



U.S. Citizenship
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Services

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Date: JUN 11 2012 Office: CALIFORNIA SERVICE CENTER FILE: WAC 10 132 50402

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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner states that it is a restaurant chain established in 1992. It seeks to employ the beneficiary as an accountant and 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 on the grounds that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE) dated June 1, 2010; (3) the petitioner's response to the RFE; (4) the director's RFE dated June 28, 2010; (5) the petitioner's response to the RFE; (6) the notice of decision; and (7) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation requiring a bachelor's or higher degree in accounting.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or experience.

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of professional recognition.

In the petition signed on March 30, 2010, the petitioner indicated that it wished to employ the beneficiary as an accountant on a full-time basis at the rate of \$42,640 per year.

In its support letter dated March 30, 2010, the petitioner states that the proffered position requires at least a bachelor's degree in accounting or a related field. The petitioner also states

that the beneficiary is qualified for the proffered position “by virtue of his education, and extensive knowledge of the field. . . .” The petitioner submitted a copy of the beneficiary’s Interim Certificate of Graduation, college transcripts, and employment verification letters, but did not submit a credential evaluation with the petition.

On June 28, 2010, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) an advisory evaluation of the beneficiary’s foreign educational credentials by a reliable credentials evaluation service that specializes in evaluating foreign educational credentials; (2) an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty of accounting; (3) the results of recognized college level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI); (4) evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty; (5) affidavits or declarations (made under penalty of perjury) certifying as to the beneficiary’s training and/or experience in the specialty occupation, and that the beneficiary has recognition and expertise in the specialty through progressively responsible positions directly related to the specialty; and (6) copies of all the material evaluated including copies of personnel records, performance evaluations, pay records; or copies of any other documents that reflect promotion or achievement of progressively responsible positions directly related to the specialty.

On July 22, 2010, in response to the director’s RFE, counsel for the petitioner submitted (1) a credential evaluation from the Foundation for International Services, Inc.; (2) the beneficiary’s resume; (3) a copy of the beneficiary’s Interim Certificate of Graduation; (4) a copy of the beneficiary’s college transcripts; and (5) three employment verification letters.

The director denied the petition on August 2, 2010.

On appeal, the petitioner states “[t]he decision erroneously holds that only a bachelor’s degree in accounting will satisfy the requirements for the position of accountant.” The petitioner further states “[t]he decision was erroneous in that it did not consider that the Beneficiary does in fact possess a bachelor’s degree in Industrial Management, which is a related field to that of Accounting.” In addition, the petitioner contends that it has submitted sufficient, detailed documentation for the Service to establish that the beneficiary’s professional experience is equivalent to a baccalaureate degree.

The AAO affirms the director’s finding that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation requiring a degree in accounting under 8 C.F.R. § 214.2(h)(4)(iii)(C).

The AAO finds that the petitioner has not established that the beneficiary meets the petitioner’s own stated requirement that the person who fills this position have at least a bachelor’s degree in accounting or a related field. The beneficiary’s educational credentials have not been evaluated as equivalent to a U.S. *bachelor’s degree in accounting*. The AAO notes that the petitioner claims that a bachelor’s degree in industrial management is a related field to accounting;

however, the petitioner does not submit corroborating evidence to support its claim, such as a curriculum for both an industrial management major and an accounting major evidencing essentially the same "body of highly specialized knowledge." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in the specific specialty."² Section 214(i)(1)(b) (emphasis added). Again, there is simply insufficient evidence in the record to establish industrial management as being closely related to accounting. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Next, the AAO finds that the record does not establish that the evaluator, [REDACTED] for the [REDACTED], Inc. is an official who 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Specifically, no documentation was provided establishing that Ms. [REDACTED] is an official who 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), USCIS may determine that the beneficiary has the equivalent of a degree in a specific specialty if he has a combination of education, specialized training, and/or work experience in areas related to this claimed specialty as well as recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. However, the instant record of proceeding does not support such a determination.

As stated above, the evaluation on record is not probative of the beneficiary's attainment, through experience, of the degree-equivalency to which the evaluation attested. The AAO further finds that the evidence of record does not contain sufficient detail to establish that the beneficiary's experience was gained while working with peers, supervisors, and subordinates who have at least a bachelor's degree, or its equivalent, in an accounting-related field. Finally, the record lacks the required showing of the beneficiary's recognition of expertise in the alleged specialty gained through progressively responsible positions directly related to that specialty. As such, the evidence does not establish that the beneficiary is qualified to perform a specialty

² Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

occupation requiring a bachelor's or higher degree in accounting.

For the reasons related in the preceding discussion, the AAO affirms the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation requiring a bachelor's or higher degree in accounting. Thus, the appeal must be dismissed and the petition denied for this reason.

Beyond the decision of the director, the AAO will enter an additional basis for denial, i.e., the petitioner's proffered position does not qualify 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 an occupation that requires:

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

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

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

- (1) A 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), 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.

As discussed previously, the petitioner states that it is seeking the beneficiary's services as an accountant. In the petitioner's support letter dated March 30, 2010, the petitioner indicated that the beneficiary would report to the president and will be responsible for the petitioner's financial accounting. The petitioner also indicated that the beneficiary would perform the following duties in the proffered position:

be responsible for all aspects of financial accounting, including cash, banking, general ledger and inventory audit and management[;] [d]evelop, interpret and implement financial accounting concepts for financial planning, budgeting, and general ledger applications; [g]ather, analyze, prepare and summarize information for financial plans, operations and budgets; [p]erform technical analysis to determine present and future finance performance; [o]versee the preparation of monthly financial statements, quarterly and year end financial reports; [and] [a]ct or operate as liaison, conduit or connection for all

management colleagues with respect to or in connection with all aspects of finance and accounting.

In addition, the petitioner broke down the day-to-day responsibilities of the proffered position as follows:

Hour/Week of Work	% of Time	Detailed Description of Duties and Responsibilities
12	30%	Responsible for developing, interpreting and implementing financial cost accounting concepts for financial planning, budgeting, and general ledger applications. Gather, analyze, prepare and summarize information for financial plans, operations and budgets. Maintain and implement an effective management information and control system. This is needed to navigate managerial decisions, stabilized budgets and standards assess operational efficiency and the effectiveness of distribution system. In particular, should be able to identify areas where improvement can be made and work with management to ensure understanding of the results and impact on business.
8	20%	Perform technical analysis to determine present and future finance performance. Interpret information and data related to business activities and translate them to guide management into taking the right decisions.
8	20%	Research and improve existing cost analysis and processes and continually improve the accounting and general ledger reporting and analysis processes. Contribute in plans to reduce non-value added costs, setting overhead rates and cost reduction efforts.
8	20%	Oversee the preparation of monthly, quarterly and year-end financial reports. Plan costing systems and methods, investment analysis, internal audit, cost audit, fund management, [and] pricing planning. Coordinate and participate in annual physical inventory. Analyze pricing proposal against cost calculation. Perform budget and forecast project variance analysis.
4	10%	Research, compile and track industry performance for top competitors. Maintain

		statistics on key economic indicators.
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To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first 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 U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter 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)).

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

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ 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 in a specific specialty, or the equivalent. See Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (accessed May 30, 2012).

The "Accountants and Auditors" chapter in the 2012-2013 edition of the *Handbook* indicates that accountant positions do not require at least a bachelor's degree level of knowledge in accounting or a closely related specialty. *Id.* More specifically, the "How to Become an Accountant or Auditor" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in accounting or a related field." *Id.* This does not support the view that all accountant jobs qualify as specialty occupations. "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

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).⁴

Further, the aforementioned section of the *Handbook* includes this statement:

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.

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. Further, this conclusion is supported by the finding above that the petitioner is seeking to fill the proffered position with an individual whose credentials have not been established as being equivalent to a U.S. bachelor's degree in accounting.

The AAO notes that the petitioner cites *Matter of [name not provided]*, HHW-N-5225 (AAU Mar. 7, 1985) in its support letter dated March 30, 2010 as evidence that the legacy U.S. Immigration and Naturalization Services (INS) has previously held that an accountant position requires a bachelor's degree or its equivalent. However, the petitioner does not submit a copy of *Matter of [name not provided]*, [REDACTED] (AAU Mar. 7, 1985) with the initial petition and, as such, there is no evidence that the facts of the instant petition are analogous to those in the unpublished decision. More importantly, however, *Matter of [name not provided]*, [REDACTED] (AAU Mar. 7, 1985) is neither an H-1B specialty occupation case nor a precedent decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Further, the AAO notes that the petitioner also indicates in its support letter that an accountant position is a "professional" position and cites *Matter of Arjani*, 12 I&N Dec. 649 (R.C. 1967) and *Matter of Doultinos*, 12 I&N Dec. 153 (DD 1957). Whether an accountant position

⁴ 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 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.

qualifies as a “profession” under section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), is irrelevant to the instant petition. As indicated earlier, the issue before the AAO is whether the petitioner’s proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession.⁵

Finally, the AAO notes that the Occupation Report from America’s Career InfoNet, referenced by the petitioner in its support letter, is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor’s degree in a specific specialty. The report indicates the following:

Education and Training

Occupation: Accountants and Auditors
Most Common Educational/Training Level: Bachelor’s degree
Related Instructional Programs:

- Accounting
- Accounting and Business/Management
- Accounting and Computer Science
- Accounting and Finance
- Auditing
- Financial Forensics and Fraud Investigation
- Taxation

U.S. Dept. of Labor, Employment and Training Administration, America’s Career InfoNet, http://www.careerinfonet.org/occ_rep.asp?next=occ_rep&Level=&optstatus=11111111&jobfam=13&id=1&nodeid=2&socode=132011&stfips=06&x=54&y=18#SectionOp6 (accessed May 30, 2012).

The America’s Career InfoNet’s reference to “Bachelor’s degree” - without specification of any particular academic concentration or major – as the “[m]ost common education/training level” is not evidence that a bachelor’s degree in a specific specialty or its equivalent is a minimum requirement for entry into the occupation to which the proffered position belongs. Therefore, despite the petitioner’s assertions to the contrary, the America’s Career InfoNet information is not probative of the proffered position qualifying as a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the

⁵ The AAO notes that the primary, fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor’s or higher degree, or its equivalent, to be in a specific specialty. Thus, while “accountants” are specifically identified as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 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.

As stated earlier, 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

In addition, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner also does not provide any job-vacancy advertisements evidencing a common degree-in-a-specific-specialty requirement in the petitioner's industry for positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner.

Therefore, 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." Here, the record fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of accountant. As the petitioner has thus failed to differentiate or otherwise distinguish its proffered position from general accountant positions as described in the *Handbook* that can be performed by individuals without at least a bachelor's degree in accounting or its equivalent, 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 as a minimum entry requirement for the occupation. The petitioner has therefore failed to establish that it meets the requirements of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Here, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties as described in the record appear indistinguishable from the general range of accountant positions, for which the *Handbook* does not indicate a usual association with at least a bachelor's degree in a specific specialty or the equivalent as a minimum entry requirement for the occupation in the United States.⁷

The petitioner has therefore failed to establish that it has satisfied any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). As such, the petitioner has not established that the proffered position qualifies as a specialty occupation, and the petition must be denied for this additional reason.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. § 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.

⁶ 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").

⁷ The petitioner has designated the proffered position as a Level I accountant position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.