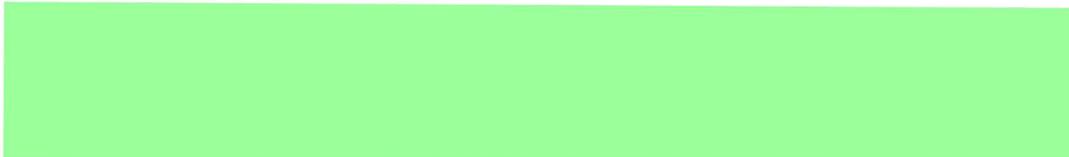
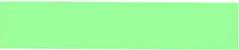


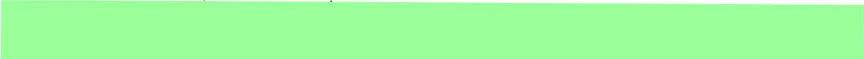


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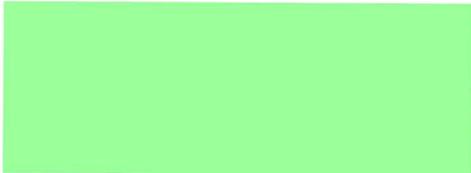


DATE: **FEB 22 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

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:

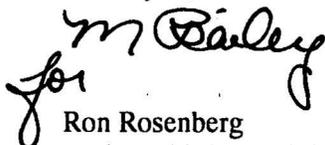


INSTRUCTIONS:

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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on May 17, 2011. In the Form I-129 visa petition, the petitioner describes itself as a religious organization established in 2000. In order to employ the beneficiary in what it designates as a treasurer position, the petitioner 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 July 5, 2011, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements. In support of this assertion, counsel submitted a brief and additional evidence.

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

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a treasurer to work on a part-time basis for 20 hours per week at a rate of pay of \$32.32 per hour.² In a support letter dated May 12, 2011, the petitioner stated the following regarding the duties and responsibilities of the proffered position:

Generally

- Be knowledgeable about Church finances and accountability.
- Oversee and account for assets and liabilities, according to decisions of the congregation, the vestry and diocese, in a reasonable, ethical and legal manner.

Weekly/Semi-Monthly

- Supervise collection, counting and deposit of contributions, ensuring that at least two persons are present during collection and counting.

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² This hourly wage equates to an annual salary of \$33,612.80 per year.

- Supervise timely payment of ordinary operating expenditure [sic], including payroll. For irregular or non-operating expenditures, make sure proper approval has been issued from the vestry.
- Post transactions to the Church ledger[.]

Monthly

- Attend vestry meetings.
- Reconcile bank statements to church ledger[.]
- Maintain records of all income, revenue, receipts, expenses, disbursements, assets and liabilities, especially documents related to loans, mortgages, investments and payroll taxes.
- Provide financial reports to the vestry on operating funds, non-operating funds, and cash balances/investments.
- Provide a summary of financial reports for the bulleting [sic] and newsletter.

Quarterly

- Provide a statement of giving to contributors following appropriate IRS regulations for tax deductibility.
- Prepare and report tax information.

Annually

- Arrange for an audit of financial records and processes by the Church accountant.
- Assist with financial planning including preparation of the annual budget.
- Work with Church accountant to prepare year-end tax information.
- Process commitments to the annual giving campaign or other campaigns of the congregation.
- Provide a detailed financial report for the Annual Meeting.

In its letter of support accompanying the initial I-129 petition, the petitioner described the minimum educational requirements for the proffered position as completion of a "formal academic curriculum in Business Education, and[/]or related field." The petitioner stated the beneficiary's academic qualifications for the proffered position as attainment of a "Bachelor's degree in Business Administration" from a university [REDACTED]. The petitioner also provided copies of the beneficiary's diploma and transcript, English translations of these documents, and an evaluation from [REDACTED] President of Worldwide Education Evaluators, Inc., which states that the beneficiary holds the equivalent of a "Bachelor's degree in Business Administration from a regionally accredited university in the United States."

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Treasurers, Controllers, and Chief Financial Officers" - SOC (ONET/OES Code) 11-3031.01, at a Level I (entry level) wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 27, 2011. The director outlined the evidence to be submitted. The AAO notes that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation. In the request, the petitioner was asked to provide documentation highlighting the nature, scope, and activity of its business enterprise and a more detailed description of the work to be performed by the beneficiary, including the specific job duties and the percentage of time to be spent on each duty.

On June 28, 2011, the petitioner responded to the director's RFE by providing a revised description of the duties of the proffered position and additional evidence. Specifically, the petitioner provided the following description of its treasurer position, along with the percentage of time that the beneficiary would spend performing each of the duties:

- 10% knowledge about Church finances and accountability and overseeing and account[ing] for assets and liabilities, according to the decisions of the congregation, the vestry and diocese, in a reasonable, ethical and legal manner. (2 hrs. a week)
- 40% in supervision of collection, counting and deposit of contributions, ensuring that at least two persons are present during collection and counting. Supervising timely payment of ordinary operating expenditure [sic], including payroll. For irregular or non-operating expenditures, make sure proper approval has been obtained from the vestry. Posting transactions to the Church ledger; (8 hrs. a week)
- 20% in attending vestry meetings. Reconciling bank statements to church ledger. Maintaining records of all income, revenue, receipts, expenses, disbursements, assets and liabilities, especially documents related to loans, mortgages, investments and payroll taxes. Providing financial reports to the vestry on operating funds, non-operating funds, and cash balances/investments. Providing a summary of financial reports for the bulleting [sic] and newsletter; (4 hrs. a week)
- 10% Providing a statement of giving to contributors following appropriate IRS regulations for tax deductibility. Prepare and report tax information; (2 hrs. a week)
- 20% Arranging for an audit of financial records and processes by the Church accountant. Assisting with financial planning including preparation of the annual budget. Working with Church accountant to prepare year-end tax information. Processing commitments to the annual giving campaign or other campaigns of the congregation. Providing a detailed financial report for the Annual Meeting. (4 hrs. a week)

In addition, the petitioner submitted an excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* (2010-2011 edition) regarding "Financial Managers"; a job posting for a "business administrator" position at [REDACTED]; letters from two other churches regarding their treasurer positions; and a copy of a job description for the position of treasurer from the [REDACTED].

The AAO notes that in the letter of support dated June 22, 2011, the petitioner stated the minimum educational requirement for the proffered position as "a Bachelor's Degree." The petitioner also reiterated its statement that the position requires "the theoretical and practical application of a body of knowledge that can only be attained through a formal academic curriculum of Business Education, and[/]or a related field."

The director reviewed the information provided by the petitioner. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on July 5, 2011. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition.

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, and for the specific reasons described below, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires 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 [(2)] requires 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, a proposed 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 147 (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.

To determine whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The petitioner stated that the beneficiary would be employed in a treasurer position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Treasurers, Controllers, and Chief Financial Officers." Information regarding this occupational category appears in the chapter of the *Handbook* entitled "Financial Managers."

³ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

The AAO reviewed the chapter of the *Handbook* entitled "Financial Managers," including the subsection regarding "Treasurers and Finance Officers."⁴ The *Handbook* describes the duties of "Financial Managers" in the subsection entitled "What Financial Managers Do" and states, in part, the following about the duties of this occupation:

Financial managers are responsible for the financial health of an organization. They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization.

Duties

Financial managers typically do the following:

- Prepare financial statements, business activity reports, and forecasts
- Monitor financial details to ensure that legal requirements are met
- Supervise employees who do financial reporting and budgeting
- Review company financial reports and seek ways to reduce costs
- Analyze market trends to find opportunities for expansion or for acquiring other companies
- Help management make financial decisions

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers' main responsibility used to be monitoring a company's finances, but they now do more data analysis and advise senior managers on ideas to maximize profits. They often work on teams, acting as business advisors to top executives.

Financial managers also do tasks that are specific to their organization or industry. For example, government financial managers must be experts on government appropriations and budgeting processes, and healthcare financial managers must know about issues in healthcare finance. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry.

* * *

Treasurers and finance officers direct their organization's budgets to meet its financial goals. They oversee the investment of funds. They carry out strategies to raise capital (such as issuing stocks or bonds) to support the firm's expansion. They also develop financial plans for mergers (two companies joining together) and acquisitions (one company buying another).

⁴ For additional information regarding the occupational category "Financial Managers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Financial Managers, on the Internet at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-1> (last visited February 13, 2013).

Handbook, 2012-13 ed., Financial Managers, on the Internet at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-2> (last visited February 13, 2013).

In the subsection entitled "Work Environment," the *Handbook* states the following about financial managers:

Financial managers held about 527,100 jobs in 2010. They work in many places, including banks and insurance companies. They work closely with top executives and with departments that develop the data that financial managers need.

The following industries employed the most financial managers in 2010:

Finance and insurance	29%
Management of companies and enterprises	9
Professional, scientific, and technical services	9
Manufacturing	8
Government	8

Work Schedules

Most financial managers work full time, and many work long hours.

Handbook, 2012-13 ed., Financial Managers, on the Internet at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-3> (last visited February 13, 2013).

The AAO notes that in the Form I-129, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 813110 – "Religious Organizations."⁵ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises (1) establishments primarily engaged in operating religious organizations, such as churches, religious temples, and monasteries and/or (2) establishments primarily engaged in administering an organized religion or promoting religious activities.

See U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 813110 – Religious Organizations, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited February 13, 2013).

⁵ NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited February 13, 2013).

As noted above, the *Handbook* indicates that financial managers work in many places, including banks and insurance companies. According to the *Handbook*, treasurers direct their organization's budgets to meet its financial goals. In addition, the *Handbook* states that they oversee the investment of funds, as well as carry out strategies to raise capital (such as issuing stocks or bonds) to support the firm's expansion. The *Handbook* indicates that treasurers also develop financial plans for mergers (two companies joining together) and acquisitions (one company buying another).

The AAO notes that the duties of the proffered position must be analyzed within the context of the petitioner's business operations. That is, in analyzing whether the proffered position is properly characterized as pertaining to the occupational category "Financial Managers," the size and scope of the petitioner's business operations are aspects for review. It is reasonable to assume that the size of an employer's organization 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. In matters where a petitioner's organization 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 position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

The AAO reviewed the record of proceeding, but is not persuaded by the petitioner's claim that the proffered position falls under the occupational category "Financial Managers," and more specifically treasurer positions. At best, the petitioner has demonstrated that the beneficiary may have a few general tasks in common with those associated with this occupation. For instance, the petitioner has not demonstrated that the beneficiary will be responsible for the investment of funds, as well as carrying out strategies to raise capital (such as issuing stocks or bonds) to support the petitioner's expansion. Additionally, the petitioner does not claim that the beneficiary will develop financial plans for mergers and acquisitions.

Furthermore, the AAO notes that the scale of the petitioner's business operations materially affects the beneficiary's day-to-day duties and the complexity of the tasks. For example, the AAO must consider that while the petitioner may expect the beneficiary to prepare financial statements – a duty of a "financial manager" as described in the *Handbook* – what this entails for a company that issues stocks and bonds, invests its profits, and is engaged in mergers and acquisitions, is substantially more complex than the preparation of financial statements for a two-employee organization with a gross annual income of \$297,000 and a net annual income of \$1,647, whose main source of income is derived from parishioner donations.⁶ Additionally, the petitioner has represented that the

⁶ In the Form I-129 petition and supporting documents, the petitioner indicated that it has a staff of two employees (a senior pastor and a secretary). According to the petitioner, volunteers help the petitioner with its ministries and various departments within the church. The petitioner stated that it has a volunteer Accounting Director but did not provide the job duties of this volunteer position. The petitioner reported its

beneficiary will spend 40% of her time on duties such as counting cash contributions, paying regular bills, and overseeing the payroll (which currently consists of two employees). In this context, the fact that a person may be employed in a position designated by an employer as that of treasurer and may apply some knowledge of financial principles in the course of his or her job is not in itself sufficient to establish the position falling under the occupational category of "Financial Managers."

In the instant case, the petitioner has not provided sufficient evidence to demonstrate that its proffered position has the substantially the same or similar duties, tasks, knowledge, work activities, etc. that are generally associated with "Financial Managers." In consideration of the above, the AAO finds that the petitioner has not demonstrated that the proffered position falls under the occupational category of "Financial Managers." Thus, the AAO will not further address this occupational category as it is not relevant to this proceeding.

The director reviewed the job description provided by the petitioner and found that the duties of the proffered position are most similar to the duties performed by bookkeepers or junior accountants as described in the *Handbook*. The AAO reviewed the chapter of the *Handbook* entitled "Bookkeeping, Accounting, and Auditing Clerks," which states, in part, the following about this occupational category:

Bookkeeping, accounting, and auditing clerks produce financial records for organizations. They record financial transactions, update statements, and check financial records for accuracy.

Duties

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

gross annual income as \$297,000 and its net annual income as \$1,647.

The petitioner provided a one page document entitled "2011 Budget," which has 4 entries under the category "Income" and six entries under the category "Expenses." No further information was provided regarding the 2011 budget. In addition, the petitioner submitted a one page document entitled "Profit Loss Prev Year Comparison January Through December 2010." The document indicates that the petitioner's income and expenses decreased in 2010 from the previous year. The document confirms the petitioner's statement in the Form I-129 that its net income for 2010 was approximately \$1,647.

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.

Handbook, 2012-13 ed., Bookkeeping, Accounting, and Auditing Clerks, on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited February 13, 2013).

In the subsection entitled "Work Environment," the *Handbook* states the following about this occupation:

Bookkeeping, accounting, and auditing clerks held about 1.9 million jobs in 2010.

They following industries employed the most bookkeeping, accounting, and auditing clerks in 2010:

Professional, scientific, and technical services 11%
Retail trade 9
Finance and insurance 7
Wholesale trade 7
Health care and social assistance 7

Bookkeeping, accounting, and auditing clerks work in offices.

Work Schedules

Many bookkeeping, accounting, and auditing clerks work full time. About 1 of 4 clerks worked part time in 2010. They may work longer hours to meet deadlines at the end of the fiscal year, during tax time, or when monthly or yearly accounting audits are done. Those who work in hotels, restaurants, and stores may put in overtime during peak holiday and vacation seasons.

Handbook, 2012-13 ed., Bookkeeping, Accounting, and Auditing Clerks, on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-3> (last visited February 13, 2013).

Upon thorough review of the chapter of the *Handbook* regarding bookkeeping, accounting, and auditing clerks, the AAO finds that the duties of the proffered position are most accurately captured by this occupational designation. For example, the *Handbook* states that the duties of bookkeeping, accounting, and auditing clerks may include receiving and recording funds; maintaining an organization's books; being responsible for the payroll and general ledger; and producing financial statements and other reports.

The subchapter of the *Handbook* entitled "How to a Become a Bookkeeping, Accounting, or Auditing Clerk" states, in part, the following about this occupation:

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.

Handbook, 2012-13 ed., Bookkeeping, Accounting, and Auditing Clerks, on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited February 13, 2013).

The *Handbook* does not state that a baccalaureate or higher degree, in a specific specialty, or its equivalent is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* reports that most bookkeeping, accounting, and auditing clerks need a high school diploma. The *Handbook* indicates that some employers prefer to hire individuals with some postsecondary education. The AAO must note that a *preference by some employers* for individuals

with some postsecondary education is obviously not an indication of an occupational entry requirement. Further, a preference for "some postsecondary education" clearly includes less than a bachelor's degree in a specific specialty.

It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. As previously mentioned, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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)).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record of proceeding regarding 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.

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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Also, there are no submissions from an industry professional association indicating that it has made a degree a minimum entry requirement.

The AAO notes that under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that "the degree requirement is common to *the industry in parallel positions among similar organizations.*"

(Emphasis added.) For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, letters submitted by other organizations are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. As previously mentioned, 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In the instant case, the petitioner submitted two letters from churches regarding similarly titled positions at those organizations. However, upon review of the documents, the AAO finds that the petitioner's reliance on the letters is misplaced.

The first letter is from [REDACTED] in Marietta, Georgia, who states that his church "employs a part-time bookkeeper and a part time treasurer." He writes, "Our bookkeeper has been with us for approximately 5 years and our treasurer for 3." The second letter is from [REDACTED] church in Mabelton, Georgia, who writes "to inform that [the church has] a part-time treasurer." The letters do not contain any further details regarding the organizations and the treasurer positions.

The AAO finds that both letters contain insufficient information to serve as probative evidence under this prong of the regulations. Most importantly, neither letter states a degree requirement for the "treasurer" position, nor describes the duties associated with the respective positions. That is, the letters do not contain any details regarding the job duties and day-to-day responsibilities of the positions. There is a lack of information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, aside from job title, it is unclear whether the duties and responsibilities of these positions are the same or related to the proffered position. Further, the letters contain insufficient information to determine whether or not the organizations are "similar."

The petitioner also submitted a job description from the [REDACTED] Valley for a position entitled "Treasurer." In regard to this job description, the AAO again notes that the petitioner has failed to provide the requisite evidence to establish that the [REDACTED] is properly characterized as a "similar organization" to the petitioner. More importantly, the job description does not state an educational requirement for the position, and therefore necessarily does not establish that "the *degree requirement* is common to the industry in parallel positions among similar organizations." See 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (emphasis added).

Finally, the petitioner submitted one job posting from [REDACTED] for a full-time "business administrator" for the [REDACTED]. The advertising organization describes

itself as having "an average attendance exceeding 700 worshippers each Sunday, an annual budget of over \$2,000,000, and a full-time staff of 10 plus 6 FTE's." The job posting states an educational requirement of a "Bachelor's Degree in Business Administration or related studies *preferred*" (emphasis added). Thus, the AAO must note that the stated degree specification is a *preference*, not a requirement. In addition, the AAO notes that the petitioner has not demonstrated that the "business administrator" position is a parallel position to the proffered position. The advertised position is a full-time position that "oversees financial management, information technology (IT) management, human resources (HR) management, administrative staff, and facilities management." Additionally, the position is responsible "setting IT policy, hardware and software acquisitions, support management of website maintenance" as well as "[s]upervision of maintenance and upkeep of building, grounds and landscaping." Thus, the scope of the advertised position is substantially more involved and broad than the duties of the proffered position, described *supra*. Furthermore, even if the job posting pertained to a parallel position in a similar organization (which it does not), and the church had articulated a qualifying educational requirement (which it did not), the petitioner has failed to establish the relevancy of just one example to the issue here. That is, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from one advertisement with regard to determining the common educational requirements for entry into parallel positions in similar organizations.⁷

Thus, based upon a complete review of the record of proceeding, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its

⁷ 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 this job advertisement 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 advertisement was 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 announcement supported the finding that an organization similar to the petitioner in its industry, for a position parallel to the proffered position, commonly requires at least a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that just one posting (which appears to have been consciously selected) could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not normally require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

equivalent.

The AAO acknowledges that the petitioner may believe that its particular position is so complex and/or unique that it can be performed only by an individual with at least a bachelor's degree. In support of the assertion, the petitioner submitted evidence regarding its business operations, including its 2011 budget; a comparison chart of its 2009 and 2010 expenses and income; a list of its "Ministries Leadership" positions; a letter dated June 23, 2003 from the Internal Revenue Service regarding the petitioner's status as a tax exempt organization; two certificates of affiliation/partnership; and promotional materials for church events. However, the petitioner did not submit sufficient probative evidence regarding its business operations or the proffered position to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent. To the contrary, the evidence does not establish complexity or uniqueness as attributes of the proffered position that would require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent.

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

The AAO reviewed the record in its entirety and finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, the record lacks sufficient probative evidence to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. The evidence of record does not establish that this position is significantly different from other bookkeeper positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree is not required for these positions. In other words, the record lacks sufficiently detailed information to discern the proffered position as unique from or more complex than similar positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The AAO observes that the petitioner and counsel have indicated that the beneficiary's educational background will assist her in carrying out the duties of the proffered position, and takes particular note of her academic degree and recent religious studies. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but 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 does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be 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 the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, the AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner 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 at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding

certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner stated in the Form I-129 petition that it has two employees and was established in 2000 (approximately eleven years prior to the filing of the H-1B petition). In response to the RFE, the petitioner indicated that the proffered position is a new position. The record of proceeding does not contain any documentation regarding employees who have previously held the position and/or probative evidence regarding the petitioner's recruiting and hiring practices. The record is devoid of information to satisfy this criterion of the regulations.

Upon review of the record, the petitioner has not provided any evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

On appeal, counsel asserts that the petitioner is a "fast-growing" church and thus requires "a dedicated in-house Treasurer who can attend to the financial needs of [the petitioner] on a well organized and reconciled basis and fully comply with all internal reporting requirements as well as external reporting requirements, such as IRS filings." The AAO acknowledges that the petitioner and counsel may believe that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. However, the AAO reviewed the documentation submitted by the petitioner but finds that it fails to support the petitioner's assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

In support of the petition, the petitioner submitted various documents, including evidence regarding its business operations such as its 2011 budget; a comparison chart of its 2009 and 2010 expenses and income; a list of its "Ministries Leadership" positions; a letter dated June 23, 2003 from the Internal Revenue Service regarding the petitioner's status as a tax exempt organization; two certificates of affiliation/partnership; and promotional materials for church events. However, while the petitioner asserts that its business operations are growing and expanding rapidly, the AAO observes that the petitioner did not establish how these factors specifically impact the duties and responsibilities of the proffered position. Furthermore, the petitioner did not submit probative evidence substantiating its claims.⁸

⁸ The record of proceeding does not contain evidence establishing the rapid expansion of the petitioner's business operations. The AAO notes that the document that compares the 2009 and 2010 budgets indicates a

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.⁹ Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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.

decrease in revenue and spending. While the 2011 budget indicates an increase of revenue and expenses over 2010, it is not a detailed budget, and the petitioner has not submitted any other corroborating documentation, such as tax returns, to document the veracity of the data. However, even if the petitioner had provided such documentation, the petitioner did not submit any probative evidence to establish that these (or other) aspects of the petitioner's business demonstrate that the nature of the duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

⁹ Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) position after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

Level I (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.

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

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Even if the proffered position were a specialty occupation, which it is not, the beneficiary would not qualify to perform the duties of that specialty occupation based on her education credentials, because it has not been demonstrated that the beneficiary possesses a degree in a specialized field of study.

Specifically, while an evaluation of the beneficiary's academic credentials prepared by [REDACTED] states that the beneficiary education is "equivalent to the completion of the four-year degree, Bachelor of Business Administration, from a regionally accredited university in the United States," it fails to designate any specific business specialty. The AAO notes that a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* Thus, even if the petitioner had demonstrated that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent, the petition could not be approved, because the petitioner failed to demonstrate that the beneficiary has taken courses or gained knowledge considered to be a realistic prerequisite to any specific specialty within the field of business. For this additional reason, the petition cannot be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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