



U.S. Citizenship
and Immigration
Services

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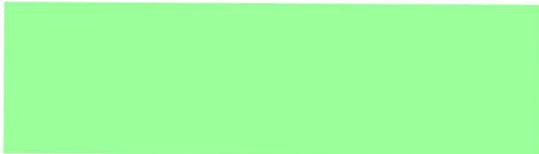


DATE: **JUN 28 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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,

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 "Fashion merchandise design, distribution, wholesale and retail sales" firm with 24 employees in the United States. In order to employ the beneficiary in what it designates as a staff accountant position, the petitioner seeks to classify him 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 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 before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a staff accountant position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011, Accountants. The LCA further states that the proffered position is a Level II position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor of commerce degree from [REDACTED]. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in accounting.

With the visa petition, counsel submitted a printout of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to Accountants and Auditors, apparently to support the proposition that the proffered position qualifies as a specialty occupation position.

Counsel also submitted a letter, dated January 12, 2012, from the petitioner's manager. That letter states that, in the proffered position, the beneficiary would oversee the petitioner's accounting department, and perform the following duties:

1. Inventory management and forecasting;
2. Cost estimation;
3. Accounts payable: General Ledger allocation and bill approval;
4. Accounts receivable;
4. Monthly bank reconciliations;
5. Assist management team with budget planning;
6. Monitor and control budget;
7. Monitor cash flow;

8. Elaborate financial statements; and
9. Keep management team apprised of the financial status of the business and provide financial advice to the management team as necessary.

[Error in enumeration from the original].

The petitioner's manager further stated that the proffered position requires, "at least a bachelor's degree in accounting or a related field."

On April 17, 2012, 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. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) an organizational chart of the petitioner's operations; (2) evidence pertinent to [REDACTED] (3) evidence pertinent to [REDACTED] (4) printouts of three vacancy announcements posted by the petitioner; (5) printouts of two vacancy announcements posted by other companies; (6) a letter from the CEO of [REDACTED]; and (7) a letter, dated July 9, 2012, from the petitioner's president.

The director denied the petition on October 18, 2012, 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 its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director characterized the proffered position as a position for a Bookkeeping, Accounting, and Auditing Clerk as described in the *Handbook*.

On appeal, counsel submitted, *inter alia*, (1) a letter, dated November 6, 2012, from the CEO of [REDACTED] and (2) a letter, dated December 17, 2012, from the CFO of [REDACTED] (USA) Inc.

In his November 6, 2012 letter, [REDACTED] CEO stated that his company is also in the apparel industry, and that it requires "individuals with finance/accounting, inventory management and HR expertise." He stated that [REDACTED] minimum educational requirement when hiring such individuals "is a Bachelor's degree in accounting or finance." He provided a list of 32 Essential Duties and Responsibilities of such positions, including analyzing financial data, assisting with analysis of accounting transactions, planning and forecasting, analysis and reporting of cost vs. margin, and additional analysis and peripheral supporting schedules.

In his December 17, 2012 letter, [REDACTED] the CFO of [REDACTED] states that [REDACTED] is one of the petitioner's majority shareholders, and that the petitioner sought, at the recommendation of [REDACTED] "to hire a qualified accountant with a

minimum of a bachelor's degree" It is noted that the letter does not state that the search required that the bachelor's degree be in a specific specialty, such as accounting.

Mr. [REDACTED] further stated:

Through a lengthy hiring process, the decision was made to hire [the beneficiary] as he has very specific accounting and financial management qualifications that are critical to [the petitioner]. Specifically, [the beneficiary] has excellent knowledge and experience in preparing financial statements, budgets, forecasts, and cash flow models that are very unique to our business.

* * *

At this stage of our Company's development, [the beneficiary] is an ideal fit as a senior accountant that would be able to manage the accounting department and oversee the account process and financial reporting.

In his appeal brief, counsel objected to the director's characterization of the proffered position as a bookkeeping, accounting, or auditing clerk position, asserting that the proffered position is an accountant position, and that such positions are specialty occupation positions. Counsel also stated:

[The petitioner] has a complex organizational structure, which makes performing the job duties that much more challenging. As described in our reply to the Request for Evidence, the Petitioner is a wholly-owned subsidiary of [REDACTED] a holding company, which has three more wholly-owned subsidiaries besides [the petitioner], including two more operating divisions and a payroll services division. Thus, the Beneficiary must engage with all four of the companies, as opposed to just one. Additionally, the Petitioner has distributors in several foreign countries, which means the Beneficiary must deal with international transactions. It is clear that the Petitioner's complex corporate interrelationships require the services of an accountant with a bachelor's degree.

Counsel also asserted that the evidence submitted shows that "a degree requirement is common to the industry in parallel positions among similar organizations."

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the

educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent 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.¹

The petitioner claims in the LCA that the proffered position corresponds to SOC code 13-2011 (Accountants and Auditors). The *Handbook* describes the occupation of "Accountants and Auditors" as follows:

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
- Suggest ways to reduce costs, enhance revenues, and improve profits

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.

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).

On the other hand, the director analyzed the proffered position as a bookkeeping, accounting, and auditing clerk position. The *Handbook* states the following about 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.

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-2> (last visited June 26, 2013).

The duties the petitioner's manager attributed to the proffered position are consistent with those of bookkeeping, accounting, and auditing clerk positions as described in the *Handbook*. The AAO finds no flaw in the director's finding that the petitioner failed to show, by a preponderance of the evidence, that the proffered position is an accountant 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.

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 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.

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-4> (last visited June 26, 2013).

Even if the proffered position had been demonstrated to be an accountant position, a review of the *Handbook* does not indicate that such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation. Specifically, 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.

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 bookkeeping and accountancy, but do not establish any particular level of formal, postsecondary 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.

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

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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 letter from the CEO of [REDACTED] states that because the petitioner is a similar business it has a "definite need for accounting/finance based employees." It does not state that a bachelor's degree in a specific specialty or its equivalent is a minimum requirement. Furthermore, insufficient evidence pertinent to those positions at [REDACTED] was provided to show that the proffered position is a position "parallel" to those positions. Therefore, the letter from [REDACTED] will be accorded very little evidentiary weight for the proposition that a requirement of a minimum of a bachelor's

degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions in similar organizations in the petitioner's industry.

The letter from the CEO of [REDACTED] stated that his company requires "individuals with finance/accounting, inventory management and HR expertise," and that their minimum educational requirement for such positions is a bachelor's degree in accounting or finance. However, the 32 duties described for that position are abstractly described, as are the nine duties attributed to the proffered position. As such, determining whether the positions at [REDACTED] are truly parallel to the proffered position is not possible. For instance, the duties listed by [REDACTED] include analyzing financial data, assisting with analysis of accounting transactions, analysis of cost vs. margin, and "Additional analysis." The duties of the proffered position do not mention analysis. Although the proffered position may involve the same degree of analysis as the positions with [REDACTED], it may not. Although a more detailed description of the duties of the proffered position, or some other evidence, might have demonstrated the depth of analysis required by the position, insufficient evidence pertinent to those duties was provided to show that the proffered position is a position "parallel" to the positions with [REDACTED]. Therefore, the letter from [REDACTED] too, will be accorded very little evidentiary weight for the proposition that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions in similar organizations in the petitioner's industry.

The petitioner did submit two vacancy announcements placed by other companies 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. Financial Planner Analyst for [REDACTED], an apparel company, stating, "Bachelor's degree in Business Administration, Accounting, or Finance"; and
2. Controller for an unidentified company in an unidentified industry requiring a bachelor's degree in accounting or finance.

The first vacancy announcement states that an otherwise undifferentiated bachelor's degree in business administration would be a sufficient educational qualification for the position announced. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. That vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The second vacancy announcement has not been shown to be in the petitioner's industry. Although counsel stated, on appeal, that it was found at [REDACTED] and that the position it announces is therefore likely in the apparel industry, it is not apparent from the announcement that

the advertising organization is similar to the petitioner and in the petitioner's industry. As that vacancy announcement has not been shown to have been placed by an organization in the petitioner's industry, it is not evidence that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for parallel positions in similar organizations in the petitioner's industry.

Further, even if both of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from two announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

Thus, based upon a complete review of the record, 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 petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

² 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 these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the 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 proffered position had been demonstrated to be an accountant position, and even if the job announcements supported the finding that the position of accountant for firms similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

On appeal, counsel asserted that the proffered position is more challenging because of the petitioner's complex organizational structure, that is, that because the petitioner is owned by another company that owns other companies and is owned by yet other companies, the job of accountant for the petitioner is rendered more complex. Counsel appeared to imply that, because the various companies have the same or related ownership, the beneficiary would be doing accounting work for the other companies in addition to working for the petitioner. The AAO notes that this would not be permitted pursuant to H-1B visa status. Counsel did not explain any other way in which the ownership of the petitioner by another corporation would render the proffered position appreciably more complex or unique.

The petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level II accountant, an indication that the proffered position is a position for an employee who performs moderately complex tasks that require limited judgment. 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. 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, notwithstanding that the *Handbook* suggests that some accountant positions do not require such a degree.

The evidence of record does not establish that this position is so complex or unique that it requires at least a baccalaureate degree in a specific specialty or its equivalent for entry in the United States, and it cannot be concluded that the petitioner has 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 degree or its equivalent for the position.³

³ 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

In his response to the RFE, the petitioner's president stated that the proffered position was held most recently by [REDACTED] whom he stated served as the petitioner's chief financial officer (CFO) and has a bachelor's degree in accounting. The petitioner's organizational chart does not list a CFO position. The assertion that [REDACTED] worked in the proffered position is mixed with indications that he held a different position.

Further, the record contains a letter, dated May 9, 2011, offering [REDACTED] the position of CFO. That letter, however, is on the letterhead of [REDACTED] and purports to have been signed by the [REDACTED] as [REDACTED] CEO. [REDACTED] is also listed on the petitioner's organizational chart as the petitioner's CEO.

Although [REDACTED] may very possibly be the CEO of both companies, the discrepancy between the number of employees the petitioner originally claimed and the number it listed on its organizational chart suggests that some of the people listed on the organizational chart are not actually employed by the petitioner, but by related companies. The offer of employment at [REDACTED] suggests that [REDACTED] is one of those people. The petitioner has not demonstrated, by a preponderance of the evidence, that [REDACTED] ever held the proffered position. Further, although the petitioner's president stated that [REDACTED] has a bachelor's degree in accounting, and that evidence of that degree was submitted, the record contains no evidence of any such degree. Ever if the evidence demonstrated that [REDACTED] once held the proffered position, absent evidence of his asserted bachelor's degree in accounting, that evidence would have little weight for establishing the proposition that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. It is also noted that (1) the salary offered to [REDACTED] is more than two times the salary offered to the beneficiary for the proffered position, and (2) the title of CFO indicates that it is a higher level position than that of "staff accountant."

The petitioner's president also asserted, in his response to the RFE, that [REDACTED] is the petitioner's controller, a position subordinate to the proffered position, and is a CPA. [REDACTED] is, in fact, shown as the petitioner's controller on the organizational chart.

However, the record contains a letter, dated October 3, 2011, from [REDACTED], signing as the CEO of [REDACTED], and offering, on behalf of [REDACTED], the senior controller position to [REDACTED]. Again, notwithstanding that [REDACTED] may be CEO of all three companies, and they may have the same or related ownership, or one company may own one or both of the others, they are separate companies for the purpose of the criterion of 8 C.F.R.

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").

§ 214.2(h)(4)(iii)(A)(3). The unreconciled discrepancy between the number of employees the petitioner originally claimed and the number listed on the organizational chart suggests that some of the people listed on the organizational chart are not actually employed by the petitioner. The offer of employment at [REDACTED] suggests that [REDACTED] is one of those people. The petitioner has not demonstrated, by a preponderance of the evidence, that [REDACTED] ever held the proffered position.

The record contains no other evidence pertinent to anyone who may have ever worked for the petitioner in the proffered position. Further, although the petitioner stated, on the visa petition, that it was established in 2008, the offer of employment to [REDACTED] is dated May 9, 2011 and the offer to [REDACTED] is dated October 3, 2011. The record contains insufficient evidence pertinent to the person who performed the duties of the proffered position during the previous years.

The petitioner has not demonstrated, by a preponderance of the evidence, that normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the position, and has not, therefore, satisfied the criterion at 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. The duties of the proffered position, inventory management and forecasting, cost estimation, duties pertinent to accounts payable and accounts receivable, bank statement reconciliations, assisting with budget planning, monitoring the budget and cash flows, preparing financial statements, apprising management of the financial status of the business, and providing financial advice to management have not been described with sufficient specificity to show that they are more specialized and complex than the duties of staff 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 II accountant position, a position requiring performance of moderately complex tasks that require limited judgment. 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. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely related to accounting, notwithstanding that some accountant positions require no such degree.

For both reasons, 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.

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. The appeal will be dismissed and the petition denied.

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