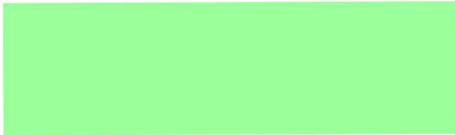




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 28 2013**

Office: VERMONT SERVICE CENTER

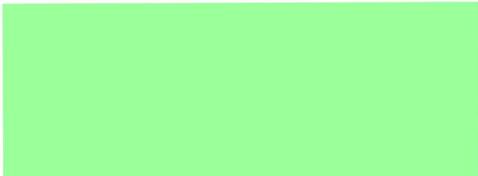
FILE: 

IN RE: Petitioner: 

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The Form I-129 visa petition states that the petitioner is a clothing designing, making, and alteration business with 12 to 15 employees. To employ the beneficiary in what it designates as an executive 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 his 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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is whether the petitioner has demonstrated that 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 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, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an executive accountant position and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011.01, Accountant. The LCA further indicates that the proffered position was certified by the United States Department of Labor (DOL) for a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary received a degree in Finance and Accounting from the [REDACTED] in China. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration with a concentration in accounting. No evidence of the evaluator's qualifications accompanied that evaluation.

Counsel also provided a letter, dated July 8, 2011, on the petitioner's letterhead. The signature of the author is illegible and the letter contains no signature line identifying the person who signed the letter. However, reference to a subsequent letter in the record shows that the signature is that of [REDACTED], the petitioner's president. The July 8, 2011 letter states the following as the duties of the proffered position:

- Maintenance of general ledger accounts and analyses accounts payable, accounts receivable and accounts reconciliation journal entries and accruals;
- Profitable analysis, bank and credit card reconciliations and cost accounting and cash flow analyses;
- Prepare monthly financial statements and reports, budgeting & forecasting band vendor and customer relationship.

- File payroll & payroll tax, prepare and file corporate taxes, both federal and state
- Safeguard assets and assure accurate and timely recording of all transactions by implementing disciplines of internal audits, control and checks
- Assure financial plans are consistent with company goals
- Other duties as the President deems necessary

That letter also states that the proffered position requires "[a] minimum of a four-year degree in Accounting"

That letter further states:

THE PETITIONER (PARENT COMPANY)

[The petitioner] is one of the three group companies, is a well-established company founded under the laws of North Carolina, with a major business in field of clothing design, making and alteration. [REDACTED] and [REDACTED] are the other two companies under the same management and the companies are engaging in the field of clothing design and making and alteration.

[The petitioner], [REDACTED] and [REDACTED] currently employs [sic] 12 – 16 employees and these company's [sic] annual gross revenue was \$1,560,000.00 for the year 2010 and we expect a stable increase this year.

We are in need of a [sic] Executive accountant for our group companies' financial affairs, with an educational background in Accounting and finance.

Thus, the letter makes explicit that, if the visa petition is approved, the beneficiary would work for the petitioner and two other companies under the same management.

On December 12, 2011, the service center issued an RFE in this matter. The director outlined the specific evidence to be submitted. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*, the following: (1) a statement, headed, "Verification," signed on December 22, 2011 by the petitioner's president and the presidents of [REDACTED] and [REDACTED] (2) counsel's own letter, dated January 8, 2012; (3) an unsigned, undated document; and (4) eight vacancy announcements, which will be addressed below.

The statement from the presidents of the three companies asserts:

This is to verify that [the beneficiary] will be hired in our company as an Executive Accountant to work 40 hours per week, sometimes, weekends overtime is necessary. Her duties will include but not limited to three (3) companies payrolls, payroll tax,

inventory control, ledger maintenance, monthly accounting reports, preparation of financial statements and filing of the company taxes.

This statement makes clear, again, that if the visa petition were approved, the beneficiary would work for two other companies, in addition to the petitioner.

In his January 8, 2012 letter, counsel stated:

The accounting jobs were handled and shared by 4 employees previously and the management decide [sic] to hire a professional accountant to handle all the accounting and tax matters fro [sic] the three companies.

The unsigned, undated document referred to above states, *inter alia*:

4. The duty was partially performed by [redacted] and [redacted] Enclosed are the w-2 forms for year 2010.

5. [redacted] position: chief accounting manager, managing all of the accounting work for the store in [redacted] data management, auditing, maintenance and assisting the accounting job in two other locations; [redacted] part time for accounting assistant for the store in [redacted]; routine accounting, monthly reporting, payroll and tax paying, ...; [redacted] part time for accounting assistant for the store in [redacted] routine accounting, monthly and quarterly reporting, payroll and tax paying.

6. company organization: [redacted] President, all accounting work; [redacted] president [redacted] vice president [redacted] secretary [redacted] did part of accounting and [redacted] and [redacted] did part; [redacted] president [redacted] secretary [redacted] did part of accounting and [redacted] and [redacted] did part.

7. Employee's degree: [redacted] Ph.D; [redacted]: Bachelor; [redacted] Bachelor in Hong Kong; [redacted] Ph.D; [redacted] no degree

Although the intended meaning of that document is not clear in every respect, it appears to indicate that some of the duties of the proffered position have been performed by [redacted] [redacted] and [redacted] [redacted] and [redacted]. It further indicates [redacted] has no college degree, that [redacted] and [redacted] have doctorates, and that [redacted] and [redacted] have bachelor's degrees. It does not indicate the subjects in which any of those people allegedly have degrees, and no evidence was provided to corroborate the statements pertinent to those degrees.

The director denied the petition on April 4, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. In that decision, the director observed that some of the duties attributed to the proffered position might be performed by a bookkeeper, rather than an accountant.

On appeal, counsel asserted that the duties described demonstrate that the proffered position is an accountant position, rather than a bookkeeper position, and that: "Statutes and case laws have been very well established that [sic] an accountant is a professional position requiring at least bachelor degree [sic] thus qualifying for specialty occupation." Counsel did not cite directly to any such statutes or case laws.

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 may be 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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

In the "Accountants and Auditors" chapter, the *Handbook* provides the following description of the duties of those positions:

What Accountants and Auditors Do

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

¹ 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.

- 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," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited June 26, 2013).

In the "Bookkeeping, Accounting, and Auditing Clerks" chapter, the *Handbook* provides the following description of the duties of those positions:

What Bookkeeping, Accounting, and Auditing Clerks Do

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

Duties

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

- Use bookkeeping software as well as online spreadsheets and databases
- Enter (post) financial transactions into the appropriate computer software

- Receive and record cash, checks, and vouchers
- Put costs (debits) as well as income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared to income), income statements, and totals by account
- Check figures, postings, and reports for accuracy
- Reconcile or note and report any differences they find in the records

The records that bookkeeping, accounting, and auditing clerks work with include expenditures (money spent), receipts (money that comes in), accounts payable (bills to be paid), accounts receivable (invoices, or what other people owe the organization), and profit and loss (a report that shows the organization's financial health).

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

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

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

The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, billing, purchasing (buying), and keeping track of overdue bills. Many of these functions require clerks to communicate with clients.

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

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

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

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

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

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

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

Id. at "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited June 26, 2013).

Most of the duties the petitioner attributed to the proffered position are consistent with the duties of bookkeeping, accounting, and auditing clerks as described in the *Handbook*. The description of the duties of the proffered position states that the beneficiary would maintain the petitioner's accounts and reconcile them, and prepare monthly financial statements and reports. The *Handbook* states that bookkeeping, accounting, and auditing clerks post financial transactions, check figures, postings and reports for accuracy, and produce balance sheets and income statements. Those descriptions provide no basis for distinguishing between the proffered position and a bookkeeping, accounting, or auditing clerk position.

The description of the duties of the proffered position speaks of "Profitable analysis," "cost accounting and cash flow analyses," and "forecasting band vendor and customer relationship." Forecasting and analysis are typically more the province of accountants than bookkeeping, accounting, and auditing clerks. However, in this instance, the record contains no evidence pertinent to the complexity of the forecasting and analysis required by the proffered position. In addition, as the petitioner did not provide a breakdown of the duties to be performed by the beneficiary, it is unknown to what extent the analysis and forecasting duties would comprise the day-to-day responsibilities of the proffered position. Therefore, whether those forecasting and analysis duties would elevate the proffered position from a bookkeeping, accounting, and auditing clerk position to an accountant position is unclear.

Further, the duties of the proffered position appear to involve, generally, making entries and performing routine duties pertinent to the petitioner's business records. Those duties are more consistent with the duties of bookkeeping, accounting, and auditing clerks than they are with those

of accountants, who organize financial records and examine them for accuracy and compliance with generally accepted accounting principles.

On the balance, the AAO does not find that the petitioner has demonstrated that the proffered position is an accountant position, rather than a bookkeeping, accounting, or auditing clerk position. However, the AAO will assume, *arguendo*, that the proffered position is an accountant position, so as to reach counsel's assertions as to those positions.²

The *Handbook* states the following about the educational requirements of accountant and auditor positions:

How to Become an Accountant or Auditor

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

² The *Handbook* indicates that the minimum educational requirement for entry into most bookkeeping, accounting, or auditing clerk positions is a high school diploma. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited June 26, 2013). As such, if the proffered position were analyzed as a bookkeeping, accounting, or auditing clerk position, rather than as an accounting position as claimed by the petitioner, the instant petition could still not be approved for this alternative reason absent additional evidence that the bookkeeping or accounting clerk position proffered by the petitioner would satisfy one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A).

practical experience through summer or part-time internships with public accounting or business firms.

Licenses

Every accountant filing a report with the Securities and Exchange Commission (SEC) is required by law to be a Certified Public Accountant (CPA). Many other accountants choose to become a CPA to enhance their job prospects or to gain clients.

CPAs are licensed by their state's Board of Accountancy. Becoming a CPA requires passing a national exam and meeting other state requirements.

As of 2012, 46 states and the District of Columbia required CPA candidates to complete 150 semester hours of college coursework, which is 30 hours more than the usual 4-year bachelor's degree. Many schools offer a 5-year combined bachelor's and master's degree to meet the 150-hour requirement, but a master's degree is not required.

A few states allow a number of years of public accounting experience to substitute for a college degree.

All states use the four-part Uniform CPA Examination from the American Institute of Certified Public Accountants. Candidates do not have to pass all four parts at once, but most states require that they pass all four parts within 18 months of passing their first part.

Almost all states require CPAs to take continuing education to keep their license.

Certification

Certification provides an advantage in the job market because it shows professional competence in a specialized field of accounting and auditing. Accountants and auditors seek certifications from a variety of professional societies. Some of the most common certifications are listed below:

The Institute of Management Accountants offers the Certified Management Accountant (CMA) upon applicants who complete a bachelor's degree. Applicants must have worked at least 2 years in management accounting, pass a two-part exam, agree to meet continuing education requirements, and comply with standards of professional conduct. The exam covers areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management.

The Institute of Internal Auditors (IIA) offers the Certified Internal Auditor (CIA) to graduates from accredited colleges and universities who have worked for 2 years as internal auditors and have passed a four-part exam. The IIA also offers the Certified in Control Self-Assessment (CCSA), Certified Government Auditing Professional (CGAP), and Certified Financial Services Auditor (CFSA) to those who pass the exams and meet educational and experience requirements.

ISACA offers the Certified Information Systems Auditor (CISA) to candidates who pass an exam and have 5 years of experience auditing information systems. Information systems experience, financial or operational auditing experience, or related college credit hours can be substituted for up to 2 years of experience in information systems auditing, control, or security.

For accountants with a CPA, the American Institute of CPAs (AICPA) offers the option to receive any or all of the Accredited in Business Valuation (ABV), Certified Information Technology Professional (CITP), or Personal Financial Specialist (PFS) certifications. The business valuation certification requires a written exam and completion of at least 10 business valuation projects that demonstrate a candidate's experience and competence. The technology certification requires the achievement of a set number of points awarded for business technology experience and education. Candidates for the personal financial specialist certification also must achieve a certain number of points based on experience and education, pass a written exam, and submit references.

Advancement

Some top executives have a background in accounting, internal auditing, or finance. For more information, see the profile on top executives.

Beginning public accountants often advance to positions with more responsibility in 1 or 2 years and to senior positions within another few years. Those who excel may become supervisors, managers, or partners; open their own public accounting firm; or transfer to executive positions in management accounting or internal auditing in private firms.

Management accountants often start as cost accountants, junior internal auditors, or trainees for other accounting positions. As they rise through the organization, they may advance to accounting manager, chief cost accountant, budget director, or manager of internal auditing. Some become controllers, treasurers, financial vice presidents, chief financial officers, or corporation presidents.

Public accountants, management accountants, and internal auditors can move from one aspect of accounting and auditing to another. Public accountants often move into

management accounting or internal auditing. Management accountants may become internal auditors, and internal auditors may become management accountants. However, it is less common for management accountants or internal auditors to move into public accounting.

Important Qualities

Analytical skills. Accountants and auditors must be able to identify issues in documentation and suggest solutions. For example, public accountants use analytical skills in their work to minimize tax liability, and internal auditors do so when identifying fraudulent use of funds.

Communication skills. Accountants and auditors must be able to listen carefully to facts and concerns from clients, managers, and others. They must also be able to discuss the results of their work in both meetings and written reports.

Detail oriented. Accountants and auditors must pay attention to detail when compiling and examining documentation.

Math skills. Accountants must be able to analyze, compare, and interpret facts and figures, although complex math skills are not necessary.

Organizational skills. Strong organizational skills are important for accountants and auditors who often work with a range of financial documents for a variety of clients.

Id. at "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited June 26, 2013).

The *Handbook* only states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." The *Handbook* does not state that such a degree is a normal minimum entry requirement for all accountant and auditor positions and, by extension, it does not indicate that such a requirement is standard for entry into the particular position proffered in this matter. 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 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. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

In addition, as noted above, the *Handbook* indicates that some without a bachelor's degree or even a postsecondary degree may "advance to accountant positions by demonstrating their accounting skills on the job."

Further, 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 of financial records, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty or its equivalent as minimally necessary to attain such knowledge.

Further still and despite the "executive" title given the proffered position, the petitioner has designated it as a Level I accountant position on the submitted 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. 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 in a specific specialty or its equivalent, especially as the *Handbook* suggests that some accountant positions do not require such a degree or its equivalent as a minimum for entry into the occupation.

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 in a specific specialty or its equivalent, 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 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 a standard industry-wide entry 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 petitioner did submit eight vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Site Accountant for an unidentified company in an unidentified industry requiring a "B.S. in Accounting, Finance, or other quantitative degree," and five to seven years accounting experience;
2. General Accountant for an unidentified manufacturing firm requiring a bachelor's degree in accounting, finance, or business and "3+ years of general accounting experience";
3. Senior Accountant for [REDACTED] requiring an otherwise unspecified bachelor's degree and "3-5 years experience in either public accounting (preferably financial services) or industry (preferably mortgage servicing or commercial lending)";
4. Staff Accountant for an unknown company in an unknown industry requiring a bachelor's degree in accounting or finance and a minimum of three years experience.
5. Senior Accountant for an unidentified company requiring an otherwise unspecified bachelor's degree, "strong ledger experience," and "Month[-]End Close experience," and stating "Experience in Retail/Distribution industries preferred."
6. Accountant for the [REDACTED], a "women's retailer," requiring an accounting degree and three to seven years of accounting experience.
7. Accounting Supervisor for an unidentified company in an unidentified industry requiring "A bachelor's degree in accounting or [a] related field," and "Specific experience with accounts payable and accounts receivable, financial reporting, General Ledger and supervision";
8. Staff Accountant for [REDACTED] requiring a bachelor's degree in accounting and two to five years of experience.

None of the companies recruiting through those vacancy announcements has been shown to be similar organizations in the petitioner's industry, and some clearly are not. For this reason alone, they are of little evidentiary value in showing that similar organizations in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into accounting positions parallel to the proffered position.

In addition and as was noted above, the petitioner has designated the proffered position as a Level I position on the 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. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I accountant positions, entry-level positions requiring only a basic understanding of accountancy, require a minimum of a bachelor's degree in a specific specialty or its equivalent. All of the advertised positions are for experienced candidates, however. They are not entry level positions and, as such, are of little evidentiary value in demonstrating that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent for this additional reason.

Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from eight announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

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

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so

³ 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 eight job postings with regard to determining the common educational requirements for entry into parallel positions in similar home care organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of accountant for a company similar to the petitioner in the petitioner's industry 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 does not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States.

complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even assuming, *arguendo*, that the proffered position is an accountant position, the record contains little to differentiate it as more complex or unique than accountant positions in general. The duties of the proffered position (such as maintaining and reconciling the general ledger and various accounts, cash flow analysis, profitability analysis, preparing financial statements, processing payroll, and computing various taxes) are described in terms of functions common to bookkeeping or accounting clerks or, at most, lower-level accountants in general, and so have not been shown to be more complex or unique than the duties of other accountant positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent for entry.

Finally, as was also noted above, the LCA submitted in support of 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 bachelor's degree or its equivalent, especially as the *Handbook* suggests that some accountant positions do not require such a minimum degree or its equivalent for entry.

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

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the position.⁴

As was observed above, a document provided states that [REDACTED], [REDACTED] and [REDACTED], [REDACTED] and [REDACTED] have collectively performed the duties of the proffered position. It indicates that [REDACTED] has no college degree, that [REDACTED] and [REDACTED] have doctorates, and that [REDACTED] and [REDACTED] have bachelor's degrees. It does not indicate the subjects in which any of those people have degrees, and no evidence was provided to corroborate the statements pertinent to those degrees.

⁴ 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 a 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").

That evidence does not demonstrate that the petitioner normally requires a degree of any kind for the proffered position, as [REDACTED] had no degree. Further, the petitioner has not even alleged that [REDACTED] and [REDACTED], and [REDACTED] have degrees in subjects directly related to the proffered position. Finally, even if the petitioner had so alleged, that allegation would be insufficient, absent evidence to corroborate that the people who have previously performed the duties of the proffered position have those claimed degrees.

Although the statements by the petitioner are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). Accordingly, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them 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. Even assuming that the proffered position is an accountant position, the duties of the proffered position, such as maintaining and reconciling the general ledger and various accounts, cash flow analysis, profitability analysis, preparing financial statements, processing payroll, and computing various taxes contain no indication that they are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of bookkeeping, accounting clerk, or accountant positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I accountant position, a position for an entry-level employee with only a basic understanding of accountancy. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to accounting, especially as the *Handbook* indicates that some accountant positions require no such degree.

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 record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The Form I-129 visa petition identifies the petitioner as E W & J Company LLC. However, the petitioner's July 8, 2011 letter and the undated "Verification" statement both indicate that the beneficiary would be employed by two additional companies, identified as [REDACTED] and [REDACTED]. Notwithstanding that they may have some degree of common ownership, there is no evidence that these companies are the same legal entity and no evidence, therefore, that the beneficiary would be free to work for those other companies pursuant to a visa petition filed by the instant petitioner.

In general, if the beneficiary were scheduled to be employed by any other company, each respective company would need to submit a separate Form I-129 petition for the portion of the beneficiary's time to be spent performing duties for each separate employer, regardless of common ownership between the separate legal entities. See 8 C.F.R. § 214.2(h)(1)(i) (stating in pertinent part that "an alien may be authorized to come to the United States temporarily to perform services or labor for . . . an employer, if petitioned for by that employer."). Accordingly and to the extent that the instant petition requests employment authorization for the beneficiary to be employed by multiple legal entities that are not the petitioner, the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

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

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