

Identifying info deleted to  
protect privacy and prevent  
disclosure of personal information  
**PUBLIC COPY**

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



**U.S. Citizenship  
and Immigration  
Services**

D2

[Redacted]

Date: **JUN 25 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:

[Redacted]

**INSTRUCTIONS:**

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

If you believe the 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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner claims to operate a retail convenience store and gas station and to seek to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the proffered position was not a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*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 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the director’s RFE; (4) the director’s decision denying the petition; and (5) the petitioner’s Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

On the Form I-129, the petitioner claimed that it was established in 2002 and was engaged in retail sales. It further claimed to have two employees and a gross annual income of \$151,500. Regarding the proffered position, it stated that it required the services of the beneficiary as an accountant, and

submitted a document outlining the specific duties of the position. Specifically, the petitioner stated the following:

**ACCOUNTANT – PROPOSED JOB DUTIES:** Analyze financial information and prepare financial reports to determine and maintain record of assets, liabilities, profit and loss, tax liability and other financial activities, oversee company accounts receivable and collections; develop internal financial systems for centralized control and to maximize revenue.

**SPECIFIC RESPONSIBILITIES:**

- Prepare, examine and analyze accounting records, financial statements and other financial reports to assess accuracy, completeness and conformance to reporting and procedural standards.
- Compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting and other tax requirements.
- Analyze business operations, trends, costs, revenues, financial commitments and obligations, to project future revenues and expenses or to provide advice to management for business planning.
- Report to management regarding company finances.
- Establish tables of accounts and assign entries to proper accounts.
- Develop, maintain and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs and ratio of staff costs to revenue.
- Develop and implement centralized recordkeeping and accounting systems, making use of current computer technology.
- Survey operations to ascertain accounting needs and to recommend, develop and maintain solutions to business and financial problems.
- Advise management about issues such as resource utilization, tax strategies and the assumptions underlying budget forecasts.
- Create centralized collection policy and system and oversee implementation.
- Develop a system for cash control and safeguards to prevent employee embezzlement.

The director found the initial evidence insufficient and issued an RFE dated July 1, 2010. The director first requested more details regarding the nature of the petitioner's retail sales, including the type of sales in which the petitioner was engaged, the number of employees it currently had on staff, shift schedules for its employees for the previous month, and photos of the petitioner's business. The director also requested additional documentation in support of the contention that the proffered position was a specialty occupation.

In a response dated August 16, 2010, the petitioner addressed the director's queries. The petitioner claimed to operate a retail convenience store and gas station as a franchisee of Chevron, and claimed that the majority of its sales were cash transactions. The petitioner further claimed that as a small business, the owner was actively involved in the management and operations, in addition to two full-time sales representatives. The petitioner also claimed that the owner's wife worked as a cashier and performed other duties as needed.

Regarding hours of operation and employee shifts, the petitioner claimed that it was open from 6:00 a.m. until 11:00 p.m., and that the schedule was divided into two shifts: 6:00 a.m. to 2:00 p.m. and 2:00 p.m. to 11:00 p.m. The petitioner stated that only one employee per shift was required, and that the owner often overlapped the shifts.

Regarding the proffered position, the petitioner stated that the position of accountant was a new position, and that it previously used the services of an outside CPA for tax preparation. It claimed that the employment of an in-house accountant would allow the petitioner to develop a strategic economic plan, create and maintain a budget based upon real time data and cash flow analysis, and to create inventory and cash flow systems in "the uncertain economic climate that exists today."

The petitioner further claimed that the owner, who is directly involved in the operation of the business, requires the services of a professional with academic training to analyze his business and provide recommendations for implementation of systems and policies. It also provided the following updated description of the duties of the proffered position:

As indicated in the job description previously submitted, the duties involve the detailed analysis of the business accounting, recordkeeping, budgets and policies to determine workability, profitability, accuracy and security. In addition to analysis, the duties include the independent formulation of systems, auditing policies and procedures that will improve operational efficiency and profitability and ensure compliance with all tax and regulatory laws. The duties require the creation and development of reports and the preparation [of] financial statements, tax returns and other tax documents.

The specific duties of the position can be categorized and summarized as follows:

### **Tax Computation and Compliance**

Compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting and other tax requirements.

### **Business Analysis and Financial Planning**

Analyze business operations, trends, costs, revenues, financial commitments and obligations, to project future revenues and expenses or to provide advice to management for business planning[.]

Advise management about issues such as resource utilization, tax strategies and the assumptions underlying budget forecasts.

Create centralized collection policy and system and oversee implementation.

Develop a system for cash control and safeguards to prevent employee embezzlement.

Report to management regarding company finances.

### **Accounting, Auditing and Budget Management**

Prepare, examine and analyze accounting records, financial statements and other financial reports to assess accuracy, completeness and conformance to reporting and procedural standards.

Establish tables of accounts and assign entries to proper accounts.

Develop, maintain and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs and ratio of staff costs to revenue.

Develop and implement centralized recordkeeping and accounting systems, making use of current computer technology.

Survey operations to ascertain accounting needs and to recommend, develop and maintain solutions to business and financial problems.

The petitioner concluded that the duties of the proffered position are part of the coursework for a degree in business administration. The record also includes a copy of the beneficiary's diploma from Everest University, indicating that he holds a master's degree in business administration with a concentration in international business.

The petitioner also submitted photos of its business, demonstrating that the petitioner operated a stand-alone convenience store (or food mart) on the grounds of the gas station. The petitioner also submitted a copy of its profit and loss statements for February and April of 2003, as well as a number of invoices from 2008.

On August 25, 2010, the director denied the petition. Specifically, the director found that the duties of the proffered position, when examined in relation to the petitioner's organizational structure, appeared more akin to those of a bookkeeper or an accounting clerk. The director concluded that the petitioner failed to demonstrate that the proffered position was a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's findings were erroneous, and that there are significant differences between the duties of a bookkeeper and the proposed duties of the beneficiary in the proffered position. Counsel also submits a copy of the petitioner's IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for 2008.

The petitioner claims that the duties of the proffered position "are part of the coursework for a degree in Business Administration," which implies that the petitioner requires the incumbent to hold at least a bachelor's degree in business administration to perform the duties of the proffered position. As a preliminary matter, therefore, it must be noted that such an implied requirement contradicts the petitioner's claims that the proposed position qualifies as 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. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>1</sup>

---

<sup>1</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz*

In this matter, while the petitioner does not specifically state the qualifications required to perform the duties of the proffered position, it suggests in the response to the RFE 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 assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO now turns to the basis for the director's denial. In reviewing the record, the AAO observes that the critical element is not the title of the position or 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.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

The petitioner claims that the proffered position is that of an accountant. The director, however, found that the proffered position is more akin to that of a bookkeeper or an accounting clerk. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2012-2013 online edition of the *Handbook* for its discussion of accountants. As stated by the *Handbook*, the occupation of accountant is described in relevant part as follows:

Accountants and auditors prepare and examine financial records. They ensure that financial records are accurate and that taxes are paid properly and on time. Accountants and auditors assess financial operations and work to help ensure that organizations run efficiently.

#### Duties

Accountants and auditors typically do the following:

---

*Assoc.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be; otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

- 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

In addition to examining and preparing financial documentation, accountants and auditors must explain their findings. This includes face-to-face meetings with organization managers and individual clients, and preparing written reports.

Many accountants and auditors specialize, depending on the particular organization that they work for. Some organizations specialize in assurance services (improving the quality or context of information for decision makers) or risk management (determining the probability of a misstatement on financial documentation). Other organizations specialize in specific industries, such as healthcare.

\* \* \*

***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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Accountants and Auditors, <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited June 12, 2012).<sup>2</sup> The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the proffered position as described would more likely than not require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring

---

<sup>2</sup> Since the issuance of the director's decision, an updated version of the *Handbook* has become available.

accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by graduates of community colleges or by bookkeepers and accounting clerks who meet the education and experience requirements of their employers:

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.

*Handbook, 2012-13 ed., Accountants and Auditors, <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited June 12, 2012).* The *Handbook* also notes in its description of bookkeeping, accounting and auditing clerks that:

Employment of bookkeeping, accounting, and auditing clerks is expected to grow 14 percent from 2010 to 2020, as fast as the average for all occupations.

Job growth for these workers is largely driven by overall economic growth. As the number of organizations increases, more bookkeepers will be needed to keep these organizations' books. In addition, in response to the recent financial crisis, investors will pay increased attention to the accuracy of corporate books. Stricter regulation in the financial sector will create demand for accounting services, creating opportunities for accounting clerks.

*Handbook, 2012-13 ed., Bookkeeping, Accounting, and Auditing Clerks, <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-6> (last visited June 12, 2012).* The AAO notes that the petitioner claimed in its response to the RFE that it requires the beneficiary's services as a result of today's "uncertain economic climate," which appears to correspond to the *Handbook's* observation that the increased demand for bookkeeping, auditing, and accounting clerks is directly linked to the recent financial crisis.

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

At the time of filing in June 2010, the petitioner stated that it commenced business operations as a retail convenience store/gas station in 2002. It claimed to have two full-time sales representatives, and further claimed that the owner and his wife worked as needed within the business. It further claimed to have a gross annual income of \$151,000 and a net income of \$20,000. On appeal, however, the petitioner submitted a copy of its 2008 income tax return, which indicated that it had a gross annual income in excess of \$1 million and a net loss of \$13,620. It appears, therefore, that the petitioner's gross receipts have declined substantially since 2008, thereby raising questions regarding the validity of the claim that it requires the services of a full-time accountant.

Moreover, the petitioner indicates that the beneficiary will receive an annual salary of \$38,043; however, its 2008 tax return demonstrates that despite gross receipts in excess of \$1 million, it only paid its two full-time employees a combined total of \$10,150 and operated at a net loss for the year.<sup>3</sup> The petitioner further claimed that its two employees, in the position of sales representatives, were full-time employees and alternated between eight- and nine-hour shifts. Assuming that each sales representative worked a standard 40 hour week, the hourly wage for each employee over the course of a calendar year would be \$2.44 per hour, significantly less than the Florida minimum wage of \$6.79 in effect in 2008. 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).

The record contains no evidence or statement from counsel or the petitioner that clarifies these discrepancies. Moreover, the petitioner provides minimal documentation related to its financial operations and organization that would shed light on the claimed complexity of the accounting work to be performed by the beneficiary. The petitioner's repeated contentions that it requires the services of a full-time accountant, when compared to the evidence discussed above, carry little weight, since the record offers no meaningful evidence to establish that the accounting duties to be performed by

---

<sup>3</sup> Even when factoring in the claimed 2008 depreciation deduction, the ordinary business income, while no longer being a loss, would still be insufficient at \$6,552 to pay the beneficiary's proffered wage of \$38,043 per year.

the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a specialty degreed accountant. Accordingly, 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.

The record contains no evidence that organizations similar to the petitioner, i.e., gas stations and convenience stores, impose a common degree requirement among parallel positions. The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the position. The petitioner claims that it requires professional expertise in order to survive the recession, and states that it requires the independent exercise of judgment and recommendations by someone such as the petitioner. Other than submitting a copy of the beneficiary's diploma from Everest University, however, which demonstrates that the beneficiary holds a master's degree in business administration, the petitioner makes no reference to the educational requirements for the proffered position, nor does it state that the duties of the proffered position can only be performed by an individual with a degree. Moreover, in response to the RFE, the petitioner indicates that the proffered position is temporary in nature, and claims that the position will ultimately revert to a part-time position or be performed by the owner himself.

The issue under this criterion is whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Counsel does not address this prong on appeal, nor does the petitioner or counsel explain or clarify at any time in the record which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. In addition, the petitioner indicates that the owner will ultimately assume the duties of the proffered position, yet the record contains no evidence that the owner holds a degree in a specific specialty such as accounting that directly relates to the claimed position. The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In response to the RFE, the petitioner indicated that the proffered position is a new position and that it has not previously employed any individuals in the position of accountant. Therefore, since the petitioner acknowledges that it has not previously

hired degreed individuals to fill the proffered position in the past, the petitioner has not satisfied this criterion.

Moreover, while the petitioner fails to specifically state the educational credentials required for entry into the proffered position, it should be noted that 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 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 required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, 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.

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. Again, 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 have not been described with sufficient specificity to show that they are more specialized and complex than accounting positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner and counsel simply provide unsupported opinions with regard to the complexity of the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a degreed individual could perform them. The record does not establish that this position is inherently more specialized or complex than other similar but non-specialty-degreed employment.<sup>4</sup>

Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore,

---

<sup>4</sup> Moreover, the petitioner has designated the proffered position as a Level I 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. Again, 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. at 591-92.

the evidence does not establish that the proffered position meets the requirements of 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 AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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