



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **MAY 17 2013** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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 stated that it is a church with nine employees. To employ the beneficiary in what it designates as a part-time accountant position, the petitioner endeavors 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 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 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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, 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 a particular position 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 accountant position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011 Accountants and Auditors from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I position.

The visa petition states that the beneficiary would work for the petitioner for seven hours per week at an hourly wage of \$17.85 per hour.

With the visa petition, counsel provided evidence that the beneficiary has a bachelor's degree in accounting and a master's degree in business administration. Counsel also provided the following description of the duties of the proffered position:

Responsible for oversight of church finances including accounting, proper reporting, receipting, and disbursement of funds within established guidelines and policies. Primary focus is financial record keeping and payment procedures.

DUTIES AND RESPONSIBILITIES include the following:

- Provides oversight and accounting of income and expenses
- Responsible for check/ACH processing and reconciliation (expense checks, payroll checks and NSF checks)
- Develops annual church budget
- Develops and monitors all church budget expenditures

- Examines and interprets statistical financial data; receives and answers queries concerning financial matters
- Coordinates audits, financial records review and payroll processes
- Prepare financial statements
- Other duties and responsibilities as assigned

That description further states:

QUALIFICATIONS – EDUCATION and/or EXPERIENCE

Bachelor's degree from four-year college or university in related field.

On May 3, 2010, the service center issued an RFE in this matter. The service center requested additional evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center outlined the specific evidence to be submitted.

In response, counsel submitted (1) an employment agreement signed by both the petitioner's senior pastor and the beneficiary, dated March 18, 2010; (2) an undated, unattributed statement entitled "Response to Request for Evidence," and (3) another undated, unattributed statement pertinent to the petitioner and the beneficiary.

The document headed, "Response to Request for Evidence" lists the nine positions in which the petitioner employs people. Those positions are Senior Pastor, Church Administrator/Business Manager, Associate Pastor of Music/Ministry Development, Director of Online Ministries/Administrative Assistant, Director of Media Production, Director of Marketing/Publication, Musician (Keyboardist), Musician (Percussionist), and Sound Technician. The AAO notes that the petitioner does not list a bookkeeper position.

That document also states:

Over the 15[-]year history of the operation of the church, only one other person has held the position of Staff Accountant. This individual had a Master[']s degree and held the position until August of 2009.

It is noted that no evidence was provided pertinent to that person or his/her degree, nor does that statement reveal the academic discipline in which that unidentified person allegedly held a master's degree.

That document further states: "Because of the high level of responsibility for fiscal accountability of the organizational finances, this position requires the services of a trained professional with the minimum of a Bachelor[']s degree in Accounting."

The other undated unattributed statement pertinent to the petitioner and the beneficiary lists a job description for each of the petitioner's nine job positions. None of those position descriptions includes bookkeeping duties. The position most closely related to the petitioner's financial

operations is the position of Church Administrator/Business Manager, which includes human resources duties, and "[c]ollect[ing] and prepar[ing] reports such as time and attendance records, terminations, new hires, budget expenditures, and statistical records of performance data." It does not, however, include such duties as making entries into various ledgers, or similar bookkeeping duties.

That undated, unattributed statement also contains the following revised list of the duties of the proffered position:

- 10% Coordinates revenue and expense recordkeeping.
- 5% Responsible for check processing and reconciliation, including expense checks, payroll checks and NSF transactions.
- 25% Helps develop annual church budget.
- 10% Develops and monitors all church budget expenditures.
- 25% Provides statistical financial data to Senior Pastor and other authorized users
 - Weekly Revenue Reports
 - Weekly Expense Reports
 - Revenue/Expense Comparison Reports
 - Annual Budgets
- 3% Receives and answers queries concerning financial matters.
- 10% Coordinates audits and financial records reviews.
- 5% Coordinates payroll processes as assigned.
- 5% Works with the church's independent auditors in the preparation and completion of the annual audit of [the petitioner's] financial records.
- 2% Other duties as assigned.

The employment agreement signed by the petitioner's senior pastor and the beneficiary reiterates that the beneficiary would work seven hours per week for the petitioner, and states that he would be paid \$125 per week. The AAO observes that \$125 per week corresponds to seven hours per week at \$17.85 per hour, rounded.

The director denied the petition on June 25, 2010, 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. In that

decision, the director analyzed the proffered position as a bookkeeping position, rather than an accountant position.

On appeal, counsel provided a brief and a letter from the petitioner's senior pastor dated July 26, 2010. That letter states that the petitioner "is going through a transition within [its] finance department where [it] will need an accountant," and that the proffered position "is very important due to the transition that is taking place in [the] organization." That letter provides no further information pertinent to the claimed transition, or in what way such a transition necessitates the petitioner's need for the proffered position.

In further describing the proffered position that letter states:

We currently have people who oversee some of the money aspects of the organization but we need someone who will be able to keep track of data, record the transactions and take the information from the bookkeeping process to analyze the financial results and generate reports.

* * *

On the other hand[,] the bookkeeping process which is done by other individuals involves the systematic recording of transactions.

* * *

We also need an accountant to improve or modify the system of accounts where necessary. He would oversee the process of adding new accounts and deleting any unnecessary accounts. He will be responsible for inputting tax information and issuing payments when the need arises. He will also have the ability to train and supervise any new financial personnel and will work directly with any other department to resolve any accounting issues or problems.

In the appeal brief, counsel stated:

The petitioner has sufficient staff and volunteers such that the beneficiary will not perform duties that are inconsistent with those of the specialty occupation of Accountant.

Counsel asserted that the evidence demonstrates that the proffered position is an accountant position, and implied that it must, therefore, be a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

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

The AAO recognizes the U.S. Department of Labor'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 As the petitioner has identified its proffered position as that of an accountant, the AAO first turns to the *Handbook* and its discussion of this occupation. The "Accountants and Auditors" chapter of the *Handbook* describes the duties of an accountant as follows:

Accountants and auditors prepare and examine financial records. They ensure that financial records are accurate and that taxes are paid properly and on time. Accountants and auditors assess financial operations and work to help ensure that organizations run efficiently.

Duties

Accountants and auditors typically do the following:

- Examine financial statements to be sure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures
- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited May 8, 2013). In addition, the *Handbook* indicates that there are four main types of accountants and auditors: public accountants, management accountants, government accountants, and internal auditors. *Id.* Since the petitioner in this matter is a church with nine employees, the focus of the AAO's analysis will be on whether the proffered position is that of a management accountant, also called cost, managerial, industrial, corporate, or private accountant.

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.

According to the *Handbook*:

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.

Id. Under the *Handbook's* description, it therefore appears to be unusual for small organizations with nine employees to employ a management accountant, since management accountants are usually part of executive teams and prepare financial reports for their employer only.

Instead, the AAO finds that the duties of the proffered position as being more aligned with those performed by bookkeeping, accounting, and auditing clerks. The *Handbook* describes the duties of bookkeeping, accounting, and auditing clerks as follows:

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.

* * *

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.

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 Mar. 28, 2013).

As was noted above, the description of the proffered position provided with the visa petition states that the primary focus of the proffered position is on financial record keeping and payment procedures. Keeping financial records and processing payments are duties within the scope of a bookkeeping, accounting, or auditing clerk's duties. Further, the various other duty descriptions that have been provided in this case are all at least equally consistent with the finding, made by the director, that the proffered position is a bookkeeper position, rather than an accountant position.

Further still, the list of the petitioner's employees indicates that it does not employ a bookkeeper or accounting clerk. As the petitioner does not employ a bookkeeper or accounting clerk and as there is no evidence² that the beneficiary would be relieved from performing the company's general, financial record keeping, such as recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeper and/or accounting clerk), it appears more likely than not that the beneficiary is being hired to perform, at

² Counsel stated, on appeal, that the petitioner has sufficient staff and volunteers to relieve the beneficiary of nonqualifying duties. However, descriptions of all nine of the petitioner's job positions are in the record, and none of the descriptions indicate that any of the petitioner's other employees would perform bookkeeping duties. Further, counsel's statement is the only indication that the petitioner's volunteers would perform such duties. The AAO observes that counsel's assertions are not evidence, and are insufficient to sustain the burden of proof in this case. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

least in substantial part, these duties. In addition, the AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. Here, the petitioner has also failed to establish that the financial transactions of a nine-employee church that may use an outside CPA to prepare its tax returns requires the services of more than a bookkeeper or accounting clerk. Therefore, the AAO finds insufficient evidence that the proffered position is anything more than a bookkeeper or accounting clerk.

Having determined the proffered position to be that of a bookkeeper, the AAO turns to the educational requirements for this type of employment. Under the section on "How to Become a Bookkeeping, Accounting, or Auditing Clerk," the *Handbook* states that:

Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. In 2009, 25 percent of these workers had an associate's or higher degree.

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 May 8, 2013).

Because the *Handbook* indicates that working as a bookkeeping, accounting, or auditing clerk does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into those occupations, the *Handbook* does not support the proffered position as being a specialty occupation. Further, there is nothing in the evidence of record that otherwise establishes that the duties described for the proffered position would require the application of at least a bachelor's degree level of highly specialized knowledge in any specialty.

Even *assuming arguendo* that the proffered position is an accountant position, the proffered position would still not qualify for classification as a specialty occupation.

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

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

Education

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

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

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 May 8, 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. In addition, the *Handbook* indicates that some without a bachelor's degree or even a post-secondary degree may "advance to

accountant positions by demonstrating their accounting skills on the job." The *Handbook* does not support the position that a bachelor's or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into accounting positions.

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

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

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

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner has not demonstrated 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 among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy 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." Here, the petitioner failed to credibly

demonstrate exactly what the beneficiary will do on a day-to-day basis such that relative complexity or uniqueness can even be determined. Furthermore, the *Handbook* reveals that the proffered duties are performed by bookkeepers, an occupation which does not require a bachelor's degree in a specific specialty for entry into this occupation in the United States.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. As noted above, the petitioner submitted an undated, unattributed statement in the record indicating that the petitioner employed a person with a master's degree as a "Staff Accountant." However, no evidence was provided to corroborate the assertions made regarding this employee. As such, the record contains no evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).³

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The *Handbook* describes the duties of the proffered position as analogous to that of a bookkeeper, a position that does not require a bachelor's degree in a specific specialty. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.⁴

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 possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁴ Even if eligibility for the benefit sought here had been otherwise established by the petitioner in this matter, the simultaneously requested application for change of status and extension of stay (Part 2 of the Form I-129) would more than likely be denied by the director as there is an indication that the beneficiary would be a public charge. Section 212(a)(4) of the Act states that an alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible. *See also* 8 C.F.R. § 214.1(a)(3)(i).

(b)(6)

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. § 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.

The petitioner proposes to pay the beneficiary \$125 per week, which equates to \$6,500 annually. When the visa petition was submitted, in 2010, the poverty level guidelines indicated that a one-person household within the 48 contiguous states of the United States with an income of less than \$10,830 was living in poverty. With an annual income of \$6,500, the beneficiary is likely to become a public charge and would, therefore, be inadmissible.