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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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MAY 31 2012

Date:

Office: VERMONT SERVICE CENTER FILE: 

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen 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,

Michael T. Kelly

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an internal medicine practice with seven employees and a stated gross annual income of \$1 million. Seeking to employ the beneficiary as an accountant, the petitioner filed this H-1B petition in an endeavor 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE) dated June 22, 2010; (3) the petitioner's response to the RFE dated August 3, 2010 with supporting materials; (4) the director's denial letter; and (7) the Form I-290B and brief submitted by counsel along with supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO concurs with the director that the petitioner has not established that the proffered position qualifies as a specialty occupation within the meaning of the controlling statutory and regulatory provisions. Accordingly, the decision will be dismissed, and the petition will be denied.

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

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

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

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

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's

degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary's services as an accountant. In a supporting letter dated April 6, 2010 the petitioner states that the beneficiary:

[w]ill be responsible for creating monthly, quarterly, yearly reports regarding the finances of the practice, as well as managing the account receivables, account payables and patient billings. Furthermore, he will be responsible for working with consultants to develop the [REDACTED] based on accounting principles for [REDACTED]. In addition, he will be required to manage the employee payroll as well as create audit standards and internal accounting controls for the practice.

[The beneficiary] will also be responsible for preparing the internal reporting package, as well as, providing assistance to operational management in the analysis and understanding of all financial information as required. Moreover, he will be required to prepare monthly consolidation and ensure that intercompany accounts for all entities are balanced on a periodic basis, as well as, prepare assigned audit schedules for the quarterly and year end external audits on a timely basis. [The beneficiary]'s main responsibilities will also include maintaining all fixed assets including monthly accruals and account reconciliations, as well as, generating timely analytical reports. Lastly, [the beneficiary]'s main responsibility will include preparing information required by external auditors, appropriate tax returns for the medical practice and its affiliates, and various other analyses as required, as well as preparing monthly journal entries and statements for the practice and its affiliates.

On June 22, 2010, the director issued a Request for Evidence (RFE) to demonstrate that the proffered position is a specialty occupation. In response, the attorney submitted various job advertisements and a copy of *O*NET Online* report for accountants. The attorney claimed that the advertisements show that a baccalaureate degree in a specific field of study is normally the minimum requirement for the position. The attorney also claimed that the *O*NET* report shows that the duties for the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific field of study. The attorney enclosed an organizational chart, degrees and certification of current employees, and the most recent payroll.

The director denied the petition on August 24, 2010, finding that the evidence of record does not establish that the job offered qualifies as a "specialty occupation" under section 101(a)(15)(H)(i)(b) of the Act. The director indicated that although the petitioner had titled the proffered position as an accountant, an analysis of the proposed job duties reflects the duties performed by payroll clerk, accounts receivable clerk/accounts payable clerk, administration clerk, audit clerk, inventory clerk and general office assistant. The director further stated that the petitioner has not provided evidence to indicate how the beneficiary would be relieved from

performing non-qualifying functions. The director also noted that the job advertisements submitted were for large corporations and/or hospitals and not similarly situated. The director stated that the petitioner has not provided evidence to establish that a baccalaureate degree in a specific field of study is a standard minimum requirement within the petitioner's company and industry among similarly situated companies. The director stated that under 8 CFR §103.2(b)(14), "failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition."

On September 23, 2010, the counsel for the petitioner filed an appeal in response to the denial. Counsel contended that he submitted all requested evidence in response to the RFE, and clearly established that the position of an accountant qualified as a specialty occupation. Counsel also noted that USCIS did not request evidence to establish that the beneficiary would be relieved from performing non-qualifying functions, but the director erroneously denied the petition on this basis.

The AAO finds that the director's determination that the petitioner did not establish the proffered position as a specialty occupation was correct. To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The AAO recognizes the *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

Counsel asserts that the *Handbook* states that "most accountants and auditors need at least a bachelor's degree in accounting or a related field." However, despite the counsel's assumption to the contrary, accountants do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty. The *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

"How to Become an Accountant or Auditor" section of the *Handbook's* chapter on accountants states, "[m]ost accountants and auditors require at least a bachelor's degree in accounting or a related field." *Id.* This does not support the view that any accountant job qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular accountant position

¹ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site: <http://www.bls.gov/ooh/>.

is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).² Further, the “Education” subsection of the aforementioned section of the *Handbook* includes the following 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 demonstrating their accounting skills on the job.

In this context, the fact that a person may be employed in a position designated as that of an accountant and may apply some 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 would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor’s degree level of a body of highly specialized knowledge in accounting. To make this determination, the AAO turns to the record for information regarding the duties and the nature of the petitioner’s business operations. 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 knowledge that may be obtained only through a baccalaureate degree or higher in accounting or its equivalent.

The AAO finds that the description of the proposed duties is generic and generalized, and lacks sufficient details to convey the practical and theoretical level of knowledge required to perform the duties. For example, some of the duties include “create monthly, quarterly and yearly reports regarding the finances of the practice, prepare internal reporting package, provide assistance to operational management in the analysis and understanding of all financial information as required, and generate timely analytical reports.” The duties appear to be the same and involve preparing a report to advise the management of its financial status. However, the petitioner is a small medical practice with seven employees, who are either nurses or medical assistants and do not appear to have management authority except the owner/physician. There is no information provided in complexity of the operation that warrants a level of knowledge that may be obtained only through a baccalaureate degree in accounting. Further, the AAO also finds that, to the extent the proffered position and its duties are described and documented in the record of proceeding, the proffered position more closely resembles the positions described under the *Handbook* section on bookkeeping, accounting, and auditing clerks.

According to the *Handbook*, bookkeeping, accounting, and auditing clerks typically do the following:

- Use bookkeeping software as well as online spreadsheets and databases

² For instance, the first definition of “most” in *Webster’s New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is “Greatest in number, quantity, size, or degree.”

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

The records that bookkeeping, accounting, and auditing clerks work with include expenditures (money spent), receipts (money that comes in), accounts payable (bills to be paid), accounts receivable (invoices, or what other people owe the organization), and profit and loss (a report that shows the organization's financial health).

The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, billing, purchasing (buying), and keeping track of overdue bills.

Similarly, the beneficiary's duties include "managing the employee payroll," "maintain all fixed assets including monthly accruals and account reconciliations," and "prepare monthly journal entries and statements for the practice and its affiliates," which resemble duties of a bookkeeping, accounting and auditing clerks. The *Handbook* states that most bookkeeping, accounting and auditing clerks need only a high school diploma, which does not qualify the position as a specialty occupation.

Counsel claims that the listed duties qualify under the specialty occupation definition; specifically, managing the account receivables and payables, because it involves overseeing of the duty to be performed by another individual. However, the definition of specialty occupation does not require one to manage others, but requires theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in accounting. Counsel does not provide information on why managing the account receivables and payables requires such theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Moreover, such duty is just one of many duties listed, and the counsel does not discuss how much time the beneficiary would spend in performing such duty or how significant such duty is in performing his duties as an accountant for the petitioner.

Counsel further states that USCIS erred in denying the petition on the basis that the petitioner failed to demonstrate that the beneficiary would be "relieved from non-qualifying functions" because it was never requested. The AAO notes that there is no requirement for USCIS to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. Title 8 C.F.R. § 103.2(b)(8) clearly permits the director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the director. Second, even if the director had erred as a procedural

matter in not issuing an RFE on the particular issue, it is not clear what remedy would be appropriate beyond the appeal process itself. In fact, counsel asserts that while such evidence was not requested, the response to the RFE was sufficient to cover the particular issue, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner yet another additional opportunity to supplement the record with new evidence. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

While the director may have erred in stating one of the basis for denial, the AAO notes that the job duties of the proffered position are described in terms of general functions, and do not meet the definition of a specialty occupation. Furthermore, the petitioner has not demonstrated that the beneficiary would be relieved from non-qualifying functions.

Counsel previously provided an organization chart in the RFE that lists seven employees including the physician/owner, nurses and medical assistants, but did not include their duties. In its appeal, the counsel mentions that the petitioner has part-time employees who were not included in the organization chart, but their duties include filing and bookkeeping. However, there is no independent evidence provided on the part-time employees and their duties. 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).

Counsel further claims in its appeal that the petitioner has another office at a different location, and the additional employees at the other location perform some of the non-essential duties cited by the director in its denial. Counsel included a list of employees at the other location and their duties. However, the regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

Counsel also claims that *O*NET* summary report for accountants clearly states that “most of these occupations require a 4 year degree” and “considerable amount of work related skill.” AAO notes that the *O*Net* Summary Report for 13-2011.01 – Accountants, cited by counsel, is insufficient to establish that the position qualifies as a specialty occupation normally requiring at

least a bachelor's degree or its equivalent in accounting or a related field. A designation of Job Zone 4 -- Education and Training Code: 5 indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, despite the counsel's assertions to the contrary, *O*NET* information is not probative of the proffered position qualifying as a specialty occupation.

Counsel also refers to *Matter of Anjani*, 12 I & N Dec. 649 (BIA (1967) and *Matter of Doultsinos*, 12 I & N Dec. 153 (BIA 1967) to state that the position of accountant is a "professional" position. However, both *Anjani* and *Doultsinos* are concerned with qualification of the beneficiary, and not the nature of an occupation. Moreover, *Anjani* and *Doultsinos* are concerned with membership in professions, not eligibility to perform services in a specialty occupation, and these decisions predate the statutes and regulations inaugurating the H-1B specialty occupation program. While the terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes *Anjani* and *Doultsinos*. Therefore, counsel's reliance on these cases is misplaced.

As the *Handbook* indicates that the proffered position does not belong to an occupational classification for which there is a categorical requirement for at least a bachelor's degree in a specific specialty, and as the duties of the proffered position as described in the record of proceeding do not indicate that the proffered position in this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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. at 1102).

As reflected in the discussion above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Furthermore, the petitioner has not provided any documentation to indicate that the industry's professional association has made a degree a minimum entry requirement.

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 for at least a bachelor's degree in a specific specialty or its equivalent. Also, 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. Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the counsel submitted copies of five advertisements in the RFE and seven in the appeal as evidence that its degree requirement is common to the industry in parallel positions among similar organizations. First, as previously discussed, the AAO will not accept evidence offered for the first time on appeal, when a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency. Second, the counsel fails to establish that the submitted advertisements are for parallel positions in similar organizations in the same industry.

For instance, one of the advertisements is for staff accountants at Medical Staffing Network, which describes itself as the largest provider of nurse staffing services in the United States by revenues. While counsel argues that the duties are parallel, it is impossible to conduct a legitimate comparison of business operations without information regarding the size, scope, scale of operations and revenues. Another advertisement is for a staff accountant for [REDACTED], a professional staffing company whose annual revenue is \$30 million and has 137 employees. The petitioner, on the other hand, has gross revenue of \$1 million and seven employees. Therefore, it cannot be determined whether the advertised positions would be considered parallel to that of the proffered position. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.³

³ According to the *Handbook's* detailed statistics on accountants and auditors, there were approximately 1,216,900 persons employed as accountants and auditors in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-1> (last accessed May 4, 2012). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just five job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the medical industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of accountant for a seven-person medical practice required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected

The documents provided do not establish that a degree in accounting is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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 shows that the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation.

The petitioner and counsel claim that the duties of the proffered position are complex, because the beneficiary would work with consultants to develop "electronic medical record system," utilizing skills gained from accounting and applying them to assist in accounting organization, effectiveness and content. However, counsel failed to provide sufficiently detailed information or documentary evidence to show the level of complexity or theoretical knowledge required to perform this duty. Counsel enclosed copies of what appears to be screen shots of this medical record system currently in use, but failed to explain complexities or uniqueness of its function and extent of its use for accounting purposes. In addition, this is just one of the many duties that the beneficiary would be engaged in, and the counsel failed to discuss significance of this particular duty as an accountant that would distinguish the position from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the accountant duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex and unique. While one or two courses in accounting may be beneficial in performing certain duties of an accountant position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree in a specific specialty, or its equivalent are required to perform the duties of the particular position here proffered.

Accordingly, the petitioner failed to establish that the position is so complex or unique that it can only be performed by an individual who has attained at least a bachelor's degree, or the

could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

equivalent, in accounting or a related specialty or its equivalent. Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion entails an employer demonstrating that it normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

In the instant matter, the counsel indicated that the petitioner previously did not have an accountant, and there is no record of the employees who previously held the position. Therefore, there is no evidence to 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).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO incorporates by reference and reiterates its earlier discussion about generalized and generic nature of the petitioner's descriptions of the proposed duties. The petitioner failed to meet its burden of proof to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

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 sustained that burden.

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