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



U.S. Citizenship
and Immigration
Services

DATE: OCT 04 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director of the California Service Center (hereinafter "the director"), denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner claims to be a "fabric importer and textile converter" with 40 employees and a gross annual income of \$54 million. It seeks to employ the beneficiary in the position of accountant. Accordingly, the petitioner endeavors to classify the beneficiary 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 the proffered position is a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which requires [(1)] 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 requires [(2)] 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 stating additional requirements that a position must meet, supplementing 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.

In a letter dated May 14, 2012, the petitioner claimed that it required the services of an accountant. In a separate statement appended to the petition, the petitioner provided the following description of the duties of the proffered position:

Apply principles of accounting and business administration to analyze financial information and supervise accounting personnel to prepare general ledger and journal vouchers for accounts payable, accounts receivable. Prepare payrolls, financial statements and records. Compile and analyze information to account for expenditures and document business transactions. Direct and coordinate activities of other accounting clerical workers performing accounting and bookkeeping tasks. Access financial operations, make recommendations to management and provide suggestions to reduce cost, enhance revenues, and improve profits. Be responsible for financial data analysis and detailing assets, liabilities, capital and prepare reports to summarize and manage grant programs with regard to current and projected financial position to management. Inspect account books and accounting systems for efficiency and use of accepted accounting procedures. Access financial operations, make recommendations to management and provide suggestions to reduce cost, enhance revenues, and improve profits.

The petitioner also claimed that "the position cannot be filled by anyone with less than a Bachelor's Degree in Business Administration, Accounting, any similar field of study or its equivalent." Regarding the beneficiary's qualifications, the petitioner submitted an educational evaluation demonstrating that the beneficiary holds the foreign equivalent of a U.S. bachelor's degree in business administration.

The director found the initial evidence insufficient and issued an RFE dated September 27, 2012. The director requested more details regarding the nature of the petitioner's business and its need for a full-time accountant. The director also requested additional documentation in support of the contention that the proffered position is a specialty occupation.

In a response dated December 6, 2012, the petitioner addressed the director's queries. The petitioner provided an updated description of the duties of the proffered position, which is set forth below:

1. [The beneficiary] will be responsible for compiling and analyzing financial information to prepare entries to accounts, such as general ledger accounts to document business transactions in accordance with generally accepted accounting principles (GAAP). The job will also involve preparation of financial statement, balance sheet, profit and loss statement and other accounting reports. This aspect of the job does not call for simple bookkeeping, which can be trusted to an ordinary bookkeeper or accounting clerk. We do require a "professional" who has the capability to conduct analysis on the company's financial transactions and submit factual reports which will be used for decision making purposes.
2. [The beneficiary] will be expected to prepare cash flow and budgetary projection. She will prepare schedule of payments and will prepare reports to show the company's current and projected cash position. She will be expected to provide the management with a sound advice on cash management. Consequently, she will have to prepare budgetary projections, which will involve analysis and costing using budgeting principles.
3. [The beneficiary] will be engaged in internal control procedures. She will institute check and balance, and will examine expense, assets, and liabilities. She will also audit vouchers, case notes and prepare reports to substantiate individual transactions prior to settlement.
4. [The beneficiary's] job will further involve inventory control, which will call for analysis of how much inventory should be maintained during the peak months, and how much inventory should be kept on stock during the lean months to avoid unnecessary cost of storing products at the warehouse which are not moving.
5. On transactions involving importation of textiles, [the beneficiary] will oversee the preparation of required banking documents such as Letter of Credit. She will prepare comparative analysis to show comparison between locally purchased products versus imported items, the factors affecting prices as well as the revenues generated from each type of transaction.

The petitioner also submitted a copy of the petitioner's organizational chart, demonstrating that in the petitioner's organization, an accountant oversees an accounts payable and an accounts receivable clerk. Regarding the petitioner's business, the petitioner did not address the director's queries with regard to similar businesses in the petitioner's industry. Specifically, the director requested explanations and accompanying evidence to demonstrate that other businesses within the petitioner's industry sector had similar hiring practices for positions such as the proffered position, as well as explanatory statements regarding what differentiates the petitioner's business from similar

businesses in the industry and why the petitioner needs a full-time accountant. The AAO notes that the petitioner submitted an abundance of documentation, which included payroll records, copies of tax returns, job vacancy postings by the petitioner for an "experienced salesperson," and invoices.

On February 2, 2013, the director denied the petition. Specifically, the director found that the duties of the proffered position, when examined in relation to the petitioner's organizational structure, appeared more akin to those of a bookkeeper or an accounting clerk. The director concluded that the petitioner failed to demonstrate that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's findings were erroneous, and that there are significant differences between the duties of a bookkeeper and the proposed duties of the beneficiary in the proffered position. Counsel contends that, contrary to the director's findings, the proffered position is akin to that of an accountant as described in the U.S Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and thus qualifies as a specialty occupation.

Additionally, counsel for the petitioner indicates that the "preponderance of the evidence" standard is relevant to this matter, and that the petitioner clearly established through credible and uncontested evidence that the proffered position is a specialty occupation. Counsel also argues that the proffered duties come under the section in the *Handbook* on accountants and auditors. Additionally, counsel also contends that the proffered position is not a bookkeeper or accounting clerk position.

With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Applying the preponderance of the evidence standard, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation.

As a preliminary matter, the petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).¹

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In reviewing the record, the AAO observes that the critical element is not the title of the position or 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, or its equivalent, as the minimum for entry into the occupation, as required by the Act.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion 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.

The petitioner claims that the proffered position is that of an accountant. The director, however, found that the proffered position is more akin to that of a bookkeeper or an accounting clerk. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2012-2013 online edition of the *Handbook* for its discussion of accountants. As stated by the *Handbook*, the occupation of accountant is described in relevant part as follows:

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

Duties

Accountants and auditors typically do the following:

- Examine financial statements to be sure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time

- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures
- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

In addition to examining and preparing financial documentation, accountants and auditors must explain their findings. This includes face-to-face meetings with organization managers and individual clients, and preparing written reports.

Many accountants and auditors specialize, depending on the particular organization that they work for. Some organizations specialize in assurance services (improving the quality or context of information for decision makers) or risk management (determining the probability of a misstatement on financial documentation). Other organizations specialize in specific industries, such as healthcare.

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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.

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 Sept. 25, 2013).

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by graduates of community colleges or by bookkeepers and accounting clerks who meet the education and experience requirements of their employers:

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.

Handbook, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited Sept. 25, 2013).

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.²

On the Form I-129, which was filed on May 29, 2012, the petitioner claimed that it was established in 1990 and that it had forty employees. Although minimal explanatory statements were provided in support of the petition and in response to the RFE, the record contains copies of tax returns prepared by an outside accounting firm.

According to the *Handbook*, the duties of bookkeeping, accounting, and auditing clerks are as follows:

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

² 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.

- Produce reports, such as balance sheets (costs compared to income), income statements, and totals by account
- Check figures, postings, and reports for accuracy
- Reconcile or note and report any differences they find in the records

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

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

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

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

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

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

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

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited Sept. 23, 2013).

The AAO notes that an organizational chart for the petitioner's organization was submitted in response to the RFE. In the chart, the petitioner indicates that the petitioner's accountant directly supervises two individuals: Edward Alejandro, Accounts Receivable; and Alexander Almajose, Accounts Payable. There is nothing in the record that provides an overview or an explanation as to the duties performed by each of these individuals. Moreover, the petitioner submits copies of its own advertisements for the position of "experienced salesperson" in response to the RFE. No explanation with regard to the significance of these vacancy postings is submitted, thereby suggesting the proffered position is not necessarily akin to that of an accountant or even a bookkeeper. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Absent specificity with regard to the duties performed by the beneficiary's claimed subordinates, the AAO cannot determine whether the petitioner employs a bookkeeper or accounting clerk who would perform the non-specialty occupation duties described above. Although these employees have the titles of "accounts payable" and "accounts receivable," there is no evidence in the record to demonstrate that they actually perform duties that are typically associated with their job titles. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

A review of the updated description of duties of the proffered position, submitted in response to the RFE, reveals that most of the stated duties are akin to those identified in the *Handbook's* section pertaining to bookkeepers, accounting and auditing clerks described above. For example, the

petitioner claims that the beneficiary will be responsible for general ledger compilation, as well as preparation of financial statements, balance sheets, and profit and loss statements. Although the petitioner asserts in the updated job description that "this aspect of the job does not call for simple bookkeeping," the record is devoid of evidence to support this claim. Moreover, although counsel's arguments on appeal make the same claims, they are likewise unsupported by documentary evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Absent evidence to the contrary, the AAO concurs with the director's finding that the duties of the proffered position, when presented with the minimal evidence of the petitioner's operations, are akin to that of a bookkeeping clerk. The *Handbook* describes the educational requirements of this occupational category as follows:

Most bookkeeping, accounting, and auditing clerks need a high school diploma, and they usually learn some of their skills on the job. They must have basic math and computer skills, including knowledge of spreadsheets and bookkeeping software.

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited Sept. 25, 2013). Based on the above section, a baccalaureate degree or higher in a specific specialty, or its equivalent, is not required for entry into this occupational category.

It should be noted that even if the proffered position was found to be an accountant position, the *Handbook* indicates that accountants do not constitute an occupational group that requires, as a category, a specialty occupation level of education, that is, at least a U.S. bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation in the United States. Therefore, despite the petitioner's assumption to the contrary, accountants do not comprise an occupational group that requires at least a bachelor's degree in a specific specialty, or its equivalent, 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." U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors,"

<http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited Sept. 25, 2013). This does not support the view that accountant positions qualify, as a category, 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)(1)), 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)).³

Further, the "Education" subsection of the aforementioned section of the *Handbook* includes this statement:

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. In this context, the fact 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 the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner 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 a body of highly specialized knowledge leading to at least a bachelor's degree level of knowledge in accounting. This, the petitioner has failed to do.

In addition, the AAO notes that the Occupational Information Network (O*NET) Summary Reports, referenced by counsel, are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. In response to the RFE, the petitioner submitted a copy of the section of the O*NET OnLine relevant to 13-2011.01 – Accountants. Contrary to the assertions of counsel on appeal, O*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty

³ For instance, the first definition of "most" in *Webster's New 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.

directly related to the occupation. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

Therefore, contrary to the repeated claims of counsel, the proffered position cannot inherently be deemed a specialty occupation that requires a degree in a specific specialty for entry into the occupation. Accordingly, 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 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.

On appeal, counsel for the petitioner submits three job postings for the position of "Accountant." The first, posted by the [REDACTED] simply requires a bachelor's degree and does not specify that the degree be in a specific specialty. Therefore, this posting cannot be deemed evidence of an industry standard. The next posting is by the [REDACTED] a staffing/recruitment company seeking an accountant for a "Prestigious NYC based, high-end fashion organization." There is no additional information regarding the size, scope, or exact nature of this company; therefore, the AAO cannot determine whether this posting represents an industry standard among similar organizations. The final posting is by [REDACTED] a wholesaler specializing in gourmet food (cookies, chocolates, teas, etc.), [REDACTED] ginseng, health care, and Tiger Balm products.⁴ Consequently, this posting is not representative of a standard hiring practice in the petitioner's industry. Therefore, as the record contains no evidence that organizations similar to the petitioner, i.e., importers and textile converters, impose a common degree requirement among parallel positions, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).⁵

⁴ See www.popus.com (last visited September 25, 2013).

⁵ According to the *Handbook's* detailed statistics on accountants, there were approximately 1,700 persons employed as accountants by apparel, piece goods, and notions merchant wholesalers in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (last visited September 25, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just three job postings with regard to the common educational requirements for entry into parallel positions in similar organizations in the petitioner's industry. 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").

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the position.

The petitioner and counsel claim that the duties of the proffered position are complicated. The record, however, contains no evidence establishing that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the proffered position. Other than submitting a copy of the beneficiary's diploma and educational evaluation, which demonstrate that the beneficiary holds the equivalent to a U.S. bachelor's degree in business administration, neither counsel nor the petitioner state that the duties of the proffered position can only be performed by an individual with a degree in a specific specialty or its equivalent. In fact, as briefly discussed *infra*, the petitioner claims that anyone holding a generalized degree in business administration is qualified to perform the duties of the proffered position. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

The issue under this criterion is whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Counsel does not address this prong on appeal, nor does the petitioner or counsel explain or clarify at any time in the record which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. While not directly addressed by the petitioner, the claim that the petitioner requires the beneficiary to serve as its accountant, and the fact that the petitioner's tax returns submitted into the record demonstrate that they were prepared by an outside accounting firm, suggest that the proffered position is a new position and that the petitioner has not

As such, even if the job announcements supported the finding that the job of accountant for a forty-person fabric importer and textile converter 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.

previously employed any individuals in the position of accountant. Therefore, absent any evidence to the contrary, the petitioner has not satisfied this criterion.

Moreover, the AAO notes that, in the RFE, the director advised the petitioner that it could submit copies of its present and/or past job vacancy announcements in support of the contention that it has a history of hiring specialty-degreed individuals for the proffered position. It is noted that the petitioner submitted copies of its posting for "experienced salesperson" from a classified section, which does not require a degree in a specific specialty. Moreover, this posting is not for the proffered position of accountant. Absent an explanation regarding the significance of the submission of these postings, the AAO cannot determine that a specialty degree is routinely required for the proffered position.

It should be noted that 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 self-imposed requirements, then any individual with a bachelor's degree in a specific specialty could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree in that specialty. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than bookkeeper and/or accounting clerk positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner and counsel simply provide unsupported opinions with regard to the complexity of the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a specialty-degreed individual could perform them. The record does not establish that this position is inherently more specialized or complex than other similar but non-specialty-degreed employment.⁶

⁶ Moreover, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective

In addition, the petitioner submitted information pertaining to two software products in response to the RFE; namely, MOD2 and Sage 50. According to the minimal information submitted by the petitioner with regard to these products, they appear to provide automated accounting solutions for business. Moreover, the petitioner claims that almost every one of its employees uses the MOD2 software. This statement undermines the petitioner's repeated claims that the duties of the proffered position are more complex than those of a bookkeeper, since it is evident that automated accounting software solutions are currently used in the petitioner's business, thereby demonstrating that the duties of the proffered position are not as complex as the petitioner suggests.

Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position meets the requirements of 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 that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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

evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).