

(b)(6)

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

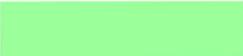


U.S. Citizenship
and Immigration
Services

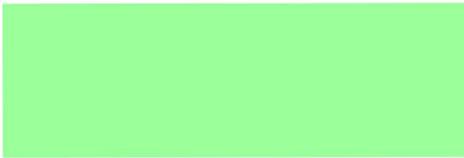


Date: **MAY 17 2013**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a checkmark below it.

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 an electrical, handyman, plumbing, and generator services company with ten employees and a net annual income of approximately \$7,000. To employ the beneficiary in what it designates as a full-time accountant position at an annual salary of \$48,963, 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, the petitioner's president 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 response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

The issue on appeal is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 101(a)(15)(H)(i)(b) of the Act 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.

The Labor Condition Application (LCA) submitted in support of the visa petition states that the proffered position is an accountant position and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011.01, Accountants from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I position.

With the visa petition, the petitioner submitted evidence sufficient to show that the beneficiary received a bachelor's degree in commerce and business administration, with a major in business administration, from the faculty of commerce and business administration at the [REDACTED] University. An evaluation of that education characterized it as "a bachelor's-level program in Business Administration and Accounting," and stated that it is "the equivalent of a Bachelor of Business Administration Degree, with a concentration in Accounting, from an accredited US college or university."

The petitioner also submitted a letter, dated June 2, 2011, from its president, which contains the following list of duties:

- Prepare, examine, or analyze accounting records, financial statements, or other financial reports to assess the accuracy, completeness, and conformance reporting and procedural standards.
- Compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements.
- Analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice.
- Establish tables of accounts and assign entries to proper accounts.
- Develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs.
- Develop, implements modify, [sic] and documents record keeping personnel, and direct their work activities.

- Survey operations to ascertain accounting needs and recommend, develop, or maintain solutions to business financial problems.
- Advise the management about the issues such as utilization, tax strategies, and the assumptions underlying budget forecasts corrective, if necessary, perform other related duties as required.

As to the educational requirements of the proffered position, the petitioner's president stated, "a qualified applicant must have at a minimum a bachelor's degree in Accounting or a related field." He further stated that the beneficiary's bachelor's degree "is equivalent to a Bachelor' [sic] degree in Accounting."¹

On June 22, 2011, 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 service center also specifically requested that, if the petitioner had ever employed anyone in the proffered position before, it state how many such people it had employed, the educational level attained by each individual, and the fields of study in which they had degrees.

In response, the petitioner submitted (1) four vacancy announcements, (2) an organizational chart showing the various positions in the petitioner's organization, and (3) a letter, dated July 8, 2011, from its president.

The organizational chart lists the ten employees claimed by the petitioner. It does not indicate that the petitioner employs a bookkeeper.

In the July 8, 2011 letter, the petitioner's president stated that the petitioner has never employed anyone in the proffered position. He also stated:

A careful [sic] review of the job descriptions above, in relation to the complexity of the job duties involved, shows that the nature of the duties is highly specialized and complex. Specifically, the attainment of the technical knowledge and expertise at the level we are seeking requires an in-depth educational study into the inner-working [sic] in accounting.

The petitioner's president also cited the vacancy announcements submitted and the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* as evidence that accountant positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. Both the vacancy announcements provided and the pertinent information in the *Handbook* will be addressed below.

¹ The AAO observes that the evaluation submitted does not state that the beneficiary's degree is equivalent to a bachelor's degree in accounting. It states that it is equivalent to a bachelor's degree in business administration with a concentration in accounting.

The director denied the petition on July 27, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a position for a bookkeeping, accounting, or auditing clerk as discussed in the *Handbook*.

On appeal, the petitioner submitted four additional vacancy announcements and a brief signed by the petitioner's president. The vacancy announcements will be addressed below.

In the appeal brief, the petitioner's president asserted that the proffered position is not a bookkeeping position, but an accountant position. He asserted that the petitioner had previously employed a bookkeeper but had found that the complexity of the position requires an accountant. He did not indicate who would perform the petitioner's bookkeeping duties in the event that the petitioner is able to hire the beneficiary as its accountant. He also reiterated:

A careful [sic] review of the job descriptions above, in relation to the complexity of the job duties involved, shows that the nature of the duties is highly specialized and complex. Specifically, the attainment of the technical knowledge and expertise at the level we are seeking requires an in-depth educational study into the inner-working [sic] in accounting.

The AAO will now discuss the application of the additional, supplemental criteria 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)(1), 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 DOL's *Handbook*, cited by the petitioner's president, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the "Bookkeeping, Accounting, and Auditing Clerks" chapter, the *Handbook* provides the following description of the duties of bookkeeping, accounting, and auditing clerk 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

² 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.

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> (last visited May 16, 2013).

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

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

More specifically, the *Handbook* states the following about management accountants, as opposed to public accountants, government accountants, and internal auditors:

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.

Id. at "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm>. (last visited May 16, 2013).

One distinction between the duties of a management accountant, as opposed to a bookkeeping clerk, appears to be the degree of analysis involved in their duties. The petitioner's president used the word "analyze" in the description of the duties of the proffered position. In one instance, he spoke of analyzing accounting records and financial statements, but only to assess their accuracy, completeness, and conformance to standards, which analysis a bookkeeping clerk might perform. He spoke of "analyz[ing] budgets" and "analyz[ing] business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice," but provided no evidence or explanation pertinent to the degree of analysis necessary to perform this duty. The description of the duties of the proffered position also includes advising management about utilization, tax strategies, and the assumptions underlying budget forecasts, but no indication was provided pertinent to the depth of analysis that would underlie that advice.

In addition, it is not readily apparent from one of the duties described as to what it would involve. Specifically, the petitioner's president stated that one of the duties of the proffered position is, "Develop, implements modify, and documents record keeping personnel, and direct their work activities." It is unclear what such a task would involve or what specifically such duties would require of the beneficiary on a day-to-day basis. Further, the AAO observes that the petitioner's organizational chart lists its president, president assistant, executive manager, quality controller, mechanical engineer, showroom manager, sales representative/associate, customer relations associate, contracts specialist, and estimator as its only employees. Which of those positions is a "document records keeping personnel" position, whose work activities the beneficiary would allegedly direct, is unclear.

Other duties attributed to the proffered position, e.g., preparing accounting records, preparing reports, ensuring payment, establishing tables of accounts, making entries to accounts, and surveying operations to ascertain accounting needs, are entirely consistent with a bookkeeping, accounting, and/or auditing clerk position.

Given the description of the proffered position and the other evidence in the record, the AAO finds no error in the director's determination that the proffered position is a bookkeeper position, or his finding that a bookkeeper position, in general, or the position here proffered, in particular, does not require a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as there is insufficient evidence of who would relieve the beneficiary from performing the necessary bookkeeping duties for the petitioner's day-to-day business operations. In addition, the record indicates that the petitioner currently utilizes the periodic services of an accounting firm to prepare its tax returns. Even if the beneficiary is expected to assume these periodic duties of preparing the petitioner's tax returns, the director's determination is further supported by the fact that there is insufficient evidence that such duties would be required on a regular, day-to-day basis or that these tax-related duties would require the full-time services of an accountant. However, the AAO will assume, *arguendo*, that the proffered position is an accountant position, so as to also address the petitioner's assertion that an accountant position would necessarily require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

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.

* * *

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

Id. at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4>. (last visited May 16, 2013).

That "most" accountant and auditor positions require a minimum of a bachelor's degree in accounting or a related field indicates that some accountant and auditor positions require less. Therefore, the *Handbook* does not indicate that accountant positions require, as an occupational category, a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into the occupation and does not indicate that a particular position designated as an accountant position, specifically the particular position proffered in this case, normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into that position.

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 business, 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.

Further still, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed by an individual without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some accountant positions do not require such a degree and that some individuals enter the occupation through on-the-job work experience.

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 a standard, 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.

As was noted above, the petitioner did submit four vacancy announcements in response to the RFE and another four on appeal. They are for positions entitled Junior Accountant; Jr. Staff Accountant; Staff Accountant; Staff Accountant, Finance; Accountant; Senior Accountant; and Accountant Sr Professional.

Those positions are with a property management company; an association of health officials; a health consulting firm; the headquarters of [REDACTED] a nonprofit research foundation; an information technology consulting firm; [REDACTED] which appears to be a nonprofit organization in [REDACTED] Virginia; and a company that is identified by neither its name nor its industry. None of those businesses has been shown to be in the petitioner's industry, and all but one are clearly not. None has been shown to be otherwise similar to the petitioner.

Five of those vacancy announcements state that the positions they announce require a bachelor's degree in accounting.

One of those vacancy announcements states that the position it announces requires a bachelor's degree with an accounting or finance major.

One vacancy announcement states that the position it announces requires, "A Bachelor's degree in Business, Finance, Accounting or [a] related field." The AAO observes, first, that a general degree in business does not delineate a specific specialty. More specifically, a degree with a generalized title, such as business or 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 or business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For this reason, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states, "Bachelor's degree in accounting, finance, business administration, or related field preferred." That vacancy announcement fails to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for the same reason explained in the previous paragraph. Further, a preference is not a minimum requirement. That such a degree is preferred does not indicate that it is required. For both reasons, that vacancy announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if all of the vacancy announcements were for positions in the petitioner's industry, which they are not, and all stated a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from eight announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from eight postings with regard to determining the common educational requirements for entry into parallel positions in similar firms. *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

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

Yet further, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions to the claimed position of accountant require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I accountant positions, entry-level positions requiring only a basic understanding of accounting, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

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 AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other accountant positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The record contains no evidence that would differentiate the work of the proffered position from the work of accountant positions in general. The duties of the proffered position (such as preparing, examining, and analyzing financial reports; preparing accounting records; ensuring payment; establishing tables of accounts; making entries to accounts; and surveying operations to ascertain accounting needs) are described in terms of functions common to bookkeeper, accounting clerk, as well as to the basic and low-level duties of accountant positions in general, and so have not been shown to be more complex or unique than the duties of other accountant positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

error").

As such, even if the proffered position were a full-time accountant position and even if the job announcements supported the finding that the position of accountant for a ten-person electrical, handyman, plumbing, and generator services firm required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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

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

In his July 8, 2011 response to the RFE, the petitioner's president stated that the petitioner has never hired anyone in the proffered position. The petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁴

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. Establishing accounts and making ledger entries; developing, maintaining, and analyzing budgets; preparing comparisons of budgeted costs to actual costs; surveying operations to determine accounting needs; developing solutions to financial problems; and advising management on tax strategies and the assumptions underlying budget forecasts contain insufficient indication of a nature so specialized and complex it requires knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I accountant position, a position with only a basic understanding of accountancy. This does not support the

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in 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").

proposition that the duties of the position are so specialized and complex, relative to other accounting positions, 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.

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

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

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.