



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **FEB 01 2013**

Office: CALIFORNIA 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:

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

On the Form I-129 petition, the petitioner claims to be a home health agency with 19 employees and a net annual income of \$140,697.40, and it seeks to employ the beneficiary as a part-time accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the proffered position was not a specialty occupation. On appeal, the petitioner contends that the director's findings were erroneous and submits a brief 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.

In its March 25, 2011 letter of support, the petitioner claimed that it was established in 2002, had nineteen employees, and had a gross annual income of approximately \$1.4 million. Regarding the proffered position, it stated that it required the services of the beneficiary as an accountant, and provided the following list of the proposed duties of the position:

1. Compile and analyze financial information.
2. Prepare profit and loss statements and monthly financial statement for timely review.
3. Prepare monthly and annual financial statement fluctuation analysis. Establish, maintain and coordinate the implementation of accounting standard operating procedures based on generally accepted accounting principles.
4. Set standard policies for preparing annual and monthly budget, expenditures, receivables, payroll, payables and staff productivity analysis.
5. Analyze revenue and expenditure trends and recommend appropriate budget levels, and ensure expenditure control.
6. Prepare and review budget, revenue, expense, payroll, invoices, billing statements and other accounting documents.
7. Issue and explain billing invoices and accounting policies to staff, vendors and clients.
8. Setting financial policies on pricing scheme, taking into consideration clients' financial capabilities.
9. Monitor and review accounting and related system reports for accuracy and completeness.
10. Analyze and resolve accounting discrepancies.
11. Recommend, develop and maintain financial databases, and manage automated and backup manual/recording system.
12. Monitor and supervise input and handling of financial data and reports for the company's automated financial system.
13. Interact with internal and external auditor in completing audits.
14. Coordinate and guide management to reach sound business decisions by preparing short- and long-term financial studies and present plans on how the business can maintain and improve general financial health and profitability.

Regarding the minimum requirements of the proffered position, the petitioner stated that it required an individual with at least a bachelor's degree in accounting or the equivalent. It further claimed that the beneficiary was qualified to perform the duties of the proffered position by virtue of her foreign bachelor's degree found to be equivalent to a U.S. bachelor's degree in business administration with a concentration in accounting.

The director found the initial evidence insufficient and issued an RFE dated April 20, 2011. The director requested additional documentation in support of the contention that the proffered position was a specialty occupation, as well as information regarding the petitioner's business operations.

In a response dated May 5, 2011, the petitioner addressed the director's queries. The petitioner explained that previously, it used Quickbooks for its financial recordkeeping and reporting and contracted an outside accounting firm to perform complex accounting tasks such as preparing year-end corporate tax returns and preparing the annual budget. The petitioner also stated that, since its gross annual income increased by nearly \$1 million from 2008 to 2009, the rapid increase in revenue required the presence of an in-house accountant.

The petitioner claimed that, by employing the beneficiary as an in-house accountant, it would not require the costly services of outside experts, thereby permitting the petitioner to improve its work turnaround time, and provide the petitioner direct access to a professional who can keep accurate and current records of the petitioner's profits and losses. The petitioner also stated that the employment of the beneficiary as an in-house accountant would favorably impact the petitioner's profitability and assist in addressing the feasibility of business expansion and setting market goals.

Additionally, the petitioner provided the following updated description of the duties of the proffered position with a breakdown of the percentage of time the beneficiary would devote to each area of duties:

1. Compile and analyze financial information.
2. Prepare profit and loss statements and monthly financial statement for timely review.
3. Prepare monthly and annual financial statement fluctuation analysis.
4. Establish, maintain and coordinate the implementation of accounting standard operating procedures based on generally accepted accounting principles.
5. Set standard policies for preparing annual and monthly budget, expenditures, receivables, payroll, payables and staff productivity analysis.
6. Analyze revenue and expenditure trends and recommend appropriate budget levels, and ensure expenditure control.
7. Monitor and supervise input and handling of financial data and reports for the company's automated financial system.
8. Manage payroll system and payment of state and federal taxes.
9. Prepare and review budget, revenue, expense, payroll, invoices, billing statements and other accounting documents.
10. Issue and explain billing invoices and accounting policies to staff, vendors and clients.
11. Set financial policies on pricing scheme, taking into consideration clients' financial capabilities.
12. Monitor and review accounting and related system reports for accuracy and completeness.
13. Analyze and resolve accounting discrepancies.

*The above job duties will consist of about 75% of the in-house accountant's time.*

14. Recommend, develop and maintain financial databases, and manage automated and backup manual/recording system.
15. Interact with internal and external auditor in completing audits.
16. Coordinate and guide management to reach sound business decisions by preparing short- and long-term financial studies and present plans on how the business can maintain and improve general financial health and profitability.
17. Conduct and prepare financial audit and interact with external auditor in completing audits and resolving tax-related issues.
18. Conducts periodic comparative analyses; sales, profit/loss, operating costs versus prior months and prior years for purposes of determining the focus of business efforts at any given point in time.

*The above job duties will comprise of about 25% of the in-house accountant's time.*

The petitioner also submitted copies of job postings for positions it contended were parallel to the proffered position in similar organizations, as well as additional documentation about the nature of the petitioner's business.

On May 24, 2011, the director denied the petition. Specifically, the director found that the duties of the proffered position, when examined in relation to the petitioner's organizational structure, appeared more akin to those of a bookkeeper or an accounting clerk. The director concluded that the petitioner failed to demonstrate that the proffered position was a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's findings were erroneous, and that there are significant differences between the duties of a bookkeeper and the proposed duties of the beneficiary in the proffered position. Counsel addresses each of the four criteria set forth under 8 C.F.R. § 214.2(h)(4)(iii)(A) and concludes that the petitioner has clearly established that the proffered position in this matter is a specialty occupation.

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

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty for entry into the occupational category.

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.

\*

\*

\*

**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 January 29, 2013). The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the proffered position as described would more likely than not require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring 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 in accounting or its equivalent.

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.

*Id.* at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited January 29, 2013).

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the petitioner correctly asserts on appeal that 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 highly-specialized knowledge that may be obtained only through at least a baccalaureate degree in accounting or its equivalent.

At the time of filing in April 2011, the petitioner stated that it commenced business operations as a home health care company in 2002. It claimed to have nineteen employees with a gross annual income of \$1.4 million and a net income of \$140,697.40. Although the record contains copies of its 2008, 2009, and 2010 Form 1120S, U.S. Income Tax Return for an S Corporation, the petitioner has provided minimal documentation related to its financial operations and organization that would shed light on the claimed complexity of the accounting work to be performed by the beneficiary. Specifically, the petitioner submitted documentation it claims is representative of its commercial transactions. However, a review of the documentation submitted reveals basic invoices and cancelled checks, as well as numerous receipts for restaurant meals. The petitioner's repeated contentions that it requires the services of an in-house accountant, when compared to the minimal evidence submitted, carry little weight, since the record offers no meaningful, corroborating evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's claimed operations are more than that required of a bookkeeper or accounting clerk or, in any event, that they are sufficiently complex to require the services of a specialty degreed accountant. Moreover, the proffered position is only a part-time position, which thereby raises further questions regarding the complexity of the duties of the proffered position as claimed.

It is noted that counsel relies on *Young China Daily v Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), asserting that the director erroneously focused on the size of the petitioner in reviewing the petition and reaching her decision. While the AAO concurs that USCIS should not limit its review to the size of a petitioner and must consider the actual responsibilities of the proffered position, it also notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the claimed 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 actual duties of a particular position. In this matter, the job description provided both initially and in response to the director's request for evidence identifies typical accounting duties, yet the record lacks sufficient evidence to demonstrate that the duties as described will actually be performed by the beneficiary or that the petitioner's organization actually has the need for an individual to perform such duties.

Specifically, the AAO notes the organizational chart submitted with the petition, which names seven employees in the following positions: (1) an administrator; (2) a billing clerk; (3) director of nursing; (4) a medical director; (5) a quality assurance employee; (6) a receptionist; (7) and an office coordinator. The organizational chart further indicates that it has the following departments with no indication as to how many persons are employed therein: (1) a governing body; (2) an accounting department; (3) a professional advisory board; (4) an IT support department; and (5) field employees. The record does not document how many "field employees" the petitioner employs, nor does it state the nature of their duties or their position titles. Furthermore, the invoices submitted are

for relatively small amounts, and a majority of the receipts included in the record are for receipts for meals from various restaurant chains such as Red Lobster and Panera. In addition, the petitioner's 1120S, U.S. Income Tax Return for an S Corporation, for 2010 clearly shows that it was prepared by an outside Certified Public Accountant (CPA), and the job duties as described do not include the preparation and filing of U.S. income tax returns for the petitioner, indicating that the beneficiary would not even assume these duties. Moreover, the job description provided also indicates that an external auditor will be involved in completing any audits of the petitioner's financial records. The petitioner also submits no evidence, such as a business plan which outlines a proposed expansion of the petitioner's enterprise, or any additional documentation demonstrating that the duties of the proffered position require duties beyond basic duties performed by bookkeeping and accounting clerks.

As discussed above, absent any independent documentary evidence to support a finding that the duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed accountant, or that a degree requirement is common to the industry, the petitioner's reliance on [REDACTED] is not persuasive. Regardless, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Based on the above analysis of the evidence contained in the record, the AAO finds that the petitioner has failed to demonstrate that the proffered position normally requires the incumbent to possess a high level of specialized knowledge that may be obtained only through at least a baccalaureate degree in accounting or its equivalent for entry into that particular position. 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, 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 insufficient evidence that organizations similar to the petitioner, i.e., small home health providers, have a common degree requirement among parallel positions. Although the petitioner submitted nine job postings in response to the director's RFE, these postings are insufficient to establish a common degree requirement in the petitioner's industry.

First, eight of the nine postings submitted include no information regarding the hiring entities aside from the fact that they are home health providers. The postings provide only generalized information regarding the type of position offered and the nature of the entity's industry, and some of the vacancy announcements are blind postings by recruiters who omit any identifying information

regarding the nature and scope of the hiring entity. As noted by the director, only one of the nine postings submitted, by [REDACTED], provides any information regarding the nature of the hiring entity. [REDACTED] is a large health network that serves as the home of a 567 bed teaching hospital, and has also been named one of the top 100 integrated health care networks in the country for 2010. Based on this information, this posting can easily be distinguished from that of the petitioner in terms of size and scope.<sup>1</sup> The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the position. The petitioner fails to specifically articulate the reasons for which it requires the services of an in-house accountant, and fails to identify which tasks, if any, can only be performed by a specialty-baccalaureate-degreed individual.

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 or its equivalent. Counsel addresses this prong on appeal, claiming that the petitioner sufficiently explained the nature of the complexity of the proposed duties, and specifically notes that the duties involved entail revenue forecasting and analysis relating to the preparation of budgets and operating procedures.

As previously stated, however, the petitioner provided no evidence of the need for revenue forecasting or other such tasks, and the documentary evidence submitted fails to demonstrate a need for the application of complex accounting principles in the course of the petitioner's ordinary business dealings. The petitioner fails to sufficiently document the need for complex accounting and

---

<sup>1</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from nine postings with regard to the common educational requirements for entry into parallel positions in similar small home health providers. *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 position of accountant for a nineteen person home health company 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 could credibly refute the 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.

fails to explain or clarify at any time in the record which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. 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. The petitioner indicates that it has not previously employed an in-house accountant. Therefore, since the record contains no evidence that the petitioner previously hired and employed specialty-baccalaureate-degreed individuals to fill the proffered position in the past, the petitioner has not satisfied this criterion.

It is noted, however, that counsel for the petitioner asserts that it has satisfied this criterion by demonstrating that it previously hired the independent accounting firm of [REDACTED] to handle its advanced accounting duties. This contention, however, is not responsive to this criterion, since the issue at hand is whether the petitioner can establish that it routinely hired and employed specialty-baccalaureate-degreed individuals for the proffered position. The fact that the petitioner previously retained an accounting firm to perform its accounting duties does not establish an in-house hiring history as contemplated under this criterion. In addition, as discussed above, there is no indication in the job description provided that the beneficiary would assume even these responsibilities currently delegated to this outside accounting firm.

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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than accounting positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner simply provides unsupported opinions with regard to the complexity of the proffered position. The record, therefore,

does not establish that this position is inherently more specialized and complex than other similar but non-specialty-degreed employment.<sup>2</sup>

Accordingly, 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 in a specific specialty or its equivalent. Therefore, 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 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.

---

<sup>2</sup> Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N.Dec. 582, 591-92 (BIA 1988).