

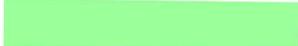
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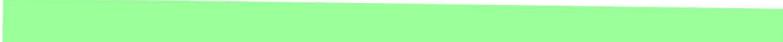
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **MAY 31 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a living trust with no employees. In order to employ the beneficiary in what it designates as an accountant position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The bases for denial asserted by the director are that the petitioner failed to establish (1) that it would employ the beneficiary in a specialty occupation position, (2) that a credible offer of employment exists, and (3) that it would abide by the terms and conditions of H-1B employment.

On appeal, counsel and the petitioner asserted that the director's bases for denial were erroneous, and contended that all evidentiary requirements were satisfied.

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 AAO will first address the director's findings that the petitioner has not demonstrated that a credible offer of employment exists in this case; and that it would abide by the terms and conditions of H-1B employment. Based upon its review of the entire record of proceeding, including the submissions on appeal addressing these bases of the director's decision, the AAO finds that the petitioner has overcome both of those findings of the director, that is, the petitioner has submitted evidence sufficient to show, by a preponderance of the evidence, that a credible offer of employment exists in this case and that the petitioner would abide by the terms and conditions of H-1B employment.

The AAO will now address the remaining basis for the director's decision of denial, that is, the finding that the petitioner has not demonstrated that it would employ the beneficiary in a specialty occupation position.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

With the visa petition, counsel provided evidence sufficient to show that the beneficiary has a bachelor's degree in accounting awarded by the [REDACTED] in the Philippines. An evaluation of the beneficiary's education indicates that it is equivalent to a bachelor's degree in accounting awarded by a regionally accredited college or university in the United States.

Counsel also provided, *inter alia*, (1) a letter, dated November 9, 2009, from the petitioner's trustee; (2) seven vacancy announcements; and (3) counsel's own letter, dated December 3, 2009.

The petitioner's trustee's November 9, 2009 letter contains the following description of the duties of the proffered position:

- Upon assuming the position, [the beneficiary] must review all trust accounting documents and records to assess the trusts' [sic] financial standing. She will do this employing professionally accepted accounting/auditing standards;

- She will design accounting methods which will provide satisfactory operational controls on trust assets. These methods will be proposed to and approved by me in my capacity as trustee before they are implemented;
- The [beneficiary] should prepare, organize and maintain a complete and accurate record of assets (i.e. properties) in the trust. The record shall include specific and pertinent data for each asset such as the current value, value at time of acquisition and location;
- She will periodically review, with frequency as she deems necessary, the trusts' [sic] assets to ensure records are kept up to date;
- Assists me in collaborating with third party contractors to ensure assets are properly maintained so as to grow and not decline in value. This will include accounting procedures involving the distribution of budgeted maintenance consists from within the appropriate trust accounts;
- The [beneficiary] must prepare monthly, quarterly and annual statements and schedules which accurately reflect pertinent accounting data including appreciation, depreciation, amortization, etc. She will also tailor statements as necessary for tax purposes; and
- Work with my trust attorney to ensure compliance with all applicable accounting laws for trusts.

As to the educational requirement of the proffered position, the petitioner's trustee stated, "The position requires at least a bachelor's degree in accounting or equivalent."

In his own December 3, 2009 letter, counsel asserted that the evidence submitted establishes the proffered position as a specialty occupation position. Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* in support of the proposition that the proffered position qualifies as a specialty occupation position.

On December 22, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*: (1) a letter, dated January 28, 2010, from the petitioner's trustee; and (2) counsel's own letter, dated February 1, 2010.

In his January 28, 2010 letter, the petitioner's trustee stated that some of the duties of the proffered position are currently handled by a CPA firm. He further stated, "I also enlist the accounting expertise of . . . an employee of my property management company" The petitioner's trustee

stated that the trust assets exceed \$36 million, which he stated is sufficient to establish that the proffered position requires a minimum of a bachelor's degree in a specific specialty or the equivalent.

Yet further, the petitioner's trustee stated, "As the 'petitioner' is not a 'business,' it is not appropriate to request and I am unable to provide information about 'others in the industry or field.'" The petitioner then submitted no evidence that similar trusts employ a degreed accountant.

In his own February 1, 2010 letter, counsel noted that, pursuant to California law, the proffered position does not require a CPA.

The director denied the petition on March 8, 2010, finding, *inter alia*, 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 or the equivalent in a specific specialty. 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 an accounting clerk, rather than as a position for an accountant.

On appeal, counsel provided, *inter alia*: (1) an evaluation, dated April 10, 2010, of the proffered position; (2) a letter, dated April 27, 2010, from the petitioner's trustee; and (3) a brief.

In his April 27, 2010 letter, the petitioner's trustee asserted that the proffered position is more similar to an accountant position, as described in the *Handbook*, than it is to an accounting clerk position. He stated that the proffered position entails financial analysis and production of accounting records, rather than merely maintaining and updating financial records. He also cited the evaluation of the proffered position as evidence that the position qualifies as a specialty occupation position.

The April 10, 2010 evaluation of the proffered position states that the duties of the proffered position are identical to the duties of other accountant positions in trust operations in the evaluator's experience. The evaluator stated that the petitioner's imposition of a degree standard on the position is a sound business decision and appropriate to the highly complex nature of trust operations, as well as consistent with industry standards. He stated, "It has been my experience that trusts, similar in size and operations to [the petitioner], routinely recruit and employ Accountants," and that the proffered position "is clearly specialized and complex enough that it would require someone that possesses the level of education of a bachelor's degree with a focus on accounting"

In his brief on appeal, counsel reiterated that the proffered position should be considered as an accountant position as described in the *Handbook*, rather than an accounting clerk position, and asserted that the proffered position qualifies as a specialty occupation position.

To make its determination whether the proffered position qualifies as a specialty occupation, 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 *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)(I): 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 has designated the proffered position an accountant position. However, to determine whether a particular job qualifies as a specialty occupation position, the AAO does not solely rely on the job title. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform.

Counsel does not contest that the proffered position, if it is an accounting clerk position, does not require a minimum of a bachelor's degree or the equivalent in a specific specialty and does not, therefore, qualify as a specialty occupation position. Rather, counsel asserts that the proffered position is an accountant position as described in the *Handbook*. The AAO will consider the duties of both types of positions.

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

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

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- 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.

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 May 29, 2013).

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

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 29, 2013).

Some of the duties of the proffered position, *e.g.*, reviewing accounting documents and records; periodically reviewing trust's assets; and preparing, organizing and maintaining a record of assets, are entirely consistent with the duties of bookkeepers and accounting clerks.

Preparing monthly, quarterly and annual statements and schedules might require an accountant, depending on the complexity of the statements and schedules to be prepared, but no evidence of that complexity was provided. Similarly, designing accounting methods which will provide satisfactory operational controls may require an accountant, rather than a clerk, depending on the complexity of the accounting methods to be designed; however, no evidence of the complexity of such methods was submitted.

As noted above, the petitioner claims that the beneficiary will "[assist] in collaborating with third party contractors to ensure assets are properly maintained"; however, that duty is so abstractly stated that it does not demonstrate the petitioner's necessity of employing an accountant. This is especially clear because the petitioner's trustee stated, on the second page of his January 28, 2010 letter, that the petitioner would continue to use the services of a CPA firm. That the beneficiary would "[assist] . . . in collaborating with third party contractors," one of which may well be a CPA, does not support the proposition that the proffered position requires an accountant. Given that third party contractors will be involved in this process, the proffered position may well require only a bookkeeper or an accounting clerk.

Many of the position's duties, as described by the petitioner, appear to involve the type of financial management responsibilities that are routinely performed by bookkeepers, such as preparing, organizing, and maintenance of a complete and accurate record of assets in the trust. Furthermore, the petitioner indicates on the Form I-129 that it has no employees, and there is no evidence that the beneficiary would be relieved from performing the trust's general, financial record keeping, such as recording the trust's financial transactions and checking financial records for accuracy (all duties of a bookkeeper and/or accounting clerk); therefore, it appears more likely than not that the beneficiary is being hired to perform, at least in substantive 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 trust with no employees that currently uses and intends to continue to use the services of an outside CPA 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:

Education

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.

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 29, 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.

As discussed above, the AAO is not convinced that the duties of the proffered position as described by the petitioner's trustee could not be performed by a bookkeeper or an accounting clerk. However, the AAO will assume, *arguendo*, that the proffered position is an accountant position to address the arguments made on appeal pertinent to accountants.

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

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.

Handbook, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited May 29, 2013).

The AAO's first point with regard to accountants is that the *Handbook* indicates that accountants do not constitute an occupational group that requires a specialty occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty for entry into the occupation in the United States.

More specifically, the introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." *Id.* This does not support the view that accountant positions as a category qualify as specialty occupations. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree,

or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).²

Clearly, that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish that the position qualifies as a specialty occupation.³ The petitioner is obliged to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting. This the petitioner has failed to do.

There is insufficient evidence in the 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.

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 closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and

² For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in accounting or a closely related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

³ On Page 10 of the decision of denial, the director stated, "USCIS does not dispute that a bona fide position of an accountant requires a beneficiary to have a baccalaureate degree." The AAO does not concur with that statement as not all accounting positions require a minimum of a bachelor's degree or the equivalent in a specific specialty. To the extent that it conflicts with today's decision, that statement is withdrawn.

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).

As was observed above, the *Handbook* provides insufficient support for the proposition that the petitioner's industry, or any other, normally requires accountants to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains insufficient evidence pertinent to a professional association of accountants that requires a minimum of a bachelor's degree in a specific specialty or the equivalent as a condition of entry. The record contains no letters or affidavits from other managers of trust operations.

Counsel provided an evaluation of the proffered position that states the evaluator's opinion that trusts similar to the petitioner in size and operations routinely recruit and employ accountants with bachelor's degrees. The evaluator did not, however, list any reference materials, e.g. studies, reports, statistics, or other authoritative references, nor does he list any other substantive basis, other than his own experience, for his conclusions.

As to that experience, although the evaluator's *Curriculum Vita* shows that he has held various academic posts and published numerous books and articles, revealing a range of knowledge on matters pertinent to business administration and accounting, nothing in the record shows him to be an expert in the specific area in which he is offering an opinion in the instant case, that is, whether a trust of the petitioner's size and operations requires an accountant with a minimum of a bachelor's degree in a specific specialty or the equivalent.

For all of the above reasons, the AAO accords no probative weight to the April 10, 2010 evaluation provided. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

As was noted above, counsel also provided seven vacancy announcements.

One of the vacancy announcements provided was placed by a bank for a Trust Officer III. That bank is not in the same industry as the petitioner, and the evidence does not show that the duties of that position qualify it as a position parallel to the proffered position in the instant case. In any event, however, that announcement states that the position requires a bachelor's degree, but not that it should be in any specific specialty. Because the announcement does not indicate that the position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, that position has not been shown to be a specialty occupation position, and the petitioner may not use that vacancy announcement to demonstrate that the proffered position is a specialty occupation position by virtue of some perceived similarity to the position it announces.

Another vacancy announcement is for a fund accountant for an unidentified investment firm and requires a degree in business, accounting, or finance. That array of subjects does not constitute a specific specialty. Further, that the educational requirement of that position may be satisfied by an otherwise unspecified bachelor's degree in business demonstrates that the position is not in a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Because the position announced has not been shown to qualify as a specialty occupation position, the petitioner cannot show that the proffered position is a specialty occupation position by virtue of some perceived similarity to the position announced.

Another vacancy announcement is for a Senior Property Accountant. That announcement states that the position announced requires a bachelor's degree in either business or accounting. As was explained above, any position, the educational requirement of which may be satisfied by an otherwise unspecified bachelor's degree in business or business administration, is not a specialty occupation position. Because the position announced is not a specialty occupation position, the petitioner cannot show that the proffered position is a specialty occupation by virtue of any perceived similarity to the proffered position.

Another announcement was placed by a recruitment firm and is for a property accountant to work for a property management company. It states that the position requires a bachelor's degree in accounting or finance; however, the petitioner did not provide sufficient evidence to establish that the advertising employer and the petitioner share the same general characteristics. The record also lacks sufficient information regarding which aspects or traits (if any) the advertising organization shares with the petitioner such that a finding could be made that this entity is similar to and in the same industry as the petitioner.

Each of the remaining three announcements requires a bachelor's degree in accounting. One was placed by a consulting/staffing firm. One was placed by a variety store chain. One was placed by a property management firm. The record lacks sufficient evidence to establish the petitioner as being similar to the advertising companies in terms of its size and the type and level of services provided such that they could be found to be similar organizations.

None of the vacancy announcements provided has been shown to be for a position parallel to the proffered position in an organization in the petitioner's industry that is otherwise similar to the petitioner. As such, they do not establish that a minimum of a bachelor's degree or the equivalent in a specific specialty is common to the petitioner's industry in positions that are parallel to the proffered position and in organizations that are similar to the petitioner.

Further, even if all seven positions were demonstrated to be for parallel positions in trusts similar to the petitioner and each unequivocally required a minimum of a bachelor's degree or the equivalent in

a specific specialty, the submission of the seven announcements is statistically insufficient to demonstrate an industry-wide requirement.⁴ The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

For all of the above reasons, the petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of 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." The petitioner and counsel claim that the duties of the proffered position are complex or unique. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. 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 or its equivalent.

The evidence of record does not establish that the proffered position is more complex or unique than other accountant positions. Counsel relies on the description of the duties of the proffered position to demonstrate its complexity or uniqueness. However, reviewing accounting documents and records; design accounting methods which will provide operational controls on assets; preparing, organizing and maintaining a complete and accurate record of assets; and periodically reviewing assets, for instance, are, at most, generic duties of an accountant position. They contain no

⁴ 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 just seven job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of accountant for a trust similar to 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.

indication of complexity or uniqueness that would require a minimum of a bachelor's degree or the equivalent in a specific specialty, notwithstanding that the *Handbook* indicates that some accountant positions may not, especially as the petitioner's trustee has revealed that an attorney and a CPA will continue to assist in the management of the petitioning trust.

The petitioner's trustee stated, in his January 28, 2010 letter, that the value of the petitioner's assets, over \$36 million, indicates that the proffered position requires a minimum of a bachelor's degree. However, no evidence in the record demonstrates that a position as accountant for a trust with that amount of assets is more complex or unique than other accountant positions. This is especially questionable in the instant case, in which the petitioner's trustee has asserted that he will continue to use the services of a CPA even if permitted to employ the beneficiary in the proffered position.

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

The criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position. Although the petitioner has never hired anyone to fill the proffered position, the petitioner's trustee asserted that some of the duties had previously been performed by a CPA, and some had been performed by an employee of the petitioner's property management firm with a bachelor's degree in commerce.⁵ They asserted that this evidence satisfies the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Precisely which duties of the proffered position those two individuals performed, however, was neither demonstrated nor alleged. Further, the petitioner's trustee has indicated that the petitioner will continue to utilize the services of the CPA. Under these circumstances, that the CPA and the property management company employee previously performed some unspecified duties of the proffered position does not demonstrate that the petitioner normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the position. The petitioner has not satisfied the requirement of the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁶

⁵ The petitioner's trustee stated that this employee has a bachelor's degree in commerce with a major in accounting. The employee's résumé also states that she majored in accounting. However, the diploma which was issued by a college in the Philippines was not accompanied by an evaluation attesting to the equivalency of that degree. In any event, the diploma merely states that this employee has a bachelor's degree in commerce, with no mention of accounting.

⁶ 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

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, or the equivalent, in a specific specialty.

Again, however, the duties of the proffered position, as described by the petitioner's trustee, contain no indication of such specialization and complexity that the knowledge required to perform them is typically associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. The duties of assisting in collaborating with third party contractors to ensure assets are properly maintained; preparing monthly, quarterly and annual statements and schedules; and working with a trust attorney to ensure compliance with all applicable accounting laws for trusts, for instance, contain no indication of specialization and complexity such that the knowledge required to perform them is usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty.

The April 10, 2010 evaluation of the proffered position also stated that the proffered position so specialized and complex enough that it would require someone that possesses the level of education of a bachelor's degree with a focus on accounting. For the reasons given above, however, the conclusory assertions of that evaluation will be accorded no weight.

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

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

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

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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").

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.