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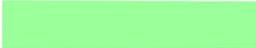
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



DATE: JUN 27 2013

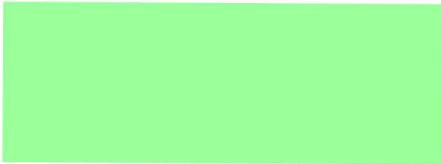
OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a men's clothing company. To employ the beneficiary in what it designates as a "Company Accountant" position, the petitioner endeavors 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The immediate issue on appeal is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meet 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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. *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.

With the visa petition, counsel submitted evidence that the beneficiary was awarded a bachelor's degree in commerce with a concentration in accounting by Saint Louis University in the Philippines. Counsel also provided, *inter alia*, (1) a letter, dated September 20, 2010, from the petitioner's president; (2) three vacancy announcements, and (3) counsel's own letter dated September 24, 2010.

In his letter, the petitioner's president provided the following description of the duties of the proffered position:

***Budget Balancing and Account Monitoring***

- ✓ Ensures the financial stability and sustainability of the business;
- ✓ Reviews, analyzes and revises budgets as necessary, ensuring the company is operating on a balanced budget and makes recommendations to the President;
- ✓ Prepares, examines and analyzes accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards.
- ✓ Flags inefficiencies in expenditures which can reduce cost and increase profit margins;
- ✓ Oversees accounts payable and accounts receivable operations as follows:
  - Accurate and timely generation of daily billings
  - Weekly/Monthly generation of revenue distribution, accruals, work in process
  - Weekly/Monthly Outside Production reports

- Monthly reconciliation of Sales and Accounts Receivables
- Monthly reconciliation of accounts receivable and accounts payable subsidiaries with general ledger control account
- Monthly sales tax deposit and quarterly sales tax return
- Ensures accurate vouchering of invoices matched with purchase orders
- Verifies proper issuance of checks for vendors scheduled for payment
- Closes accounts payable according to schedule (post sub-ledger to general)
- Prepares monthly unvouchered merchandise for accrual purposes
- ✓ Researches and resolves claims includes pricing & receiving issues and client billing issues;
- ✓ Summarizes transactions in standard formats and organizes data in special formats as called upon for use in financial analysis;
- ✓ Meets with President and Management Analyst to collaborate on advisable improvements to accounting systems and procedures;
- ✓ Upon request of the president, prepares ad-hoc reports for executive review.

### ***Financial Planning***

- ✓ Reviews/revises/prepares forms and packets containing detailed financial information to support annual audit requirements and proposed budget plans;
- ✓ Oversees financial planning input and analysis;
- ✓ Works with management analyst to survey operations, ascertain accounting needs and recommend, develop, and maintain solutions to operations and financial problems;
- ✓ Utilizes computer technology as appropriate to develop and implement financial solutions and document record-keeping and accounting systems.

The petitioner's president also stated:

As is evident from the above duties, the [proffered] position requires application of a specialized knowledge which is gained through formal coursework associated with the attainment of a bachelor degree in an accounting or financial specialty.

In his own letter, counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) and stated that the evidence demonstrates that the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

On December 13, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*, (1) an evaluation, dated January 18, 2010, of the proffered position; (2) evidence pertinent to people other than the beneficiary; (3) evidence pertinent to previous recruitment by the petitioner for the proffered position; (4) a letter, dated January 14, 2011, from the petitioner's president; and (5) counsel's own letter, dated January 18, 2011.

The January 18, 2010 evaluation of the proffered position was prepared by a professor of the [REDACTED] School of Business. It states that the duties of the proffered position, as described in the petitioner's president's September 20, 2010 letter, "are identical to the accountant positions I have seen in other companies in this and closely related industries." It further states that the duties of the proffered position require "skills in accounting, finance, budgeting, statistics, forecasting, economics, management, business law and information systems" that can "only be obtained through a minimum of a bachelor's degree in accounting or a related field"; that companies designing, manufacturing and distributing clothes most commonly employ company accountants with a bachelor's degree in accounting or a related field; and that such a degree is the industry standard.

The petitioner's president stated in his January 14, 2011 letter, that [REDACTED] worked for the petitioner as its accountant from September 8, 2009, to June 30, 2010. Documentary evidence shows that [REDACTED] also known as [REDACTED] received a bachelor of science in commerce from the [REDACTED] and subsequently became a certified public accountant in the Philippines. A quarterly wage report shows that during the fourth quarter of 2009, the petitioner employed [REDACTED] and paid her \$7,587.20.<sup>1</sup> In his January 18, 2011 letter, counsel stated that [REDACTED] are the same person.

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). The record contains no indication, other than counsel's assertion, that [REDACTED] are the same person.

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<sup>1</sup> Counsel also provided evidence pertinent to previous positions held by [REDACTED]. Those previous positions are of no direct relevance to whether the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or the equivalent.

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The evidence pertinent to other people also shows that [REDACTED] received a bachelor's degree in commerce (accounting) from the Philippines. A quarterly wage report shows that during the second quarter of 2009 the petitioner employed [REDACTED] and paid her \$432. In his January 18, 2011 letter, counsel stated that [REDACTED] are the same person. Again, that assertion has no evidentiary weight.

Payroll printouts show that the petitioner employed [REDACTED] during June 2003 and September 2005, and paid her \$1,046.40 and \$416 during those months, respectively. No evidence pertinent to the education of [REDACTED] was provided. Evidence provided pertinent to previous positions she held was provided, but has, of course, no direct relevance to whether the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or the equivalent.

A Custom Transaction detail Report indicates that, on January 15, 2002, and January 31, 2002, the petitioner issued paychecks to [REDACTED] in the amount of \$1,100, and that on April 14, and April 30, 2003, it issued her paychecks in the amount of \$1,200. Other evidence shows that [REDACTED] attended [REDACTED] of Business Administration from 1980 to 1984. Again, documents pertinent to other positions Ms. [REDACTED] held were provided, but are not directly relevant to the instant issue.

The evidence pertinent to previous recruitment for the proffered position includes a classified advertisement for an accountant placed in a newspaper by the petitioner on an unknown date. Although some of the adjoining classified advertisements state that the positions announced require a bachelor's degree in accounting or a related subject, the advertisement placed by the petitioner contains no indication of any educational requirement. Counsel also provided copies of two online classified advertisements the petitioner placed. Both call for a minimum of a bachelor's degree in accounting.

In his January 14, 2011 letter, the petitioner's president stated that [REDACTED] worked for the petitioner from its incorporation through April 30, 2003, but did not state in what capacity. He further stated that she had a bachelor's degree in business administration and significant experience as an accountant. The AAO notes that an otherwise undifferentiated bachelor's degree in business administration is not a minimum of a bachelor's degree or the equivalent in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Further, Ms. [REDACTED] accounting experience has not been shown to be equivalent to a minimum of a bachelor's degree in a specific specialty. Even if Ms. [REDACTED] occupied the proffered position, that would not indicate that the position requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

The petitioner's president stated that [REDACTED] worked for the petitioner from May 20, 2003 to September 15, 2005, but did not state in what capacity. He further stated, "Based on memory, she held a relevant bachelor's degree, but we are unable to find her records." He did not indicate that

Ms. [REDACTED] held a bachelor's degree in any specific specialty related to the proffered position. The petitioner's president's memory that Ms. [REDACTED] had a bachelor's degree is of no weight, even if presumed accurate, and even if she worked in the proffered position, in demonstrating that the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent closely related to the proffered position.

The petitioner's president stated that [REDACTED] worked for the petitioner from August 1, 2003, to April 3, 2009, but not in what position. The AAO observes that the documentary evidence submitted shows that [REDACTED] received a bachelor's degree in commerce from the [REDACTED] and that the petitioner paid [REDACTED] \$432 during a single quarter of 2009. The evidence does not show the capacity in which [REDACTED] worked, or the length of her employment, or that she is the same person as [REDACTED] who received a bachelor's degree from [REDACTED]

In his own January 18, 2011 letter, counsel cited *Matter of Arjani*, 12 I&N Dec. 649 (RC 1967), *Matter of Doultsinos*, 12 I&N Dec. 153 (DD 1957), and *The Button Depot, Inc. v. DHS*, 386 F.Supp.2d 1140 (C.D. Cal. 2005) for the proposition that, "It is well established that accountants are specialty occupations within the meaning of 8 C.F.R. § 214.2(h)(4)(ii)." Counsel also asserted that the evidence presented is sufficient to establish that the proffered position is an accountant position.

The director denied the petition on February 22, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or the equivalent. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a bookkeeper position, rather than an accountant position, as urged by the petitioner and counsel.

On appeal, counsel submitted a letter, dated March 21, 2011, from the petitioner's president, and a brief.

In his March 21, 2011 letter, the petitioner's president reviewed the duties of the proffered position and asserted that they are more typical of an accountant's duties than of a bookkeeper's duties. He also asserted that, because the proffered position is an accountant position, the *Handbook* supports the position that it qualifies as a specialty occupation position. He further stated that one may infer from this "that the duties are so complex that only an individual with a degree in accounting or a closely related field could perform them."

In the appeal brief, counsel again asserted that the evidence submitted is sufficient to demonstrate that the proffered position is a specialty occupation position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook*, supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

The AAO reviewed the chapter of the *Handbook* entitled "Accountants and Auditors," including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Accountants" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

The subsection entitled "What Accountants and Auditors Do" states the following about the duties of this occupation:

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

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

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

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

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

Some workers with a background in accounting and auditing teach in colleges and universities. For more information, see the profile on postsecondary teachers.

The four main types of accountants and auditors are the following:

**Public accountants** do a broad range of accounting, auditing, tax, and consulting tasks. Their clients include corporations, governments, and individuals.

They work with financial documents that clients are required by law to disclose. These include tax forms and balance sheet statements that corporations must provide potential investors. For example, some public accountants concentrate on tax matters, advising corporations about the tax advantages of certain business decisions or preparing individual income tax returns.

External auditors review clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

Some public accountants specialize in forensic accounting, investigating financial crimes, such as securities fraud and embezzlement, bankruptcies and contract disputes, and other complex and possibly criminal financial transactions. Forensic accountants combine their knowledge of accounting and finance with law and investigative techniques to determine if an activity is illegal. Many forensic accountants work closely with law enforcement personnel and lawyers during investigations and often appear as expert witnesses during trials.

**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.

**Government accountants** maintain and examine the records of government agencies and audit private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by federal, state, and local governments ensure that revenues are received and spent in accordance with laws and regulations.

**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.

Information technology auditors are internal auditors who review controls for their organization's computer systems, to ensure that the financial data comes from a reliable source.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Accountants and Auditors, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited June 26, 2013).

The duties the petitioner's president attributed to the proffered position are consistent with the duties of accountants as described in the *Handbook*. On balance, the AAO finds that the proffered position is an accountant position as described in the *Handbook*.

The *Handbook* states, "Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field." Counsel apparently interprets that sentence to mean that all, or almost all, accountants requires a minimum of a bachelor's degree or the equivalent in a specific specialty, that accountant positions *normally* require a minimum of a bachelor's degree in a specific specialty or the equivalent, and that all accountant positions, therefore, qualify as specialty occupation positions pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

However, that "most" accountant positions require a minimum of a bachelor's degree or the equivalent in a specific specialty does not sufficiently support counsel's position. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in accounting or a related field, it

could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position offered 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. The *Handbook* does not demonstrate that accountant positions require a minimum of a bachelor's degree or the equivalent in a specific specialty.

While the *Handbook* states that most accountant positions require at least a bachelor's degree in accounting or a related field, the *Handbook* continues by stating the following:

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Accountants and Auditors, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited June 26, 2013).

The *Handbook* reports that some graduates from junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers and can advance to accountant positions by demonstrating their accounting skills. That is, the *Handbook* reports that individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and then advance to accountant positions. The *Handbook* does not state that this education and experience must be the equivalent to at least a bachelor's degree in a specific specialty. The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Further, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree or the equivalent in a

specific specialty, notwithstanding that the *Handbook* suggests that some accountant positions do not require such a degree.

Further still, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge in bookkeeping and accounting fields, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of 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.

The record contains the evaluation described above, which states that other similar companies employ a company accountant, with duties identical to those shown for the proffered position, and that, "it is most common to find a bachelor's degree in accounting or a related field as the minimum requirement for the positions of Company Accountant."

Although the evaluator asserted knowledge of the petitioner's industry, neither his attached résumé nor the list of his publications corroborates that the evaluator has any experience in, or knowledge of, the clothing industry. The nature of the evaluator's experience in that industry, and the extent of

his knowledge of it, are entirely unclear. There is insufficient evidence in the record establishing that the evaluator is an expert in the area in which he represents himself as such and that the evaluator has in any way attained such knowledge about the actual performance requirements of positions such as the one proffered here that his opinion should be accorded any deference by USCIS.

Moreover, the AAO finds that the evaluation is conclusory, and for this additional reason also, does not merit significant evidentiary weight. The evaluator cites no studies, reports, statistics, other authoritative references, or any substantive basis for his conclusions.

For both of the above reasons, the AAO accords very little probative weight to the evaluation. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Finally, counsel's reliance upon the three job vacancy advertisements is misplaced. The vacancy announcements provided are for positions entitled Staff/Cost Accountant, Staff Accountant, and Accounting Manager. The descriptions of those positions are insufficient to establish that the positions announced are sufficiently similar to the proffered position, a Level I position, that they can be presumed to require the same education. One announcement was placed by a clothing designer, manufacturer, and retailer. The others were placed by staffing firms, specializing in placing accounting personnel, and state that the positions announced are with unidentified Fashion/Apparel/Textile companies. Whether those companies are otherwise similar to the petitioner is unknown.<sup>3</sup> Two of those vacancy announcements state that the positions announced require a bachelor's degree in accounting, and one that the position requires a bachelor's degree in accounting or finance.

Further, even if all of the vacancies announced had been shown to be for parallel positions in similar organizations, which they have not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from three announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>4</sup>

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<sup>3</sup> The AAO notes that for the petitioner to establish that another organization is similar to the petitioner, it must demonstrate that the petitioner and the other organization share the same general characteristics. Such factors may include 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.

<sup>4</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from three job postings with regard to determining the common educational requirements for entry into parallel positions in similar clothing companies. *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

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next review the record regarding the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

As evident in the earlier discussion about the descriptions of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than accountant positions that can be performed by persons without a specialty degree or its equivalent.

Further, as was also noted above, the LCA submitted to support the visa petition is approved for a Level I accountant, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of accountancy. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific degree, notwithstanding that the *Handbook* suggests that some accountant positions do not require such a degree.

For the reasons discussed, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty

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"[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of accountant for a clothing company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

for the proffered position.<sup>5</sup> The evidence on that point, however, as was discussed above, is insufficient.

Although the petitioner's president stated that [REDACTED] worked for the petitioner from its incorporation through April 30, 2003, he did not state in what position. Further, she did not apparently have a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner's president stated that [REDACTED] worked for the petitioner from May 20, 2003 to September 15, 2005, but, again, did not identify her position. Further, he stated that, based on his memory, she had a "relevant" degree. The petitioner's president's assertion that his memory indicates that her degree was "relevant" is insufficient to show that Ms. [REDACTED] had a minimum of a bachelor's degree in a specialty or the equivalent closely related to the proffered position.

The petitioner's president stated that [REDACTED] worked for the petitioner from August 1, 2003 to April 3, 2009, but, again, did not identify her position with the company. Further, the only evidence he provided of that tenure that allegedly stretched almost six years is evidence that the petitioner paid [REDACTED] \$432 during the second quarter of 2009. Further, the only evidence that she may have had a college degree is evidence that [REDACTED] received a bachelor's degree. For all of those reasons, the record fails to show that the petitioner employed [REDACTED] in the proffered position from August 1, 2003 to April 3, 2009 and that she had a minimum of a bachelor's degree in a specific specialty or the equivalent closely-related to the proffered position.

The petitioner's president stated that [REDACTED] worked for the petitioner as its accountant from September 8, 2009 to June 30, 2010. The only evidence provided in support of the proposition that she had a minimum of a bachelor's degree or the equivalent in a specific specialty related to the proffered position shows that [REDACTED] received a bachelor's degree in commerce. The record contains insufficient evidence that Marissa [REDACTED] are the same person. The evidence provided is insufficient to show that [REDACTED] worked for the petitioner in the proffered position and that she had a minimum of a bachelor's degree in a specific specialty or the equivalent related to the proffered position.

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<sup>5</sup> 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. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The record contains insufficient evidence to demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or the equivalent for the proffered position. The petitioner has not, therefore, satisfied the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Some of the duties of the proffered position, "Ensuring the [petitioner's] financial stability and sustainability," for instance, are so abstractly phrased that what level of education they may be associated with is entirely unclear. The other duties, although somewhat more specific, also contain no indication that they are usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Some examples are reviewing, analyzing, and revising budgets; preparing, examining and analyzing accounting records, financial statements, and other financial reports; and flagging inefficiencies in expenditures. Whether they are so specialized and complex that they require knowledge usually associated with a bachelor's degree cannot be determined, absent evidence pertinent to the type and level of analysis required to perform those duties in the context of the petitioner's operations.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I accountant position, a position with only a basic understanding of accountancy. This does not support the proposition that the duties of the position are so specialized and complex that their performance requires a minimum of a bachelor's degree in a specific specialty or the equivalent closely-related to accounting, notwithstanding that some accountant positions do not.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, the petitioner did not submit an evaluation of her foreign degree or sufficient evidence to establish that her degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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.