

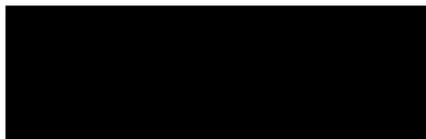
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

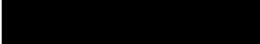
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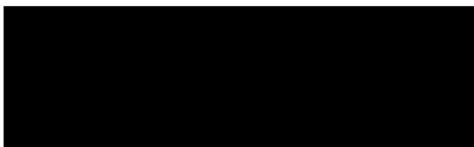
Office: VERMONT SERVICE CENTER

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:



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

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

Thank you,

*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 retail business with seven employees. 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's decision to deny the petition on the specialty occupation issue was correct. 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 submitted a letter, dated September 28, 2009, from the petitioner's director, who provided the following description of the duties of the proffered position:

- (i) Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards;
- (ii) Preparing entries and reconciling general ledger accounts, documenting transactions, and summarizing current and projected financial position;
- (iii) Maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit & loss, and cash flow statement;
- (iv) Auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets;
- (v) Preparing compliance reports for taxing authorities; and
- (vi) Analyzing operating statements, review cost control programs, and make strategy recommendations to management.

The petitioner's director also stated:

Due to the complex and demanding requirements of the position of an Accountant, only a person of exceptional ability and skills in business administration, accounting, and/or financial management is capable of qualifying as a [sic] Accountant for [the petitioner]. These minimum prerequisites for the offered position require a skilled professional with a Bachelor's degree in Business Administration, Accounting, Finance, or a related field.

The AAO observes that the phrase "business administration, accounting, and/or financial management" does not delineate a specific specialty. By asserting that a bachelor's degree in any one of those fields would be a sufficient educational qualification for the proffered position, the petitioner's director has effectively admitted that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, which is tantamount to conceding that the instant visa petition is not approvable.

In fact, even if the position required a minimum of a bachelor's degree or the equivalent in business administration, without any alternative, this would demonstrate that it is not a position in a specialty occupation. This is because the requirement of an otherwise undifferentiated bachelor's degree in business administration is inadequate to establish that a 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. See *Matter of Michael Hertz Associates*, 19 I&N

Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of 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. As explained above, 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. USCIS has consistently stated that, 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).

The failure of the petitioner even to effectively allege that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

On October 30, 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, counsel submitted: (1) an evaluation, dated November 20, 2009, of the beneficiary's employment experience and of the proffered position; (2) 17 vacancy announcements posted by other employers; and (3) counsel's own letter, dated December 5, 2009. The vacancy announcements submitted are described later in this decision.

The November 20, 2009 evaluation was prepared by an associate professor of management science at the University of Maryland. It provides a paraphrase of the duties described in the petitioner's director's September 28, 2009 letter and states that a position encompassing those duties "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Accounting, Business Administration, or a related area, or the equivalent."

As was noted above, any position the educational requirement of which may be satisfied by an otherwise undifferentiated bachelor's degree in business administration does not qualify as a specialty occupation position. Thus, the evaluation that the petitioner relies on to show that the proffered position is a specialty occupation position does not even effectively allege that the proffered position is a specialty occupation position.

In her own letter of December 5, 2009, counsel stated, *inter alia*, that the evidence submitted is sufficient to show that the proffered position qualifies as a specialty occupation position. Counsel also stated, "Currently, an outside CPA is performing the Accountant job duties," but provided no evidence to support that assertion.

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).

The director denied the petition on December 23, 2009, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation.

On appeal, counsel again asserted that the evidence submitted is sufficient to demonstrate that the proffered position is a specialty occupation position, but did not retract the assertion that an otherwise undifferentiated bachelor's degree in business administration is sufficient to satisfy the educational requirement of the proffered position. Specifically, counsel stated:

At [the petitioner], the position of Accountant have [sic] always been filed [sic] by an individuals [sic] with education and experience equivalent to a U.S. Bachelor's degree in Business Administration, Accounting, or a related degree which requirements have remained consistent in our staffing of [the beneficiary]. Prior to hiring of [the beneficiary], [the petitioner] employed an outside accounting firm to perform the duties of Accountant. They are degreed professionals.

Again, counsel provided no evidence that the petitioner has always retained an outside accountant with a specialized degree to perform the duties of the proffered position.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</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.

The *Handbook* describes the duties of accountant positions, in the chapter entitled Accountants and Auditors, as follows:

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<sup>1</sup> 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 2010 – 2011 edition available online.

*Accountants and auditors* help to ensure that firms are run efficiently, public records kept accurately, and taxes paid properly and on time. They analyze and communicate financial information for various entities such as companies, individual clients, and Federal, State, and local governments. Beyond carrying out the fundamental tasks of the occupation—providing information to clients by preparing, analyzing, and verifying financial documents—many accountants also offer budget analysis, financial and investment planning, information technology consulting, and limited legal services.

Specific job duties vary widely among the four major fields of accounting and auditing: *public accounting*, *management accounting*, *government accounting*, and *internal auditing*.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos001.htm> (last accessed December 28, 2011).

More specifically, as to management accountants, the *Handbook* states:

*Management accountants*—also called *cost*, *managerial*, *industrial*, *corporate*, or *private accountants*—record and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO finds that the duties attributed to the proffered position mark it as an accountant position, and, more specifically, a managerial accountant position. The *Handbook* describes the educational requirements of accountant and auditor positions, including managerial accountant positions, as follows:

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer applicants with a master's degree in accounting, or with a master's degree in business administration with a concentration in accounting. Some universities and colleges are now offering programs to prepare students to work in growing specialty professions such as internal auditing. Many professional associations offer continuing professional education courses, conferences, and seminars.

Some graduates of junior colleges or business or correspondence schools, as well as bookkeepers 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.

That "most" accountant positions require a bachelor's degree does not indicate that it is a normal entry requirement. 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, however, 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 offered 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.

As to accountants, the *Handbook* indicates that graduates of junior colleges or business or correspondence schools may obtain an accountant position, without possessing a bachelor's degree or the equivalent. Further, the petitioner's director and the professor who evaluated the proffered position both indicated that the proffered position could be performed by a person with an undifferentiated degree in business administration.

Additionally there is a critical evidentiary failure that precludes the petitioner from satisfying any criterion at of the criteria. That is, the generalized descriptions by which the petitioner depicted the proffered position and its constituent duties present the position as no more than a set of functions generic to accounting in general, without sufficient details to convey the substantive requirements of the work that would actually be involved in the particular context of this specific petitioner's business operations, and without credibly correlating such requirements to a need for a specific educational level of a body of highly specialized knowledge of accounting principles that would have to be theoretically and practically applied to perform the position.

As the evidence of record fails to establish this particular proffered position as one that normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner has not 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* provides no support for the proposition that the petitioner's industry requires accountants to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of accountants that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

As was noted above, counsel submitted 17 vacancy announcements posted by other companies. The vacancies announced are for accountant positions and related positions.

Three of the vacancy announcements state that they require a bachelor's degree in business administration. One announcement states that the position it announces requires a four-year degree in accounting, finance, business, or a related field. One announcement states that it requires a degree in business or accounting. Another states that the position requires a degree in accounting, business, or a related field. As was noted above, a position the educational requirement of which can be satisfied by a degree in business administration is not a specialty occupation position. Any similarity between the positions advertised in those announcements and the proffered position does not support the proposition that the proffered position is a specialty occupation position.

One of the announcements states that a bachelor's degree is preferred for the position, but not that it should be in any specific specialty. One of the announcements states that a bachelor's degree in accounting or finance is preferred for the position. In either case, a preference is not a minimum requirement. Any similarity between the proffered position and the positions advertised in those announcements does not support the proposition that the proffered position is a specialty occupation position.

One of the announcements states that a bachelor's degree is required for the position announced, and that a degree in accounting or finance is preferred for the position. A preference is not a minimum requirement. Again, that position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and is not a specialty occupation position. Any similarity between the proffered position and the position advertised in that announcement does not support the proposition that the proffered position is a specialty occupation position.

One of the announcements states that the position requires a bachelor's degree, but not that the degree should be in any particular subject. Two others state that they require four-year degrees, but not that the degrees should be in any specific subject. Those positions do not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and thus are not specialty occupation positions. Any similarity between them and the proffered position does not support the proposition that the proffered position is a specialty occupation position.

One of the announcements states that the position requires a bachelor's degree in accounting or an equivalent combination of education and experience. It indicates, however, that three years of general accounting experience after high school would be considered equivalent to a bachelor's degree in accounting. As USCIS does not consider three years of experience after high school to be equivalent to a bachelor's degree, the AAO does not consider that announcement to actually require a minimum of a bachelor's degree or the equivalent in accounting, notwithstanding that it states that it does. Therefore, the position announced does not support the proposition that the proffered position is a specialty occupation position.

One announcement is for an accounts payable manager. It states that the position requires an accounting degree or a finance degree. Whether a degree less than a bachelor's degree would be acceptable is unclear. Whether the duties of an accounts payable manager parallel those of the accountant position proffered in the instant case is unknown. The name of the company that posted that announcement suggests that it is a restaurant. A heading of the announcement indicates that it is a retail grocery. The body of the announcement states that the company is the leading wholesale grocery and food service distributor in the United States. Whether the position is for a position parallel to the proffered position in the petitioner's industry is therefore unclear for several reasons.

One announcement states that the position requires a four-year degree in accounting or finance.

One announcement was placed by [REDACTED] for a financial accountant to work in Philadelphia, Pennsylvania, and states that the position requires a bachelor's degree in accounting. One was placed by a retail jewelry company and requires a bachelor's degree in accounting.

Of the 17 vacancy announcements submitted, those are the only two that clearly state a requirement for a minimum of a bachelor's degree or the equivalent in a specific specialty. For that reason, as well as the other reasons noted above, those 17 announcements, considered together, do not support the proposition that a requirement of a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both parallel to the proffered position; and located in organizations that are similar to the petitioner.

Further, even if all 17 positions 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 submission of the 17 announcements is statistically insufficient to demonstrate an industry-wide requirement.<sup>2</sup> The record contains no

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<sup>2</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 17 job postings with regard to determining the common educational requirements for entry into parallel positions in similar businesses. See generally [REDACTED] *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

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 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 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 November 20, 2009 evaluation was apparently provided to support the proposition that the proffered position is so complex or unique that it can only be performed by an individual with a minimum of a bachelor's degree or the equivalent in a specific specialty. That evaluation, however, indicates that the proffered position could be performed by a person with a bachelor's degree in business administration. The petitioner's director's September 28, 2009 letter also states that a business administration degree would satisfy the educational requirement of the proffered position. As was explained above, a position the educational requirement of which can be satisfied by an otherwise undifferentiated degree in business administration is not a specialty occupation position. Rather than supporting the proposition that the proffered position is a specialty occupation position, the evaluation provided makes clear that it is not, as does the petitioner's director's September 28, 2009 letter. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is satisfied if the employer normally requires a degree or its equivalent for the position. In the instant case, counsel alleged, both in her December 5, 2009 letter and on appeal, that the petitioner previously retained outside accountants, with degrees, to perform the duties of the proffered position. The record contains no evidence to corroborate that assertion and, in any event, counsel did not even allege any specific specialty in which the outside accountants have their degrees. Even if he had, as stated earlier, with citation,

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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 company in the petitioner's industry that is otherwise similar to the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it could not 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.

assertions by counsel, without documentary support, do not constitute evidence. The petitioner has not provided any evidence for analysis under 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.

The duties of the position as described appear to encompass routine duties associated with accountant positions in general. The duties of compiling and analyzing financial information; preparing financial reports; applying generally accepted accounting principles; making entries to the general ledger and reconciling accounts; maintaining payables and receivables; preparing balance sheets, profit & loss statements, and cash flow statements; etc., contain no indication of specialization and complexity such that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue that was not addressed in the decision of denial, but which will now be discussed. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the exercise of this function that the AAO identified these additional grounds for denying the petition.

The beneficiary does not actually possess a U.S. bachelor's degree, nor a foreign degree. The petitioner provided the November 20, 2009 evaluation, discussed above in the context of the specialty occupation issue, to show that the beneficiary has experience equivalent to a bachelor's degree. The petitioner also provided another evaluation, dated February 28, 2008, for that purpose.

In the February 28, 2008 evaluation, the evaluator stated:

On the basis of the More [sic] than nineteen years of work experience and professional training in Accounting, and related areas, it is my judgment that [the beneficiary] has attained the equivalent of a Bachelor of Arts degree in Accounting from an accredited institution of higher education in the United States.

In the November 20, 2009 evaluation, the evaluator stated that the beneficiary's employment experience is equivalent to at least five years of university-level academic training in accounting. The evaluator also stated that, in his position at the University of Maryland, he has the authority to grant college-level credit for experience. However, he provided no evidence in support of that

assertion. The evaluator who provided the February 28, 2008 evaluation did not assert that he has any such authority.

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, 8 U.S.C. § 1184(i)(2), 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 [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] 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 either that the beneficiary has completed a degree in the specialty that the occupation requires, or that, if he or she does not possess the required degree, that the alien has [1] 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.

The beneficiary has not been shown to meet criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3), as there is no evidence of a U.S. or foreign bachelor's degree or of an unrestricted state license, registration or certification which authorizes him to fully practice and be immediately engaged in a specialty occupation in the state of intended employment.

Next, in order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 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;<sup>3</sup>
- (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) 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. . . .

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, as the record contains no evidence related to them. The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is not applicable here, as the beneficiary does not seek to rely on foreign educational credentials, but on employment experience.

With regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), that regulation makes clear that only evidence from an official with authority to grant college-level credit for training and/or experience will be considered. In the instant case, one of the evaluators did not even allege that he has such authority. The other evaluator alleged such authority, but provided no corroborating evidence.

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<sup>3</sup> The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

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, pursuant to a program at that institution for granting such credit, on the basis of training or work experience.

The AAO finds that the record has not established that the evaluators who have opined on the educational equivalency of the beneficiary's work experience are officials who have "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," as required by this criterion. On this ground alone, their opinions on the beneficiary's work experience have no evidentiary value, and the petitioner has not submitted sufficient evidence to demonstrate that the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) is satisfied.

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It allows recognition of a beneficiary's qualification by a USCIS determination that his or her training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty. This criterion provides that, for each year of college-level training the alien lacks:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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<sup>4</sup>;
- (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;

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<sup>4</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (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.

The AAO finds that none of the evidence provided is sufficient to demonstrate the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in any particular specialty occupation; or that the alien has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion. Consequently, the petitioner has not established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Pursuant to the instant visa category a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO will not base today's decision on the issue of the beneficiary's qualifications and will not address the issue of the beneficiary's qualifications in further detail. The AAO notes, however, that if the petitioner had overcome the specialty occupation basis for denial, it would still have been obliged to show that the beneficiary is qualified to work in the proffered position in order for the visa petition to be approvable.

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. The appeal will be dismissed and the petition denied.

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