



U.S. Citizenship  
and Immigration  
Services

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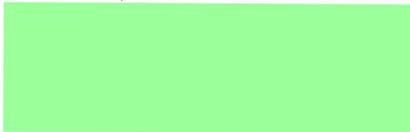


DATE: **JAN 11 2013** Office: VERMONT SERVICE CENTER File:

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

The information presented in the petition indicates that the petitioner is a real estate brokerage firm established in 2000, with four employees. It seeks to employ the beneficiary as an Accountant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, determining that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's July 7, 2011 denial letter; and (5) the Form I-290B, with petitioner's brief and accompanying evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the evidence in the record of proceeding establishes that the proffered position is a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. 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 petitioner seeks the beneficiary's services as an accountant. In its July 29, 2011 letter of support, the petitioner indicated that the beneficiary's job duties would be as follows:

- [A]pply principles of accounting and utilize specialized accounting skills to perform documentation of accounts and transactions;
- Analyze various financial information;
- [Prepare] account[s] payable and account[s]receivable;
- [C]reate credit memos for clients; and
- [Conduct] bank reconciliation and prepare financial reports.

The petitioner asserted that the position requires a bachelor's degree in accounting, finance, or a related field, and stated that the beneficiary possesses the U.S. equivalent of a bachelor's degree in economics, and a master of business administration degree with a concentration in finance and accounting.

The Labor Condition Application (LCA) which the petitioner submitted for the petition was certified for an "Accountant" under SOC code 13-2011.00, Accountants and Auditors, to work full-time at the petitioner's location in New York City. According to the related wage rate, the LCA obligated the petitioner to pay the beneficiary at least an hourly wage of \$26.25 per hour, which would meet the Level I prevailing wage of \$26.25 per hour.

In the RFE dated August 11, 2011, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed evidence including, but not limited to: a detailed statement to explain the beneficiary's proposed duties and responsibilities, with the percentage of time

devoted to each duty; information that states the educational requirements for the duties; and an explanation as to how the beneficiary's education relates to the position. Also, the director requested evidence documenting the following: the degree requirements of the particular position and within the industry; the complexity and unique nature of the position; the nature of the position's duties as specialized and complex; and the petitioner's past recruitment and employment practices for the particular position. Additionally, the director requested evidence that the beneficiary had continuing diplomatic status, together with a copy of the beneficiary's Form I-94 arrival/departure record.<sup>1</sup>

In response to the RFE, the petitioner submitted a letter dated August 17, 2011 through its counsel, in which it addressed some, but not all, of the director's evidentiary requests. The petitioner indicated the real estate firm's Director of Finance and Executive Vice President, who earned a Master of Business Administration in Finance, had been serving also as the firm's accountant. The petitioner submitted documentation from two Department of Labor publications: the Occupational Information Network (O\*NET), and the Bureau of Labor Statistics descriptions of "accountant" to support its occupational classification as an accountant, and not a bookkeeper. To support the assertion that the position is a specialized occupation, counsel claimed the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* states that the position of "accountant" requires a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position of accountant.<sup>2</sup> These publications, according to counsel, firmly establish that the job classification of accountant is one in which a bachelor's degree is the minimum level of education for entry into the occupation. Finally, the petitioner provided three job advertisements that it states are for accountants sought by similarly situated companies in the same geographical area.

The petitioner's RFE response included some additional details regarding the proffered position's duties, and it maintained that a degreed accountant is essential for what the petitioner described as its sizable real estate brokerage operation in the busiest real estate market in the nation. Summarized below is the breakdown of the duties, and the approximate amount of related work time, as presented in the RFE response:

- [P]erform documentation of accounts and transactions, providing follow-up and documentation of account receivables and account payables as well as monthly bank reconciliations (20%);

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<sup>1</sup> The AAO observes that the beneficiary's Form I-566 indicates that his tour of duty was expected to end on July 1, 2011, a date prior to the filing of the H-1B nonimmigrant visa petition. No other evidence was submitted by counsel to demonstrate that the tour of duty had continued up to or beyond the date of filing the H-1B nonimmigrant visa petition. As such, it is unclear whether the beneficiary had valid status at the time of filing, despite the fact that he possessed a facially valid I-94 indicating A-2 validity for "duration of status."

<sup>2</sup> 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>.

- [A]nalyze various financial information, including examining and analyzing business records and cooperative and condominium financial information to determine financial condition of property (15%);
- [D]evelop, maintain, and analyze budgets, and prepare monthly and quarterly financial statements/reports (15%);
- [U]se accounting knowledge and skills to reconcile asset holdings, accruals cash balances of clients regarding ability to purchase properties; and to provide credit memos to the company's clients indicating all financial aspects of real estate sales and purchases including tax ramifications, cash flow requirements, and financial requirements of lenders/sellers (15%);
- [S]upervise all billing issues with clients and determine and maintain record of assets, profit and loss, [and] tax liability (15%); and
- [P]lan, evaluate, implement and develop all aspects of credit and collection functions and processes, and conduct any other accounting-related activities within the company.

At the outset, the AAO finds that, as reflected in both the above-quoted description of duties from the petitioner's letter of support and in the petitioner's response to the RFE, the petitioner describes the duties of the proffered position in terms of generalized functions that appear generic to the accounting occupation in general, and contextually abstract within the nature of the petitioner's business in particular. In this regard, the AAO particularly notes that such generalized statements of duties as quoted above are not sufficient in themselves to either establish the substantive nature of the duties as they would actually be performed in the specific context of the petitioner's particular business operations or to establish the level of accounting applications that the beneficiary would have to apply and any associated level of accounting education that would be necessary to employ those applications. In the same regard, the AAO also notes that it is adversely significant that the petitioner refused to reveal its gross annual income and its net annual income – details required by the Form I-129 – entering instead "Privately Held." Also in the same regard, the AAO finds that the record of proceeding lacks any substantial information and documentation regarding the specific character and demands of any financial reports, budgetary, or accounting analysis that the beneficiary would have to undertake in the course of employment as a staff accountant.

Likewise, the petitioner did not describe the specific baccalaureate-level accounting principles, financial analytical tools, or business accounting modalities that are necessarily applied in accomplishing the stated job duties. In other words, the petitioner did not provide an adequate factual foundation for its degree-requirement claim. Likewise, as a corollary, the AAO also finds that the petitioner does not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than

accounting positions which may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The AAO also notes that the petitioner's RFE response claimed 25 full-time real estate agents working for the firm, but claimed four employees on the Form I-129, and 35 real estate agents in its initial H-1B support letter. Based on this conflicting information, the number of employees remains unclear.

On September 26, 2011, the director denied the petition, and observed that the evidence of record failed to demonstrate that the proffered position was that of an accountant or that the petitioner's enterprise required the services of a degreed accountant. The director also concluded that the petitioner had not established the proffered position as a specialty occupation because the duties of the beneficiary in relation to the petitioner's business failed to demonstrate that the position required the specialized and complex knowledge of a degreed accountant. The director also determined that the proposed duties bear a reasonable relation to duties associated with a bookkeeper or an accounting clerk because the primary function would be the payroll and financial transaction reporting duties.

In its statement on appeal, the petitioner asserts that the director's denial was erroneous. Specifically, the petitioner contends that the position is in fact an accountant position, and that the service did not give due consideration to the stated duties. On appeal, the petitioner declares that it handles transactions worth over \$80 million annually. It also explained that it plans to add a new leasing division to its business model, with anticipated growth measured by increased transactions. More particularly, the petitioner stated that it projected an increase of \$800,000 to \$900,000 in revenue for the year 2012.<sup>3</sup> As the petitioner presented no documentation substantiating the accuracy of this projection and no documentation establishing specific and objective planning that would show that projection is not speculative, the AAO accords no weight to this assertion. 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)). With the addition of an accountant, explains the petitioner, the real estate firm will be positioned to facilitate such high volume activity by adding accounting best practices. While not explicitly stated, the petitioner appears to be stating these facts to provide background information as to the complex or unique aspects of the position, or the specialized and complex nature of the position's duties.

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)(I),

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<sup>3</sup> The AAO notes that the financial information is presented for the first time on appeal, as the petitioner intentionally withheld its gross and net annual income figures on Form I-129.

which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

First, the AAO observes that the O\*NET and BLS publications in the record of proceeding describe accountant job duties that have some similarity to the proffered position. Therefore, the AAO will assume, *arguendo*, that the proffered duties as described by the petitioner and the evidence of record would fall within the occupational classification of Accountants. To that end and to make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO will now look at the *Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.

The *Handbook* describes the Accountants and Auditors occupational classification 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

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 8, 2013). In addition, the *Handbook* indicates that there are four main types of accountants and auditors: public accountants, management accountants, government accountants, and internal auditors. *Id.* Since the petitioner in this matter is a private real estate firm, the focus of the AAO's analysis will be on whether the proffered position is that of a management accountant or internal auditor.

According to the *Handbook*:

**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.

**Internal auditors** check for mismanagement of an organization's funds. They identify ways to improve the processes for finding and eliminating waste and fraud. The practice of internal auditing is not regulated, but the Institute of Internal Auditors (IIA) provides generally accepted standards.

*Id.*

Under the section on "How to Become an Accountant or Auditor," the *Handbook* states that:

Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Certification within a specific field of accounting improves job prospects. For example, many accountants become Certified Public Accountants (CPAs).

### **Education**

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.

Work experience is important for getting a job, and most states require experience before an accountant can apply for a CPA license. Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

*Id.*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited January 8, 2013).

The AAO's first point with regard to its analysis of the proffered position is that the *Handbook* indicates that, despite the petitioner's assumption to the contrary, a position's inclusion in the Accountants occupational group is not in itself sufficient to establish that that particular position is one for which a bachelor's or higher degree, or the equivalent, in accounting or a closely related specialty is normally the minimum requirement for entry.

More specifically, the introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." *Id.* This does not support the view that any and all positions that may be properly identified as accountant positions satisfy this first criterion. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).<sup>4</sup>

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

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

*Id.* In this context, the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), by being one for which the minimum requirement for entry is at least a bachelor's degree, or the equivalent, in a specific specialty. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and

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<sup>4</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in accounting or a closely related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

practical application of a body of highly specialized knowledge obtained by at least a bachelor's degree, or its equivalent, in accounting. This, the petitioner has failed to do.

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

The AAO will next consider whether O\*NET supports the proposition that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel maintains that O\*NET reports that 79% of the respondents require a bachelor's degree for accountant positions, and 9% of respondents require a master's degree. Contrary to the assertions of counsel, O\*NET does not state a requirement for a bachelor's degree. Rather, it reports respondents' job requirements, and it assigns the accountants occupation a Job Zone "Four" rating, which groups the occupation as one of which "most," but not all, "require a four-year bachelor's degree." Further, O\*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. See the U.S. Department of Labor's Occupational Information Network (O\*NET) section on Accountants on the Internet at <http://www.onetonline.org/link/summary/13-2011.01> (last accessed on January 8, 2013). Therefore, O\*NET is not probative of the proffered position being a specialty occupation as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will analyze whether the petitioner has satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, 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. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to

have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of three advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the real estate industry. The advertisements provided show that a bachelor's degree in accounting is generally required, or alternatively the advertising entities would also accept bachelor's degrees in the fields of business, business administration, or finance. However, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are for parallel positions in similar organizations in the same industry.

The first advertisement regards a project compliance accountant for a real estate developer/property management company, but the petitioner has not described the position as a project compliance accountant, and it has not stated that it is involved in property management, or otherwise established that the advertised position is parallel to the position here proffered or that the advertising entity is similar to the petitioner in terms of business focus, size, or scope.

The second advertisement is for a property accountant with a commercial real estate development and management company. Again, the petitioner has not described the position as a property accountant, and it has not stated that it is engaged in property management. Therefore, it also cannot be determined whether the job would be considered parallel to that of the proffered position or that the advertising entity is an organization similar to the petitioner.

The third advertisement is for a staff accountant, and it appears to be a corporate accounting position because the incumbent reports to the corporate finance team. Moreover, although the advertising entity does not identify its industry, it appears that it is either a public company or a public accounting firm, by virtue of the stated job duties utilizing Sarbanes-Oxley internal control reviews.<sup>5</sup> Therefore, it cannot be found to be a parallel position in a similar organization. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>6</sup>

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<sup>5</sup> The Sarbanes–Oxley Act of 2002, is a United States federal law that set new or enhanced standards for all U.S. public company boards, management and public accounting firms. Pub.L. 107-204, 116 Stat. 745.

<sup>6</sup> According to the *Handbook's* detailed statistics on accountants and auditors, there were approximately 1,216,900 persons employed as accountants and auditors by various organizations in 2010. *Handbook*, <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-6> (last accessed January 8, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just three job postings with regard to the common educational requirements for entry

Accordingly, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with at least a bachelor's degree in a specific specialty can perform the work associated with the position.

The petitioner asserts that the position is so complex and/or unique because the duties involve analyzing financial information and preparing financial reports in determining and maintaining records of assets, liabilities, profit and loss, and tax liability. Beyond this assertion, the petitioner also portrays its real estate firm as growing with a high volume of transactions, but does not adequately establish a nexus between the position's alleged complexity and uniqueness and any application of the specialized knowledge it claims is necessary for the position. Moreover, the petitioner fails to support its claims regarding its claimed financial projections, and therefore the AAO cannot find that the position held within the petitioner's business would be sufficiently complex or unique. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, the AAO notes, on the LCA, the petitioner has designated the proffered position as a Level I position, 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). This fact also does not weigh in favor of the proffered position being distinguished by relative complexity or uniqueness.

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into parallel positions in similar organizations in the real estate industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of marketing coordinator for a ten-person insurance firm 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.

Consequently, as the evidence in the record of proceeding fails to demonstrate the requisite complexity or uniqueness in the proffered position, or that it is more complex or unique than accounting positions that do not require the services of a person with at least a baccalaureate degree in a specific specialty, or its equivalent, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the employer demonstrate that it normally requires for the position at least a bachelor's degree, or its equivalent, in a specific specialty.

The AAO's review will, of course, always include whatever evidence has been submitted with regard to the petitioner's past recruiting and hiring practices, as well as with regard to the credentials and relevant history of employees who previously held the position, such as documentation of their educational attainment when they were hired for the position and documentation of their term of employment with the petitioner.

In the instant matter, the petitioner states that its Director of Finance and Executive Vice President, who holds a Master of Business Administration degree in Finance, had previously taken on the role of staff accountant. Although the staff accountant functions were performed by a degreed individual, counsel has not provided documentary evidence that would establish that the petitioner has a practice of only employing a degreed individual for the particular position. 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)).

As the evidence in the record of proceeding does not demonstrate that the petitioner has an established history of recruiting and hiring only persons with at least a bachelor's degree or equivalent in a specific specialty for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>7</sup>

Next, the AAO considers the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a petitioner to establish that the nature of the specific duties of its position is so

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<sup>7</sup> To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387.

specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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's duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than accountant positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty.

Moreover, the AAO incorporates its earlier discussion regarding the wage-level designation on the LCA, which is appropriate for duties whose nature is less complex and specialized than required to satisfy this criterion.

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.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications in great detail, except to note that, in any event, the petitioner did submit an evaluation of his foreign degree. However, the petitioner failed to submit all of the underlying evidence to establish that his degree is the equivalent of a U.S. master's or bachelor's degree in a specific specialty.

Notably, the educational evaluation states that the beneficiary's bachelor's degree and transcript in economic science (theoretical economics) were reviewed, and found the degree to be equivalent to a U.S. bachelor's degree in economics. It is noteworthy that the record of proceeding does not have a baccalaureate diploma and transcript, but instead, a letter

from [REDACTED] certifying that the beneficiary was awarded an interdisciplinary B.A. degree in the social sciences-logistics track (logistics, economics and interdisciplinary studies)(verbatim). Also of note, the master's transcript indicates enrollment in at least seven finance and accounting courses culminating in a grade. However, the remarks section of the transcript indicates that no credit was awarded for three of the seven courses.

For another three of the seven courses, the remark section states "exempt," without further explanation within the transcript. The AAO finds that the reliability of the education evaluation is uncertain because the record of proceeding does not contain the beneficiary's master of business administration diploma, the beneficiary's bachelor of arts diploma, or a bachelor of arts transcript. Again, the record of proceedings contains a master's level transcript that shows few finance and accounting courses with questionable remarks. The AAO may, in its discretion, use an evaluation of a person's foreign education as an advisory opinion. However, where an opinion is not in accord with other information or is in any way questionable, the AAO may discount or give less weight to that evaluation. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

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.