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U.S. Citizenship
and Immigration
Services

DATE: **SEP 25 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

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,

for
Ron Rosenberg
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 states that it is a restaurant established in 2006. Subsequent submissions suggest that the petitioner owns several sandwich restaurants and at least one other fast food restaurant. In order to continue to employ the beneficiary in what it designates as an accountant position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in 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 [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens

who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an accountant position and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2011, Accountants and Auditors from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor of business administration degree in accounting from [REDACTED] in Huntsville, Texas.

Counsel also submitted a letter, dated August 13, 2012, from the petitioner's president. That letter states:

In this position, [the beneficiary's] specific duties will include: (i) compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards; (ii) preparing entries and reconciling general ledger accounts, documenting transactions, and summarizing current and projected financial position; (iii) maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit & loss, and cash flow statement; (iv) auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets; (v) preparing compliance reports for taxing authorities; (vi) reconciling cash and sales reports, prepare cash flow statements and deposits and (vi) [sic] analyzing operating statements, review cost control programs, and make strategy recommendations to management.

The petitioner's president also stated that the proffered position requires a bachelor's degree in business administration, accounting, or a related field.

On August 29, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted (1) over seventy vacancy announcements; (2) a letter, dated November 10, 2012, from the petitioner's president; and (3) counsel's own letter, dated November 20, 2012

In his November 10, 2012 letter, the petitioner's president reiterated his previous description of the duties of the proffered position and added further detail as follows:

Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards:

Common duties for accountants revolve around the direction and planning of financial statements, cost control systems, and ledger accounts. Accounting skills are mandatory for these positions, and immense organization is integral. They watch over all aspects of basic accounting tasks. By analyzing revenues, costs, financial liabilities, and assets, accountants are able to calculate future cash flows accurately. Financial reports such as balance sheets of profit/loss statements must be maintained and reported to administrators. The majority of an accountant's day is spent completing or analyzing paperwork, but communication among departments is also necessary.

Preparing entries and reconciling general ledger, maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit and loss, and cash flow statement:

Reconciling and forecasting internal accounts is a large part of Accountant's duties. They spend an immense amount of time compiling data, ensuring accuracy, analyzing information, and creating reports. They monitor all documents and report any trends to management.

Auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets. Preparing compliance reports for taxing authorities. Reconciling cash and sales reports, prepare cash flow statements and deposits:

Analyzing reports, statements, and accounting software of an internal or external facility to ensure accurate calculations. They must have a thorough knowledge of all laws and regulations relating to accounting and practices, because their job is to detect and report any discrepancies within a company's financial records. If an error has occurred, it is their duty to trace it back to the source, and make recommendations

to ensure more accurate accounting in the future. Calculate, input, and verify data on a regular basis. These managers and supervisors oversee all of these basic functions in addition to maintaining all financial records. These positions may require a great deal of time spent researching, or reviewing the work of others. Maintain detailed tax information year round. Their duties are not limited to preparing tax returns and reports, but also include advising a company of the benefits or expenditures associated with particular business transactions.

Analyzing operating statements, review cost control programs, and make strategy recommendations to management:

Accountants are responsible for preparing, evaluating, and presenting budgets and reports directly to management. Their duties range from establishing to implementing company practices and procedures, and extensive knowledge of accounting principles is mandatory. They must oversee all aspects of the accounting department, such as budget or report maintenance and preparation. Once the positive data has been compiled properly, they are responsible for presenting the data to management. Reconciliation and reporting of the Company's investment portfolio including recording investment activity, analyzing for variances with statements provided by third party portfolio managers and preparing necessary journal entries.

The petitioner's president also stated that when the petitioner opened in 2006 "accounting was handled by one of the partners, who have [sic] a Bachelor [sic] in Accounting." He also stated that the petitioner hired the beneficiary in 2009 as an intern and that he has worked in the proffered position since January 2010. As to the educational requirements of the proffered position, the petitioner's president stated:

Completion of a Bachelor's Degree program in Business Administration or a related area provides the student with specialized knowledge that directly prepares the graduate for the challenging tasks of the [proffered] position.

Yet further he stated that the proffered position, "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Business Administration, or a related area, or the equivalent." Elsewhere in the letter, he stated:

Due to the complex and demanding requirements of the position of an Accountant, only a person of exceptional ability and skills in Business Administration is capable of qualifying as an Accountant for [the petitioner]. These minimum prerequisites for the offered position require a skilled professional with a Bachelor's degree in Business Administration, or a related field.

The petitioner's president stated that the beneficiary is qualified to work in the proffered position based on his having attained a bachelor's degree in business administration.

In his November 20, 2012 letter, counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that "most accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." Counsel also stated:

[In the petitioner's organization], the position of Accountant have [sic] always been filed [sic] by an individual with education and experience equivalent to a U.S. Bachelor's degree in Business Administration, Accounting, or a related degree

Counsel did not, however, identify the people whom the petitioner has employed in the proffered position or provide evidence pertinent to their educational qualifications.

In addition, counsel cited *Matter of Arjani*, 12 I&N Dec. 649 (R.C. 1967), *The Button Depot, Inc., v. DHS*, 386 F.Supp2d 1140 (C.D. Cal. 2005), and *Matter of Doultinos*, 12 I&N Dec. 153 (DD 1957), apparently for the proposition that accountant positions qualify as specialty occupation positions. Those cases will be addressed below.¹

The director denied the petition on December 4, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. In that decision, the director analyzed the proffered position as a position for a bookkeeping, accounting, or auditing clerk.

On appeal, reiterated the list of the duties of the proffered position that was previously provided and asserted that the proffered position is not bookkeeping, accounting, or auditing clerk position, but an accountant position. He also reiterated that a position performing those duties "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Business Administration, or a related area, or the equivalent." Counsel again cited the *Handbook* as evidence that the proffered position qualifies as a specialty occupation position. Counsel also observed that an H-1B visa petition for the beneficiary to work in the same position was previously approved.

As a preliminary matter, the AAO observes that the petitioner and counsel have repeatedly indicated that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. However, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise

¹ It is also noted that counsel states in his letter that the petitioner will pay the beneficiary \$37,835.00 per year which is in contrast to the \$44,595 per year the petitioner claims it will pay the beneficiary. However, the AAO will assume that this is a typographical error by counsel rather than an inconsistency in the record.

undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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).

Again, the petitioner 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.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2011, Accountants and Auditors. The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Accountants and Auditors," including the sections regarding the typical duties and requirements for this occupational category.

What Accountants and Auditors Do

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

Duties

Accountants and auditors typically do the following:

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

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

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

Some workers with a background in accounting and auditing teach in colleges and universities. For more information, see the profile on postsecondary teachers.

The four main types of accountants and auditors are the following:

Public accountants do a broad range of accounting, auditing, tax, and consulting tasks. Their clients include corporations, governments, and individuals.

They work with financial documents that clients are required by law to disclose. These include tax forms and balance sheet statements that corporations must provide potential investors. For example, some public accountants concentrate on tax matters, advising corporations about the tax advantages of certain business decisions or preparing individual income tax returns.

External auditors review clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

Some public accountants specialize in forensic accounting, investigating financial crimes, such as securities fraud and embezzlement, bankruptcies and contract disputes, and other complex and possibly criminal financial transactions. Forensic accountants combine their knowledge of accounting and finance with law and investigative techniques to determine if an activity is illegal. Many forensic accountants work closely with law enforcement personnel and lawyers during investigations and often appear as expert witnesses during trials.

Management accountants, also called cost, managerial, industrial, corporate, or private accountants, record and analyze the financial information of the organizations for which they work. The information that management accountants prepare is intended for internal use by business managers, not by the general public.

They often work on budgeting and performance evaluation. They may also help organizations plan the cost of doing business. Some may work with financial managers on asset management, which involves planning and selecting financial investments such as stocks, bonds, and real estate.

Government accountants maintain and examine the records of government agencies and audit private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by federal, state, and local governments ensure that revenues are received and spent in accordance with laws and regulations.

Internal auditors check for mismanagement of an organization's funds. They identify ways to improve the processes for finding and eliminating waste and fraud. The practice of internal auditing is not regulated, but the Institute of Internal Auditors (IIA) provides generally accepted standards.

Information technology auditors are internal auditors who review controls for their organization's computer systems, to ensure that the financial data comes from a reliable source.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited Sept. 18, 2013).

On the other hand, the *Handbook* states the following with regard to the duties of bookkeeping, accounting, and auditing clerks:

What Bookkeeping, Accounting, and Auditing Clerks Do

Bookkeeping, accounting, and auditing clerks produce financial records for organizations. They record financial transactions, update statements, and check financial records for accuracy.

Duties

Bookkeeping, accounting, and auditing clerks typically do the following:

- Use bookkeeping software as well as online spreadsheets and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) as well as income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared to income), income statements, and totals by account
- Check figures, postings, and reports for accuracy
- Reconcile or note and report any differences they find in the records

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

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

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

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

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

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

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

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited Sept. 18, 2013).

The distinction between the duties of an accountant or auditor and the duties of a bookkeeping, accounting, or auditing clerk appears to be the complexity of analysis required by those duties. The petitioner claims that the duties of the proffered position include analyzing financial information, investment activity, operating statements, revenues, costs, financial liabilities, assets, reports, statements, paperwork and information in general, and accounting software; however, the petitioner failed to provide evidence sufficient to demonstrate the complexity of the requisite analysis.

The duties the petitioner's president attributed to the proffered position are consistent with those of bookkeeping, accounting, and auditing clerk positions as described in the *Handbook*. The AAO finds no flaw in the director's finding that the petitioner failed to show, by a preponderance of the evidence, that the proffered position is an accountant position. However, the AAO will assume, *arguendo*, that the proffered position is an accountant position, so as to reach counsel's assertions as to those positions.³

As mentioned earlier, the petitioner cited three decisions, *Matter of Arjani*, *The Button Depot, Inc., v. DHS*, and *Matter of Doultsinos*, apparently for the proposition that accountant positions qualify as specialty occupation positions.

However, both *Arjani* and *Doultsinos* are concerned with qualifications of the beneficiary, and not the nature of an occupation. Moreover, *Arjani* and *Doultsinos* are concerned with membership in professions, not eligibility to perform services in a specialty occupation, and these decisions predate the statutes and regulations inaugurating the H-1B specialty occupation program. While the terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes *Arjani* and *Doultsinos*. Therefore, counsel's reliance on these cases is misplaced. Further, although *Button Depot* pertained to an H-1B visa petition, the issue was not whether the position proffered qualified as a specialty occupation position, but whether the beneficiary was qualified for the position. Therefore, even if the petitioner had demonstrated the proffered position to be an accountant position, those cases would not support the proposition that it is a specialty occupation position.

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

How to Become an Accountant or Auditor

³ The AAO observes, however, that analyzing the proffered position as a position for a bookkeeping, accounting, or auditing clerk would not increase the visa petition's prospects for approval.

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 numbers of points based on experience and education, pass a written exam, and submit references.

Advancement

Some top executives have a background in accounting, internal auditing, or finance. For more information, see the profile on top executives.

Beginning public accountants often advance to positions with more responsibility in 1 or 2 years and to senior positions within another few years. Those who excel may become supervisors, managers, or partners; open their own public accounting firm; or transfer to executive positions in management accounting or internal auditing in private firms.

Management accountants often start as cost accountants, junior internal auditors, or trainees for other accounting positions. As they rise through the organization, they may advance to accounting manager, chief cost accountant, budget director, or manager of internal auditing. Some become controllers, treasurers, financial vice presidents, chief financial officers, or corporation presidents.

Public accountants, management accountants, and internal auditors can move from one aspect of accounting and auditing to another. Public accountants often move into management accounting or internal auditing. Management accountants may become internal auditors, and internal auditors may become management accountants. However, it is less common for management accountants or internal auditors to move into public accounting.

Important Qualities

Analytical skills. Accountants and auditors must be able to identify issues in documentation and suggest solutions. For example, public accountants use analytical skills in their work to minimize tax liability, and internal auditors do so when identifying fraudulent use of funds.

Communication skills. Accountants and auditors must be able to listen carefully to facts and concerns from clients, managers, and others. They must also be able to discuss the results of their work in both meetings and written reports.

Detail oriented. Accountants and auditors must pay attention to detail when compiling and examining documentation.

Math skills. Accountants must be able to analyze, compare, and interpret facts and figures, although complex math skills are not necessary.

Organizational skills. Strong organizational skills are important for accountants and auditors who often work with a range of financial documents for a variety of clients.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited Sept. 18, 2013).

The *Handbook* reports that some graduates from junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to accountant positions by demonstrating their accounting skills. That is, the *Handbook* reports that individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and then advance to accountant positions. The *Handbook* does not state that this education and experience must be equivalent to at least a bachelor's degree in a specific specialty. The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Further, 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. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty, or the equivalent, especially as the *Handbook* suggests that some accountant positions do not require such a degree.

Further still, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge in bookkeeping and accounting fields, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to

the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

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

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner did submit over seventy vacancy announcements that were either posted on the Internet or placed in newspaper classified sections.

Many of the vacancy announcements do not identify the industry the position announced is in. Those vacancy announcements are of no evidentiary weight for the proposition that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions parallel to the proffered position with similar companies in the petitioner's industry.

Many of the vacancy announcements indicate that they are for positions in various retail and wholesale sales companies selling various products, including musical instruments, clothing, shoes, hardware, house paint, perfumes and cosmetics, pet supplies, office supplies, precious metals and stones, used tires, or unidentified commodities. Others positions announced are with manufacturers of clothing, electronics components, and other consumer goods. Some of the announcements provided are for positions with financial services firms, with communications firms, or biotechnology firms. One of the positions announced is with an energy/utility company; one is with a construction firm; one with a hotel; one was placed by a medical testing company; one was placed by a community redevelopment corporation; and one of the vacancy announcements was placed by the petitioner's counsel.

The AAO observes that, on appeal, counsel stated: "Restaurant chain accounting is not the same as accounting that is done for any other business or individuals." Although that assertion may not be

supported by the record, neither is the contrary supported. That is, the petitioner has not demonstrated that the requirements for accountants in the numerous different industries from which the vacancy announcement's above were drawn are the same as the requirements for accountants for a chain of fast food restaurants. In any event, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is only concerned with parallel positions in organizations *in the petitioner's industry* and otherwise similar to the petitioner.

Because the vacancy announcements listed above are not for positions in the petitioner's industry, they are of no evidentiary weight for the proposition that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions parallel to the proffered position with similar companies in the petitioner's industry.

Of the over seventy vacancy announcements provided, only five have been demonstrated to be in industries even related to the petitioner's industry. That is, they are in industries related to food service. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Accountant for [REDACTED] the franchisor for [REDACTED] restaurants, requiring a bachelor's degree in accounting and three years of experience in accounts payable with some supervisory experience;
2. Accountant for [REDACTED] requiring one to three years' experience and stating, "BA or BS in related field preferred";
3. Accountant for [REDACTED] a multi-brand restaurant operator, stating no education or experience requirement;
4. Accounts Payable Supervisor for [REDACTED] a restaurant and caterer, requiring two to three years of managerial or supervisory experience, and stating, "Bachelor's degree in accounting preferred; or five plus years related experience and/or training; or equivalent combination of education and experience";
5. Accounts Payable Manager for [REDACTED] a restaurant supply company, requiring previous business leadership and mentoring experience, and "Four[-]year College degree, or four plus years of equivalent work experience."

Although those vacancy announcements contain duty descriptions, the descriptions are not detailed enough to show that the positions announced are truly parallel to the proffered position.

Additionally, although the first vacancy announcement was placed by the world headquarters of the [REDACTED] organization, of which the petitioner is a franchisee, it was not placed by a company that is truly in the petitioner's industry, that is, a company that owns and operates individual fast food restaurants. The complexity of the accounting tasks required by a franchisor of fast food restaurants has not been shown to be comparable to that of fast food restaurant franchisees.

Similarly, whether [REDACTED] and [REDACTED] which placed the second and third vacancy announcements, respectively, own and operate fast food restaurants has not been

demonstrated. Whether the complexity of the operations of that company, and the requirements it would place on its accountant positions, are similar to those of the petitioner has not, therefore, been demonstrated.

Further, the second vacancy announcement states that a bachelor's degree is "preferred" for the proffered position. A preference is not a minimum requirement. The third vacancy announcement contains no educational requirement. Those vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for the positions they announce. For these reasons, it cannot be found that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The fourth and fifth vacancy announcements indicate that experience can be substituted for the otherwise required education. Those vacancy announcements, however, require only four or five years of experience as a substitute for a bachelor's degree. Pursuant to the regulations applicable to H-1B visa petitions, five years of experience is not equivalent to a bachelor's degree. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Those vacancy announcements do not, therefore, state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

An experience requirement in some of the vacancy announcements raises another issue. The first, second, fourth, and fifth vacancy announcements include experience requirements,⁴ whereas the proffered position is an entry level position for an employee who has only basic understanding of the occupation, as indicated on the LCA where the petitioner designated the proffered position as a Level I position. *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. That those vacancy announcements require experience suggests, therefore, that they are not positions parallel to the proffered position.

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

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and

⁴ That is, the first vacancy announcement requires three years of experience in accounts payable with some supervisory experience, the second vacancy announcement requires one to three years' experience, the fourth vacancy announcement requires two to three years of managerial or supervisory experience, and the fifth vacancy announcement requires previous business leadership and mentoring experience.

(2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that various educational backgrounds may be sufficient for an entry-level accountant position, including backgrounds that do not include a minimum of a bachelor's degree in a specific specialty or its equivalent. Even the duty description the petitioner's president provided in his November 10, 2012 letter lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

In his November 10, 2012 letter, the petitioner's president stated that, when the petitioner was formed in 2006, one of its partners, who has a bachelor's degree in accounting, initially performed the duties of the proffered position. That partner has never been identified and no evidence pertinent to his degree has been provided. The period during which he or she allegedly performed the duties of the proffered position has never been revealed. The petitioner stated that the beneficiary began to

work for the petitioner during 2009 and began working in the proffered position in January 2010. Whether the petitioner employed anyone in the proffered position between the time when one of its partners held the position and the date during January 2010 when the beneficiary began to work in the proffered position has not been revealed.

In short, the number of people who have worked in the proffered position since the beneficiary was formed in 2006 is unknown to the AAO, and no documentary evidence pertinent to their educational qualifications has been provided.

Although the petitioner's president and counsel have both stated that the petitioner has always employed accountants with a minimum of a bachelor's degree in business administration or its equivalent, the record contains no corroborating evidence pertinent to anyone the petitioner has ever previously employed to fill the proffered position. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁵

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, including compiling and analyzing financial information; preparing financial reports, including balance sheets, profit and loss statements, and cash flow statements; preparing ledger entries and reconciling accounts, including payables and receivables contain no indication of a nature so specialized and complex that they require attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. Even if the petitioner had demonstrated the proffered position to be an accountant position, the position would not have been shown to be so specialized and complex that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the petitioner filed the instant visa petition for a Level I accountant position, a position for a beginning level employee with only a basic understanding of accountancy, and the *Handbook* indicates that some accountant positions require no such degree.

⁵ 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 a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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 AAO recognizes that this is an extension petition. The director's decision does not indicate whether he reviewed the prior approval of the previous nonimmigrant petition filed on behalf of the beneficiary. If the previous nonimmigrant petition was approved based on the same evidence contained in the current record, that approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the instant nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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 proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.