



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 01 2013** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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,

Ron Rosenberg  
Acting 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 claims to be a law firm with 20 employees and a gross annual income of \$1,313,789. It seeks to employ the beneficiary in a position it designates as an accountant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position was a specialty occupation. On appeal, the petitioner contends that the director's findings were erroneous and submits a brief and additional evidence in support of this contention.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

As indicated above, the petitioner claimed on the Form I-129 that it was a law firm established in 2001. It further claimed to have 20 employees and a gross annual income of \$1,313,789. Regarding the proffered position, it stated that it required the services of the beneficiary as an accountant on a part-time basis. In a letter dated September 6, 2011, the petitioner described the duties of the proffered position as follows:

[The beneficiary's] principal duties will include preparing financial reports – general ledger accounts, assets & liabilities statement, balance sheet, profit and loss statement, etc. – and will attend to the day-to-day money transactions of the firm, and bookkeeping services. She is authorized to deposit moneys and other negotiable instruments in the bank for the firm's account, and is tasked to monitor deficiencies in controls, duplication of effort, fraud or lack of compliance with management's policies or procedures.

Regarding the beneficiary's qualifications, the record demonstrates that the beneficiary holds the U.S. equivalent to a bachelor's degree in accounting.

The director found the initial evidence insufficient and issued an RFE dated December 13, 2011. The director requested more details regarding the nature of the petitioner's business, its need for a specialty degreed accountant, and evidence that the beneficiary would be relieved from performing non-qualifying functions. The director also requested additional documentation in support of the contention that the proffered position was a specialty occupation.

In a response dated January 19, 2012, the petitioner addressed the director's queries. The petitioner claimed that its law office handled approximately 2,000 clients in immigration and criminal matters, and further indicated that it collects attorney's fees from approximately 20 clients per day via mail and credit card. Additionally, it noted that it collected attorney's fees on a monthly basis from clients who were unable to pay in one lump sum. The petitioner indicated that all of this work requires the recordation of such payments into a daily journal and ultimately transferring them to a ledger account, which is work performed by the beneficiary. In addition, the petitioner claimed that its business required the payment of professional fees to service providers, as well as the management of its payroll, payment of professional liability insurance for its attorneys, and payment of advertising costs.

The petitioner also provided the following updated description of duties for the proffered position:

- a. Prepare a daily summary of receivables and expenditures, and enter them in a general ledger account for review by Petitioner. This will consist of 10% of the beneficiary's duties.
- b. Keep track of clients who are in arrears of payment of attorney's fees, monitor payments from these clients, and provide Petitioner with a list of clients who have

- already defaulted in their payments. This consists of 10% of the beneficiary's duties.
- c. The beneficiary will analyze revenue and expenditure trends and recommend appropriate budget levels and ensure expenditure control. This consists of 10% of the beneficiary's duties.
  - d. The beneficiary will explain billing invoices, and accounting policies, to staff, vendors, and clients. This consists of 10% of the beneficiary's duties.
  - e. The beneficiary will be in charge of payroll at least twice a month, by submitting the payroll report to ADP, before disbursing salaries of the employees. She will also attend to payment of all the law office's invoices, including professional fees of independent contractors and advertisers, and remind Petitioner about the due dates of their payment. This will consist of 20% of the beneficiary's duties.
  - f. As an accountant, the beneficiary will perform the other duties required by her profession such to submit an annual report to Petitioner regarding the financial condition of the company, detailing assets, liabilities and capital, prepare balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position using calculator or computer. This will consist of 20% of her duties.
  - g. The beneficiary will work 32 hours a week for the Petitioner. This is the first time that Petitioner has advertised for an internal accountant to work for the law office. Petitioner has availed of the services, however, of a private accounting office in the past, exclusively for the purpose of filing its annual tax returns. It has not employed any individual for this position either before or at present.
  - h. The beneficiary's other main duties include setting up a manual and computer based system of general accounting for the law office, where she will be able to collect and analyze financial information, prevent losses, control deficiencies or duplication of effort, and avoid fraud or lack of compliance with management's established policies or procedures. This will consist of 20% of the beneficiary's duties.

The petitioner also submitted documentation of payments received from August to December 2011, as well as invoices due and payroll summaries for the petitioner's staff.

On December 27, 2012, the director denied the petition. Specifically, the director found that the duties of the proffered position, when examined in relation to the petitioner's organizational structure, appeared more akin to those of a bookkeeper or an accounting clerk. The director concluded that the petitioner failed to demonstrate that the proffered position was a specialty occupation.

On appeal, the petitioner restates the duties of the proffered position and asserts that the director's findings were erroneous. Specifically, the petitioner states that there are significant differences between the duties of a bookkeeper and the proposed duties of the beneficiary in the proffered position. Counsel contends that, contrary to the director's findings, the proffered position is akin to that of an accountant and requires the performance of complex duties beyond those attributed to a bookkeeper, such as analysis of financial records.

In reviewing the record, the AAO observes that the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty, or its equivalent, as the minimum for entry into the occupation, as required by the Act.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports a standard, minimum entry requirement of a bachelor's degree in a specific specialty or its equivalent for the occupation.

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

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

#### Duties

Accountants and auditors typically do the following:

- Examine financial statements to be sure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures

- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

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

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

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**Management accountants**, also called cost, managerial, industrial, corporate, or private accountants, record and analyze the financial information of the organizations for which they work. The information that management accountants prepare is intended for internal use by business managers, not by the general public.

They often work on budgeting and performance evaluation. They may also help organizations plan the cost of doing business. Some may work with financial managers on asset management, which involves planning and selecting financial investments such as stocks, bonds, and real estate.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited March 12, 2013).<sup>1</sup> The AAO finds the above discussion to be generally reflected in the petitioner's description of some duties of the proffered position to the extent that it agrees that the proffered position as described would more likely than not require the beneficiary to have an understanding of accounting principles. However, specialty degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

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<sup>1</sup> Since the issuance of the director's decision, an updated version of the *Handbook* has become available.

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

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

*Handbook*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited March 12, 2013).

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through non-equivalent experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. Although the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.<sup>2</sup>

On the Form I-129, which was filed in September 2011, the petitioner claimed that it was established in 2001 and that it had twenty employees. Additionally, the petitioner stated in its response to the RFE that it had employed an outside accounting firm "exclusively for the purpose of filing its annual tax returns." On appeal, the petitioner claims that it previously hired an external accountant and auditor "to perform exactly the proffered duties of the beneficiary."

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<sup>2</sup> It is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position.

Based on this statement, it is apparent that the external accounting services consisted of basic tax return filings and document preparation. Noting that the petitioner clearly states that these are the exact duties that will now be attributed to the beneficiary, with the main change being that the petitioner will now have an internal accounting employee, the AAO finds that the record is devoid of evidence that the duties of the proffered position rise above those of a bookkeeper or accounting clerk. For example, the petitioner employed the external accountant for intermittent tasks, such as tax return preparation. The petitioner seeks to employ the beneficiary on a part-time basis, and affirms that her duties will be exactly the same as those of the external accountant previously contracted by the petitioner. There is no evidence in the record, however, that the petitioner's business has expanded or that its revenues have significantly increased, thus warranting the services of a specialty-degreed account for 32 hours per week, 52 weeks per year. Rather, it appears that the petitioner seeks to hire an accounting clerk/bookkeeper to establish and manage an internal database of financial records in order to cut costs and locally manage payroll, bookkeeping, and infrequent tax-related issues.

According to the *Handbook*, the duties of bookkeeping, accounting, and auditing clerks are as follows:

Bookkeeping, accounting, and auditing clerks typically do the following:

- Use bookkeeping software as well as online spreadsheets and databases
- 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).

Workers in this occupation have a wide range of tasks. Some in this occupation are full-charge bookkeeping clerks who maintain an entire organization's books. Others are accounting clerks who handle specific tasks.

These clerks use basic mathematics (adding, subtracting) throughout the day.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software, spreadsheets, and databases. Most clerks now enter information from receipts or bills into computers, and the information is then stored electronically. They must be comfortable using computers to record and calculate data.

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. Many of these functions require clerks to communicate with clients.

**Bookkeeping clerks**, also known as **bookkeepers**, often are responsible for some or all of an organization's accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income).

They also produce financial statements and other reports for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying receipts, and sending cash, checks, or other forms of payment to the bank.

In addition, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

**Accounting clerks** typically work for larger companies and have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do.

Often, their responsibilities vary by level of experience. Entry-level accounting clerks may enter (post) details of transactions (including date, type, and amount), add up accounts, and determine interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may add up and balance billing vouchers, ensure that account data is complete and accurate, and code documents according to an organization's procedures.

**Auditing clerks** check figures, postings, and documents to ensure that they are mathematically accurate and properly coded. They also correct or note errors for accountants or other workers to fix.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited March 13, 2013). According to the petitioner, it currently does not employ any individual as a bookkeeper

or accounting clerk who would perform the non-specialty occupation duties described above or otherwise relieve the beneficiary from having to perform those duties. Moreover, it is noted that the part-time nature of the proffered position, coupled with the list of duties for the proffered position which include handling payroll and overall management of the petitioner's general ledger, demonstrate that the duties of the beneficiary will primarily be those of a bookkeeper or accounting clerk as set forth above.

Again, the petitioner claims that the beneficiary's services are required to eliminate the need for the outside accounting firm, who handled only tax return preparation. Since the petitioner indicates that some of the duties to be performed by the beneficiary are exactly the same as those previously performed by the outside accountant, and since the petitioner indicates that it had not previously employed any individual to internally handle the duties associated with the proffered position, it appears that aside from tax return preparation, the petitioner previously attributed its general accounting, accounts payable, and bookkeeping tasks to other employees who were not specialty-degreed accountants. The statements of the petitioner imply that the beneficiary will be assuming responsibility for general bookkeeping and payroll duties previously delegated to other employees of the petitioner that most likely were not specialty-degreed accountants, since the petitioner specifically states that it has not previously employed an internal accountant.

Based on the above assessment, the AAO concurs with the director's finding that the duties of the proffered position, when presented with the minimal evidence of the petitioner's operations, are more likely than not akin to that of a bookkeeping clerk. The *Handbook* describes the educational requirements of this occupational category as follows:

Most bookkeeping, accounting, and auditing clerks need a high school diploma, and they usually learn some of their skills on the job. They must have basic math and computer skills, including knowledge of spreadsheets and bookkeeping software.

#### **Education**

Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. In 2009, 25 percent of these workers had an associate's or higher degree.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited March 12, 2013). Based on the above section, a baccalaureate degree or higher in a specific specialty, or its equivalent, is not required for entry into this occupational category. Therefore, contrary to the repeated claims of counsel, the proffered position cannot inherently be deemed a specialty occupation that requires a degree in a specific specialty or its equivalent for entry into the occupation based on the information provided by the *Handbook*.

In addition, the AAO notes again that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728. Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. Here, the petitioner has also failed to establish that the financial transactions of a 20-person law firm with a claimed gross annual income in excess of \$1.3 million requires the services of more than a bookkeeper or accounting clerk.

Moreover, the financial documentation submitted, such as spreadsheets showing the petitioner's receivables from August to December 2011, contains no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a specialty degreed accountant as opposed to a general bookkeeper and/or accounting clerk. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

The record contains no evidence that organizations similar to the petitioner, i.e., law firms with a staff of 20 employees, impose a common degree requirement among parallel positions. Although the petitioner states on appeal that "[l]aw offices which hire individuals to perform the proffered duties of the beneficiary commonly require individuals with a degree in Business, major in Accounting or Management," the petitioner submitted no evidence to support this contention. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the position. Although the petitioner claims that the duties associated with the proffered position are so complex that only a specialty-degreed individual can perform them, the petitioner submits no evidence to support this contention regarding the complexity of the proffered position relative to other bookkeeping clerks.

The issue under this criterion is whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner fails to explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but

non-degreed or non-specialty degreed employment. In addition, the petitioner claims that it had not previously employed an accountant and simultaneously claims that the external accounting firm exclusively prepared tax returns. Therefore, absent evidence to the contrary, it is apparent that non-specialty-degreed employees of the petitioner previously handled the petitioner's internal financial operations, such as payroll and management of the general ledger. The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As stated above, the petitioner specifically states that it has not previously employed an accountant or advertised such a vacancy. Although it indicates that the beneficiary will replace its outside accounting firm, it is clear that the proffered position is a new position and that the petitioner has not previously employed any individuals in the position of accountant. Therefore, absent any evidence to the contrary, the petitioner has not satisfied this criterion.

Moreover, while the petitioner fails to specifically state the educational credentials required for entry into the proffered position (although on appeal the AAO notes its claim that a degree in business, accounting, or management is generally required), it should be noted that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree in a specific specialty could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in that specialty. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than bookkeeper and/or accounting clerk positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner simply provides unsupported opinions with regard to the complexity of the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a specialty-degreed or equivalent individual could perform them. Therefore, the record does not establish that this position is inherently more specialized or complex than other similar but non-specialty-degreed employment.

To the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Accordingly, the evidence does not establish that the proffered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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

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

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