
- Responsible for determining cash flow needs in conjunction with the Administration & Finance Coordinator.

- Maintenance of corporate files, *i.e.*, office insurance, consultant contract files, federal & state contract files, tax returns, audited financial statements, payroll tax returns, employee benefits.
- Assist the Finance Coordinator in preparing overall corporate budget.
- Coordinate and assist with the year-end audit functions.
- Registering/booking of all incoming invoices;
- Keeping up filing system for all types of invoices, reimbursement forms, statistics;
- Preparation, control and follow up of invoices.

The AAO observes that, in several respects, counsel's rendition of the duties of the proffered position attempt to materially expand the scope of the duties that the petitioner indicated in its March 18, 2010 letter of support that was filed with the Form I-129. This attempt to materially expand the duties and responsibilities of the proffered position beyond those that the petitioner ascribed to the position in its letter of support is evident upon comparing counsel's versions of the duties with the duties that the petitioner identified in the letter of support filed with the Form I-129.

The AAO notes that counsel appears to have added duties to make the proffered position appear to be more demanding. The RFE requested a more detailed description of the duties attributed to the proffered position. This was not an invitation to include additional duties, not previously contemplated.

The additional duties of "Preparation of monthly and quarterly financial reports for the President," and "Responsible for determining cash flow needs in conjunction with the Administration & Finance Coordinator," for instance, were not included in the previous description of the duties of the position, nor do they constitute a more detailed description of the duties previously described.<sup>1</sup>

The purpose of the request for evidence, or RFE, is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot 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 petitioner must establish that the position offered to the beneficiary when the petition was filed merits the classification sought in the petition. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Counsel's rendering of the duties of the proffered position went beyond clarifying or providing more specificity to the original duties of the position, but rather added new generic duties to the job description, at least in asserting that the beneficiary would

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<sup>1</sup> Even those additional duties would not necessarily be those of an accountant position requiring a specialized degree. For instance, if the petitioner's administration and finance coordinator is trained as an accountant, then the duty, attributed to the proffered position, of determining cash flow needs in conjunction with him or her would be less likely to require that the beneficiary have an accounting degree. No evidence, nor even an assertion, was provided pertinent to the educational background of the petitioner's administration and finance coordinator.

“[o]perate all financial function[s],” and would be responsible for “[a]ssisting the Finance Coordinator in preparing overall corporate budget. As those just mentioned functions exceed the scope of the proposed duties as described in the petition as filed, they will not be considered by the AAO.

The AAO further finds that counsel’s attempt to expand upon the duties of the proffered position as they were described by the petitioner have no weight, as it not supported by documentary evidence corroborating its content. 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).

In any event, the AAO finds that, even if all of the assertions of counsel regarding duties not specified by the petitioner were accepted, the outcome of this appeal would not be affected. This is because the AAO finds that, as illustrated in the above excerpts from the petitioner’s letter of support and counsel’s letter in response to the RFE, the duties of the proffered position are presented in terms of generalized functions that appear generic to accounting work in general. As such, the AAO additionally finds, even the combined totality of the duty descriptions submitted by the petitioner and by counsel do not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than accounting positions that may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The AAO also observes that the petitioner has not supplemented the position and duty descriptions with persuasive evidence that their actual performance in the particular context of the petitioner’s business operations would require the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in a specific specialty.

Counsel also cited the U.S. Department of Labor’s (DOL’s) *Dictionary of Occupational Titles* and *Online Wage Library*’s assignment of the proffered position to Specific Vocational Preparation (SVP) Code 8, the assignment of the proffered position to *O\*NET OnLine*’s Job Zone 4, and Education and Training Code 5, and the DOL’s *Occupational Outlook Handbook (Handbook)* as evidence that the proffered position requires a minimum of a bachelor’s degree or the equivalent.

The director denied the petition on April 1, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor’s degree or the equivalent in a specific specialty.

On appeal, counsel provided additional vacancy announcements, a letter from another landscape service, and a brief. The vacancy announcements and the landscaper’s letter will be addressed

below. In the brief, counsel again cited DOL publications for the proposition that the proffered position qualifies as a specialty occupation position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

Counsel has asserted that the DOL classifications of the Accountant occupation in Job Zone 4, Education and Training Code 5, and SVP Code 8 demonstrate that it is a specialty occupation position. As stated above, whether the proffered position is in a specialty occupation is determined by the duties of the position, rather than the job title the petitioner gives the position. Further, even if the proffered position is demonstrated as being an accountant position and is thereby given an Job Zone 4 rating and an Education and Training Code of 5, this would not demonstrate that the proffered position is in a specialty occupation.

A designation of Job Zone 4 and Education and Training Code 5 indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). More specifically, the Online Wage Library (OWL) statement is a condensed version of what the *O\*NET* actually states about its Job Zone 4 designation. See the *O\*NET OnLine* Help Center, at [www.online.onetcenter.org/help/online/zones](http://www.online.onetcenter.org/help/online/zones), for a discussion of Job Zone 4, which explains that this zone signifies only that most - but not all - of the occupations within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, the OWL and *O\*NET* information is not probative of the proffered position qualifying as a specialty occupation.

Similarly, assignment of SVP Code 8 does not demonstrate that a position is a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. A rating of SVP Code 8 indicates that a position requires over four years, and up to and including ten years, of vocational preparation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Accordingly, it is not evidence that accountant positions constitute an occupational group for which entry categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, also cited by counsel, as an authoritative source on the duties and educational requirements of the

wide variety of occupations that it addresses.<sup>2</sup> In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the chapter entitled "Accountants and Auditors," the *Handbook* provides the following descriptions of the duties of those positions:

- Examine financial statements to be sure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures
- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

The referenced sections of the U.S. Dept. of Labor's Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., regarding accountants are available at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm> (last accessed June 25, 2012).

More specifically, that same *Handbook* chapter states the following about management accountants:

**Management accountants**, also called cost, managerial, industrial, corporate, or private accountants, record and analyze the financial information of the organizations for which they work. The information that management accountants prepare is intended for internal use by business managers, not by the general public.

They often work on budgeting and performance evaluation. They may also help organizations plan the cost of doing business. Some may work with financial managers on asset management, which involves planning and selecting financial investments such as stocks, bonds, and real estate.

In the chapter entitled "Bookkeeping, Accounting and Auditing Clerks," the *Handbook* provides the following descriptions of the duties of those positions:

- Use bookkeeping software as well as online spreadsheets and databases

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

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

The referenced section of the U.S. Dept. of Labor's Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm> (last accessed June 25, 2012).

The distinction between a bookkeeping, accounting, or auditing clerk and an accountant appears to be the degree of analysis required of the positions. The AAO finds that the duties of the proffered position as originally described contain no evidence of the complex analysis that characterizes true accountant positions. Although the description of those duties indicates that the beneficiary would analyze general ledger accounts, for instance, the record contains no evidence pertinent to the nature and complexity of that required analysis.

The AAO finds no flaw in the director's finding that the petitioner has not demonstrated that the proffered position is an accountant position. The description of the duties of the proffered position could describe a bookkeeping or accounting clerk position equally well. Such positions do not require a minimum of a bachelor's degree or the equivalent in a specific specialty and do not qualify as specialty occupation positions. However, the AAO will assume, *arguendo*, that the proffered position is an accountant position, and turn its attention to the educational requirements of such positions.

The director's decision could be read to imply that accountant positions categorically qualify as specialty occupation positions. As is explained below, the AAO does not agree with any such implication, whether intended or imputed.

The *Handbook* states the following about the educational requirements of accountant and auditor positions:

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

The *Handbook* does not support the view that accountants constitute an occupational group that categorically requires for entry at least a bachelor's degree, or the equivalent, in a specific specialty. "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. Further, the *Handbook* indicates that graduates of community colleges with less than a bachelor's degree, 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 accounting principles in the course of his or her job is not in itself sufficient to establish that the position qualifies as a specialty occupation. The petitioner is obliged 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 a body of highly specialized knowledge in accounting.

The AAO notes that, as reflected in the first job description quoted above in this decision, the petitioner described 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 level accounting knowledge that the beneficiary would have to apply to those matters.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of financial recordkeeping, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* does not report that the petitioner's industry normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for positions parallel to the one proffered here. Further, the record of proceeding contains no evidence of a pertinent a professional association requiring a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry into positions parallel to the one proffered here.

As was stated above, counsel did provide a letter from another landscape company. That letter states that, from March 2002 to May 2003, that landscape company employed an in-house accountant with a foreign bachelor's degree in accounting pursuant to an H-1B visa. Although the writer stated that having an in-house accountant is very important, he did not indicate that the company had employed an accountant at any other time. The AAO observes that a letter from a single company, which company employed an accountant for a bit more than a year and does not appear to have employed an accountant during the past nine years, is insufficient to demonstrate an industry-wide trend of employing an accountant with a specialized degree.

Counsel also provided a total of eight vacancy announcements. Three were placed by recruiting agencies, one for an unidentified "international products firm," one for an unidentified "Consumer Packaged Goods Manufacturing" firm, and one for an unidentified firm in an unidentified industry. Four were placed by construction contractors, one of which specializes in highway projects, and one of which specializes in above-ground storage tanks. One was placed by a company that describes itself as, "a leading IT outsourcing provider of infrastructure, software as a service, and on-demand solutions . . . ." The evidence in the record of proceeding neither shows that the advertised positions are substantially similar or parallel to the proffered position, nor, for that matter, that any of those companies advertising are in the petitioner's industry, that is, landscaping.

The positions announced include senior staff accountant, project accountant, staff accountant, project accountant, job cost accountant, cost accountant, accountant, and construction accountant and auditor. The record does not demonstrate that all, or even any, of those positions are parallel to the proffered position.

Further, only some of the advertisements specify as a requirement a bachelor's or higher degree in accounting or a related specialty.

One of the announcements requires a bachelor's degree in accounting or finance.

One states, "Bachelor's Degree in Accounting, Finance or related field highly preferred," making clear that a degree in either of those fields is only a preference, rather than a minimum requirement.

Six of the job advertisements specify that the positions announced require a bachelor's degree, but do not indicate that the requisite degree should be in any specific specialty, nor even in any range of subjects.

One advertisement states that the position requires a degree in accounting, and one states that the position requires a degree in accounting, or business administration with a major in accounting.

Again, none of the vacancy announcements submitted, however, has been shown to be for a parallel position with a similar organization in the petitioner's industry and to require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, even if all of the positions advertised were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the total of eight announcements submitted is statistically insufficient to demonstrate an industry-wide requirement.<sup>3</sup> The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of 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 establishes that, notwithstanding that other accountant positions in the landscaping industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The evidence submitted gives no indication that the proffered position is more complex or unique than other accountant positions. In fact, as was noted above, the duties described do not even make clear that the position is sufficiently complex that it should be considered an accountant position.

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<sup>3</sup> 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 eight job postings with regard to determining the common educational requirements for entry into parallel positions in similar landscaping companies. See generally Earl Babbie, *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 for a landscaping company 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 may 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 may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

As reflected in this decision's earlier comments about the generalized and generic nature of the descriptions of the proposed duties and of the proffered position, the petitioner has not developed complexity or uniqueness as attributes of the proffered position that would distinguish it from other positions that apply accounting principles but not at a level that requires a person with at least a bachelor's degree in a specific specialty. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will now consider the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a specialized degree or its equivalent for the position.<sup>4</sup>

In his November 19, 2009 letter, the petitioner's president stated:

For this position, we normally require that a candidate have a bachelor's degree in the field or the equivalent in experience and training. It has been our practice in the past to employ such skilled and highly trained specialists, and we fully expect to maintain this practice now and in the future.

In his March 18, 2010 letter, however, counsel stated:

We [apparently referring to the petitioner] have not hired for this position[.] [I]n the past we have hired outside contractors (who do the same duties and are professional level), or have had our Office Manager perform the duties. Our office manager has a Bachelor's degree in Business Management from River College.

Counsel added:

We [apparently the petitioner] have always required a bachelor[']s degree or its equivalent as a minimum entry into positions that deal with these duties.

The record contains no evidence to corroborate counsel's statements pertinent to the educational requirements the petitioner has imposed on those it utilized, either as contractors or employees, to

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<sup>4</sup> 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 at 387. 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").

perform the duties of the proffered position. The petitioner's assertion that the contractors were "professional level" is insufficient to establish that they each had a minimum of a bachelor's degree or the equivalent in a specific specialty.

In any event, the petitioner has not provided evidence sufficient to show that it has ever employed anyone with a minimum of a bachelor's degree or the equivalent in a specific specialty to perform the duties of the proffered position, and has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Again, however, the duties of the proffered position contain no indication of specialization and complexity such that they would require knowledge usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. To the limited extent to which they are described and not having been related by the petitioner to the substantive work that they would require in the context of the petitioner's particular business, preparing monthly financial reports and supplemental schedules, billing, administering the company's real estate subleases, participating in the year-end audit, perform ad-hoc analysis, reporting to management, etc., do not, in themselves, absent additional evidence pertinent to the level of analysis required, demonstrate the requisite degree of specialization and complexity.

The generalized description provided of generic duties contains no indication of complexity and specialization that would require knowledge usually associated with at least a bachelor's degree or the equivalent in a specific specialty, especially relative to other accountant positions that, according to the *Handbook*, may not have such a minimum entry requirement.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The record suggests an additional issue that was not addressed in the decision of denial.

If the petitioner will rely on the beneficiary's employment experience, even in part, in showing that he has the equivalent of a U.S. degree, the evidence must provide an evaluation and show that the evaluator "has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

As was observed above, an evaluation provided states that the beneficiary's education and his employment experience, taken together, are equivalent to a U.S. bachelor's degree in business administration with a concentration in accounting. That evaluation was provided in response to the following request in the December 21, 2009 RFE:

*It is your claim that the beneficiary has the claimed degree equivalency through a combination of academic training and related work experience[.] [P]lease submit an evaluation from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. This evidence should be accompanied by a letter signed by the institution's officer who is in charge of such a program. The letter should attest to the existence of the institution's program for granting such credits and to the evaluator's credentials for granting those credits toward a degree in the specific discipline of the claimed degree equivalency.*

[Emphasis supplied.]

In the evaluation, the evaluator stated:

*I am an official who has authority to grant college-level credit, via examination, waiver, or internship, for training and/or work experience in business administration within the School of Business at Portland State University, which has programs for granting such credit based on an individual's training and/or work experience.*

That evaluation was not accompanied by the requested "letter signed by the institution's officer . . . attest[ing] to the existence of the institution's program for granting [credits for work experience] and to the evaluator's credentials for granting those credits."

USCIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience. The petitioner failed to provide such a letter, notwithstanding that it was specifically requested.

As the evaluation provided does not meet the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), it merits no significant weight or evidentiary value. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where, as here, an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner has not submitted evidence sufficient to show that the beneficiary is qualified to work in any specialty occupation position. The appeal will be dismissed and the visa petition will be denied on this additional basis.

Further, even if the evaluation were to be considered, it would not demonstrate that the beneficiary is qualified to work in the proffered position. The petitioner's CEO stated, in his November 19, 2009 letter, that the proffered position requires a bachelor's degree in accounting. The evaluator stated that the beneficiary has the equivalent of a bachelor's degree in business administration with a concentration in accounting. No evidence or analysis was provided to demonstrate that a bachelor's degree in business administration with a concentration in accounting is equivalent to a bachelor's degree in accounting. The petitioner has not demonstrated that, if the proffered position required a degree in accounting, as the petitioner's CEO stated, the beneficiary would be qualified to hold the proffered position.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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