



U.S. Citizenship
and Immigration
Services

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Date: **OCT 18 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the 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 remain denied.

On the Form I-129, Petition for Nonimmigrant Worker, the petitioner describes itself as an engineering company established in 1971 with five employees and with one million dollars in gross annual income and \$100,145 in net annual income. The petitioner seeks to employ the beneficiary as an accountant and seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of his determination that the petitioner failed to demonstrate that the position qualifies for classification as 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); (3) the petitioner’s response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, and counsel’s supplemental brief. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director’s grounds for denying this petition.¹ Accordingly, the appeal will be dismissed, and the petition will remain denied.

Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate that the petition is supported by a certified Labor Condition Application (LCA) which corresponds to it. For this additional reason the petition must be denied.

As noted above, the petitioner described itself on the Form I-129 as an engineering company. In its March 17, 2011 letter of support, the petitioner asserted that over the past two years its revenues had increased approximately 30 percent resulting in the need for a full time in-house accountant. The petitioner noted that although it only employed five individuals, as much as 80 percent of the company’s revenues flow through to its subcontractors. The petitioner indicated that it is responsible for large sums of the public’s money and is responsible for ensuring that the public’s money flows to the appropriate bodies. The petitioner stated that the “Accountant will be responsible for ensuring that revenues are received and payments and expenditures made in accordance with the fiduciary capacity in which [the company] hold[s] these sums.” The petitioner described the duties of the proposed position as including:

- Ensuring the efficient running of the company and that all records are kept appropriately
- Recording and analyzing the financial information of the company
- Assisting with budgeting and cost management

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). It was in this review that the AAO observed an additional ground for denial of the petition, which, although not noted by the director, nevertheless precludes approval of this petition.

- Responsible for accounting and processing systems including the selection of upgrades as appropriate and ensuring the systems keep pace with the company's needs
- Communicating financial information to its clients and subcontractors, including State and Local Governments
- Preparing and verifying reports and financial documents before they are sent out,
- Advising on information technology
- Advising on and managing the office budget
- Assisting with the preparation of bids and Requests for Proposals, many of which involve millions of dollars

The petitioner stated that only someone with a degree in accountancy is capable of performing the above responsibilities. Upon review, the director requested further detail regarding the proposed position in an RFE. In response, the petitioner provided a list of the proposed job duties including:

- Manage all billing activities
- Prepare and ensure timely reporting of all financial information
- Provide training for new staff as needed
- Recommend and implement procedures for internal controls
- Ensure that all payments and taxes are on time
- Financial analysis of the firm
- Budgeting and spending
- Accounting system maintenance and technology optimization
- Accounts receivables and payables
- Interface with clients and internal staff to verify transactions and billings
- Financial consultation
- Maintain proper records and do reports of all analysis through the utilization of QuickBooks
- Review the requests for payments from contractors (AIA Forms), determine the amount of money to be issued based on work completed, have engineer sign and submit to owner for release of payment
- Responsible for maintaining accurate payroll information

Counsel provided a summary of the above duties and the amount of time the beneficiary would spend on the duties as follows:

- Billing – 20 percent
- Financial Consultation – 20 percent
- Technology Consultation – 10 percent
- Budgeting/Company Performance and Evaluation – 25 percent

The record contains multiple claims regarding the high responsibility and decision-making required of the proffered position. For example, counsel for the petitioner stated specifically in her letter in response to the director's RFE: "it is the overall responsibility of the Beneficiary to

ensure that the firm is run efficiently, records are accurately kept and that taxes are properly paid and on time.” Counsel also noted that the beneficiary is one of two individuals with access to the passwords for the company’s accounting software. On appeal, counsel argues that the duties set out by the petitioner are the duties of a specialty occupation accountant.

However, when considering the petitioner’s claim regarding the responsibilities inherent in the position in connection with the LCA the petitioner submitted with the petition, the petitioner’s claims are questionable. The LCA submitted by the petitioner in support of the instant position indicates that the occupational classification for the position is “Accountants and Auditors,” SOC (ONET/OES) Code 13-2011.00, at a Level I (entry-level) wage.² The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level 1 (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The proposed duties’ level of complexity, uniqueness, and specialization, as well as the level of independent judgment and understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA’s wage level is indicative of a position that is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner’s assertions regarding the proposed position’s demands and level of responsibilities. Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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

² See DOL, Employment and Training Administration’s *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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 regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, United States Citizenship and Immigration Services (USCIS)) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, it appears that the petitioner has failed to submit a valid LCA that corresponds to the claimed duties of the proposed position. Specifically, it has failed to submit a valid LCA that corresponds to the level of work and responsibilities that the petitioner ascribes to the proposed position and to the wage-level corresponding to such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations.

Further examples of the level of the independent responsibility that the petitioner asserts for the position include providing training for new staff, recommending and implementing procedures for internal controls, ensuring payments and taxes are on time, analyzing the firm, and providing financial consultation. The petitioner's claim that the beneficiary will perform these duties that reflect a high level of independent responsibility and independent judgment are materially inconsistent with the certification of the LCA for a Level I entry-level position, and this conflict undermines the overall credibility of the petition. The record contains no explanation for this inconsistency regarding the proposed position's wage level, a wage level that is significantly

lower than the claim of a high level of responsibility would require. Thus, even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved due to the petitioner's failure to submit an LCA certified for the proper wage classification.

We now address the basis upon which this petition was denied - the director's determination that the proposed position does not qualify for classification as a specialty occupation. The director noted in the denial decision that the duties of the proffered position included non-qualifying functions that could be performed by a bookkeeper, an occupation that is not classified as a specialty occupation. Accordingly, the director determined that the petitioner had not established that the duties of the proffered position comprised the duties of 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 that requires:

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

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

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), 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 the petitioner’s letter in support of the petition dated March 17, 2011, the petitioner stated that it required the services of an accountant for the specified period of three years.

On appeal, counsel for the petitioner asserts “that the duties to be performed by the Beneficiary in this case fall squarely within those of an accountant as defined by the OOH [Department of Labor’s *Occupational Outlook Handbook (Handbook)*].” Counsel contends that the *Handbook* confirms that a baccalaureate degree in accounting or a related field is the minimum requirement to function as an accountant in the United States. Counsel avers that the director improperly characterized the proposed duties as bookkeeping duties when the majority of the beneficiary’s duties are those of an accountant.

The AAO's first point with regard to its analysis of the proffered position is that, despite 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 AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As will now be discussed, the *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/oco/ocos001.htm>.

The "Accountants and Auditors" chapter in the 2012-2013 edition of the *Handbook* indicates that not every accountant position requires at least a bachelor's degree level of knowledge in accounting or a related specialty. *Id.*

The introduction to "How to Become an Accountant or Auditor" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in accounting, or a related field." *Id.* This, however, 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)(I)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).³

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

In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

Id. In this context, the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position

³ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in accounting or a related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting. This, the petitioner has failed to do.

As the director noted, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor 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.

The AAO notes that, as reflected in the job descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions which, the AAO finds, do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of accounting knowledge that the beneficiary would need to apply to those matters. The petitioner initially indicated that the beneficiary would keep records, record and analyze financial information, assist with budgeting and cost management, communicate with clients and subcontractors, advise on information technology, manage the office budget, and ensure the efficient running of the company. These duties do not include probative information regarding the actual daily functions that the beneficiary will perform. For example, although the petitioner indicated that the beneficiary will communicate financial information to clients and subcontractors, the petitioner does not explain what this will entail and whether only a basic understanding of the information is needed or whether advanced and specialized knowledge of accounting is necessary to perform the task. We observe that in response to the director's RFE, the petitioner stated that the beneficiary's interface with clients and internal staff would be to verify transactions and billings, a general duty that as described does not require advanced knowledge of accounting. Similarly, the petitioner stated that the beneficiary will ensure the efficient running of the company. It is not possible to ascertain whether this is an office managerial duty, an executive duty, or something else.

The petitioner's list of the proposed position's job duties in response to the RFE also fails to substantiate that the proffered position includes duties that are primarily specialty occupation duties. Indicating that the beneficiary will manage billing activities to ensure that payments and taxes are timely, will review requests for payment and determine the amount of money issued, as well as maintain an accurate payroll system and proper records through the utilization of QuickBooks, relate closely to the duties of a bookkeeper or an accounting clerk.⁴ Moreover, the

⁴ The *Handbook* identifies the typical duties of a bookkeeping, accounting, and auditing clerk as: using bookkeeping software; posting financial transactions; receiving and recording cash, checks, and vouchers; producing reports and income statements; and checking figures, reports and postings for accuracy and reconciling discrepancies. The *Handbook* notes that these workers have a wide range of tasks and some maintain an entire organization's books. The *Handbook* reports that most bookkeeping, accounting and auditing clerks need a high school diploma although some employers prefer candidates who have some

record in this matter does not include evidence demonstrating that the petitioner employs a bookkeeper or an accounting clerk and as there is no evidence that the beneficiary would be relieved from performing the company's general financial record keeping, it appears more likely than not that the beneficiary is being hired to perform, at least in substantive part, these duties. Although the petitioner indicates the beneficiary provides training for new staff and recommends and implements procedures for internal controls, these duties do not clearly relate to an accounting position nor does the description indicate that these duties require an advanced knowledge of accounting. The petitioner's indication that the beneficiary will provide financial analysis of the firm and provide financial consultation includes no information regarding the actual duties involved in these tasks. Likewise "budgeting and spending" includes no detail regarding specific tasks necessary to perform these duties. It appears the petitioner's statement that the beneficiary will perform accounting system maintenance and technology optimization may involve offering advice on information technology, and the appropriate software for the petitioner to use; again, however, this is not a duty that requires a degree in the field of accounting. The petitioner appears to believe that because the proffered position would include assisting with various tasks that involve large sums of money, the proffered position categorically requires the successful applicant to have a bachelor's degree in accounting to perform the duties; however, it is not the sums of money involved, but rather the actual tasks performed that determine whether a position is a specialty occupation.

As discussed in greater detail, *infra*, as the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal must be dismissed, and the petition denied.

The AAO will first review the record of proceeding in relation to 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). To satisfy this criterion, the evidence must establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition. As related in this decision's earlier discussion of the proposed duties in the context of the *Handbook's* information about accountants, the record of proceeding fails to establish that any accounting duties to be performed by the beneficiary would require the practical and theoretical application of highly specialized accounting knowledge attained by at least a bachelor's degree, or the equivalent, in accounting, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation.

To expand upon our finding, we observe that some of the petitioner's listed duties are also found in the *Handbook's* discussion of duties performed by accountants and auditors. In relevant part, the *Handbook* summarizes the duties typically performed by accountants and auditors as follows:

Accountants and auditors typically do the following:

postsecondary education, particularly coursework in accounting. See Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/oco/ocos001.htm>.

- 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.

As noted above, the petitioner indicates generally that the individual in the proffered position will examine financial statements, prepare reports and financial documents, ensure taxes are paid on time, communicate financial information, and maintain proper records. Although these duties are generally similar to the duties of an accountant as outlined in the *Handbook*, the petitioner has not included sufficient evidence to establish that the duties are not primarily the duties of a bookkeeper or accounting clerk. Counsel's argument that the described duties may overlap with the duties of a bookkeeper or accounting clerk to some degree but that the beneficiary will actually perform the duties of an accountant is not supported in the record. 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).

Our review has found that the occupations of a bookkeeper/accounting clerk or an accountant who is responsible for the basic and general duties as described in this matter are not occupations that normally impose a normal minimum entry requirement of a bachelor's degree in a specific field of study as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Furthermore, as previously discussed, the petitioner indicated in the LCA that its proposed position is a comparatively low, entry-level position relative to others within the occupation. Thus, based on the LCA submitted, the petitioner is unwilling to compensate the beneficiary at a level required to perform duties that involve the high responsibility it claims is involved in the position.

For the reasons discussed above, the AAO finds that the petitioner has not satisfied the requirements of the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed 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 discussed *supra*, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry.

The job vacancy announcements submitted by counsel also do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Counsel has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to the petitioner. The petitioner has submitted no evidence to establish that these advertisers conduct business in the petitioner's industry and that they are also similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Nor does the petitioner submit any evidence of how representative these advertisements are of the advertisers usual recruiting and hiring practices. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).⁵

Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty 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).

While the AAO acknowledges that some of the duties described by the petitioner are similar to those under the section on accountants and auditors in the *Handbook*, we here incorporate and

⁵ Furthermore, according to the *Handbook* there were approximately 1,216,900 persons employed as accountant and auditors and 1,898,300 persons employed as bookkeeping, accounting, and auditing clerks in 2010. *Handbook* on the Internet at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm>; <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-6> (last accessed October 2, 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 the eight vacancy announcements it submits with regard to determining the common educational requirements for entry into parallel positions in similar organizations. 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").

reiterate by reference our earlier comments in this decision regarding the lack of evidence substantiating the nature and educational level of accounting knowledge that would be required for the actual performance of the beneficiary's work. In this particular matter the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis collectively constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. We also incorporate by reference and reiterate our earlier discussion regarding the LCA and its indication that the proposed position is a low-level, entry position relative to others within the occupation. As previously noted the wage rate for which the LCA was certified is indicative of a position requiring only a basic understanding of the occupation and involving routine tasks that require limited, if any, exercise of independent judgment. 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 particular position proffered 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, and as the LCA indicates the position certified is a low-level entry position, the petitioner failed to satisfy the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(ii).

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Counsel for the petitioner noted in response to the director's RFE that the petitioner previously did not employ an internal accountant but rather employed an office manager/bookkeeper who held a bachelor's degree in business administration. Counsel asserts that the previous employee (the office manager/bookkeeper) was paid significantly less than the individual in the proffered position because the beneficiary will function as an accountant. The record does not include the duties of the previously employed office manager/bookkeeper, the number of hours she worked, or other information to conduct a comparison and ascertain whether the previous employee performed lower-level duties for a reduced rate of pay. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165, *supra*.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d 384, 387 (5th Cir. 2000). In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, 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.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized nature of the petitioner's descriptions of the proposed duties and our discussion and analysis of the petitioner's designation of the proposed position on the LCA as a low-level, entry position relative to others within the occupation. It is therefore simply not credible that the position is one with specialized and complex duties and would be a position likely to be classified at a higher-level, requiring a significantly higher prevailing wage. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge of accounting at a level usually associated with at least a bachelor's degree, or the equivalent, in accounting or a related specialty. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than other types of employees, including those bearing the title "accountant," who engage in some accounting duties and employ some accounting principles, but not at a level of an accountant applying theoretical and practical knowledge of accounting that is usually associated with at least a bachelor's degree in accounting or a closely related specialty or its equivalent.

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 the proffered position qualifies as a specialty occupation under any one of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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