



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **JUL 24 2014**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

[REDACTED]

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a restaurant with five employees, established in 2009. Other evidence in the record indicates that it is a sandwich franchise. In order to employ the beneficiary in what it designates as a part-time cost accountant position for "20 - 35 hours" per week, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The 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, we have determined that the director did not err in her 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.

We base our decision upon our 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.

II. THE LAW

The issue before us 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 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a cost 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 provided an evaluation, dated August 10, 2009, which was prepared by [REDACTED] Professor [REDACTED] at [REDACTED]. That evaluation states that the proffered position is similar in nature to other cost accountant positions, and that the duties of a cost accountant would require either a bachelor's degree in accounting or professional expertise equivalent to a bachelor's degree in accounting. It further states that the beneficiary's employment experience, evidence of which is contained in the record, is equivalent to a bachelor's degree in accounting from a regionally accredited college or university in the United States. Letters from two deans of [REDACTED] stated that Dr. [REDACTED] has authority within the School of Business to 1) grant credit by examination, 2) waive courses within the business school, and 3) sponsor internship credits.

Counsel also submitted: (1) a letter, dated August 22, 2012, from the petitioner's president; (2) a copy of the employment agreement, dated August 22, 2012, between the petitioner and the beneficiary; (3) a copy of a letter, dated August 23, 2012, from the manager of [REDACTED] and [REDACTED] Florida.

In his August 22, 2012 letter, the petitioner's president provided the following description of the duties of the proffered position:

As a cost accountant, [the beneficiary] will prepare, examine, and analyze accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards. She will analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice. She will also establish tables of accounts, and assign entries to proper accounts. She will document, price and total the food and beverage inventories, and then make sure to account for the changes between periods to account for the correct monthly food and beverage purchases and to insure an appropriate level of food inventory so that [the petitioner] does not have unnecessary higher food costs. She will generate daily and weekly report that summarizes, in a simple and easy to view format all key daily and weekly operating data including sales (by category), labor, food and beverage purchases as well as beginning and ending inventories and other fixed expenses allocated on a daily basis to produce a weekly estimate of the restaurant's net profit.

[The beneficiary's] duties will be to develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs. She will have to develop, implement, modify, and document recordkeeping and accounting systems, making use of current computer technology. [The beneficiary] will help us in choosing new directions to optimize the growth of our business. She will help us in managing our cash flow, tax planning, and conducting computerized bookkeeping tasks. She will oversee our billing functions and monitor, control and report special billing arrangements considering our work plan and business practice.

As Cost Accountant, [the beneficiary] will record and analyze the financial information of the [petitioner], among her responsibilities as budgeting, performance evaluation, cost management, and asset management. She will analyze and interpret the financial information that we need in order to make sound business decisions. Other responsibilities of our Cost Accountant are budgeting, performance evaluation, cost management, and asset management.

The petitioner's president also cited the U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook (Handbook)* for the proposition that the proffered position requires a bachelor's degree, and stated that the requisite bachelor's degree must be in "Accounting or a related discipline." He further stated: "The petitioner hired a cost accountant prior to [redacted] and a required qualification for that previous hire is a bachelor's degree in accounting or a similar field."

The August 22, 2012 employment agreement between the petitioner and the beneficiary reiterated the duty description contained in the petitioner's president's letter of the same date.

The August 23, 2012 letter from the manager of [REDACTED] states that cost accountants are very important in its type of business, and that his restaurant only hires individuals with a bachelor's degree in finance, accounting, or business administration for that position.

On December 4, 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 service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements. That RFE stated that the duty description provided appeared to describe a position for a bookkeeping, accounting, or auditing clerk.

In response, counsel submitted: (1) copies of four vacancy announcements; (2) a copy of an evaluation, dated August 12, 2009; (3) a copy of its general manager's diploma; (4) photographs of the petitioner's sandwich shop, and (5) counsel's own letter, dated February 26, 2013. The vacancy announcements will be addressed below.

The August 12, 2009 evaluation was prepared by [REDACTED] Ms. [REDACTED] stated that the beneficiary has, as a result of her employment experience, the equivalent of a bachelor's degree in accounting. Evidence in the record shows that Ms. [REDACTED] has a bachelor's degree in history, but not that she has any current association with any institution of higher learning.

The petitioner's general manager's diploma shows that he has a bachelor's degree in finance. The photographs of the petitioner's sandwich shop show that it is a [REDACTED] sandwich shop location.

In his February 26, 2013 letter, counsel reiterated that the petitioner has five employees and was established in 2009. She asserted that the proffered position is not a bookkeeping position and described the duties of the position as follows:

- Prepare, examine, or analyze accounting records, financial statement, or other financial reports to assess accuracy, completeness and conformance to reporting and procedural standards. (10%)
- Analyze business operations, trends, costs, revenues, financial commitments and obligations to project future revenues and expenses or to provide advice. (20%)
- Establish table of accounts and assign entries to proper accounts. (5%)
- Develop, maintain and analyze budgets, preparing periodic reports that compare budgeted costs and actual costs (20%)
- Develop, implement, modify and document recordkeeping and accounting systems, making use of current computer technology (20%)
- Record and analyze financial information. (10%)
- Purchasing, accounting and inventory control. (5%)

- Budget preparations and handle accounts. (10%)

Counsel stated that the proffered position was previously filled by [REDACTED] who has a bachelor's degree in finance, and who now works as the petitioner's general manager. She did not further explain the statement in the petitioner's president's August 22, 2012 letter pertinent to [REDACTED]

Counsel identified the petitioner's other employees as [REDACTED], the petitioner's evening manager; and [REDACTED]

[REDACTED] Counsel further stated that the evidence provided demonstrates that the proffered position requires a minimum of a bachelor's degree in accounting or a related field.

The director denied the petition on April 3, 2013, 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. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director stated:

USCIS recognizes that the position of a Cost Accountant is normally considered professional, and that most of these positions require prospective employees to hold at least a bachelor's degree in Accounting or a closely related field.

However, the director questioned whether the petitioner's business, which appears to be an individual [REDACTED] sandwich shop franchise, would employ a cost accountant for 20 to 35 hours per week, as the petitioner claims it will.

On appeal, counsel stated:

The petitioner is offering an extension of a previously approved H1B for the same position, with the same company under the same terms as the previously approved H1B petition for [the beneficiary] as a Cost Accountant for a period of three years.

Counsel stated that the evidence of record demonstrates that the proffered position qualifies as a specialty occupation position, and again cited the *Handbook* in support of that proposition.

IV. ANALYSIS

Initially, we note that, contrary to counsel's assertion, the petitioner in the instant case has not previously employed the beneficiary in H-1B status. In any event, even if it had, 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).

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which we routinely rely 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)).

We 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. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

Preliminarily, the petitioner must establish the type of position being offered. The petitioner stated, in the LCA, that the proffered position corresponds to an accountant or auditor position as described in O*NET. However, because the duty descriptions provided have indicated that, in the proffered position, the beneficiary would prepare accounting records and examine them for completeness; establish tables of accounts; assign entries to proper accounts; perform calculations pertinent to food and beverage inventories; generate data pertinent to sales, labor, food and beverage services; develop, implement, modify, and document recordkeeping and accounting systems; conduct computerized bookkeeping tasks; oversee billing functions; record and analyze financial information; etc., we will also consider whether the proffered position may be a position for a bookkeeping or accounting clerk.

The *Handbook* describes the occupation of "Bookkeeping, Accounting, and Auditing Clerks" as follows:

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

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

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

- Use bookkeeping software, online spreadsheets, and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) and income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared with income), income statements, and totals by account
- Check for accuracy in figures, postings, and reports
- 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 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*, 2014-15 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (July 7, 2014).

On the other hand, the *Handbook* describes the duties of accountants and auditors as follows:

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 ensure 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 decisionmakers) 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 following are examples of types of accountants and auditors:

Public accountants perform 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.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms. Publicly traded companies are required to have CPAs sign documents they submit to the Securities and Exchange Commission (SEC), including annual and quarterly reports.

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

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 also may 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*, 2014-15 ed., Accountants and Auditors," <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-2> (last visited July 2, 2014).

The petitioner is claiming that the proffered position is a position for a cost accountant, which the *Handbook* also calls a managerial accountant. Such positions are similar to bookkeeping or accounting clerk positions, in that both are responsible, to some degree, for a company's financial records. Both positions involve some degree of analysis.

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 accounting records, financial statements, financial reports, business operations, trends, costs, revenues, financial commitments, obligations budgets, and other financial information. However, the petitioner failed to provide evidence sufficient to demonstrate the complexity of the requisite analysis for its sandwich shop franchise.

Further, the petitioner's five present employees do not include a bookkeeping or accounting clerk. As the petitioner does not employ a bookkeeper or accounting clerk and as there is no evidence that the beneficiary would be relieved from performing the company's general, financial record keeping, such as recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeping clerk and/or accounting clerk), it appears more likely than not that the beneficiary is being hired to perform, at least in substantial part, these duties.

We find, by a preponderance of the evidence, that the proffered position is a bookkeeping or accounting clerk position. We further observe that such positions do not qualify as specialty occupation positions because they do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. The appeal will be dismissed and the visa petition denied on this basis.

However, although the evidence is insufficient to demonstrate that the proffered position is an accountant position, as claimed, we will momentarily assume, *arguendo*, that the proffered position qualifies as such a position, so as to reach counsel's assertions pertinent to such positions.

As noted above, the director stated the following in the decision of denial:

USCIS recognizes that the position of a Cost Accountant is normally considered professional, and that most of these positions require prospective employees to hold at least a bachelor's degree in Accounting or a closely related field.

Notwithstanding that statement by the director, we are aware of no axiom that cost accountant positions normally require a bachelor's degree in accounting or a closely related field. Instead, we will turn first to the *Handbook*, cited by counsel, in our analysis of accounting positions. The *Handbook* states the following about the educational requirements of accountant and auditor positions:

How to Become an Accountant or Auditor

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, those with associate's degrees, 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.

Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

Licenses, Certifications, and Registrations

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. Many employers will often pay the costs associated with the CPA exam.

CPAs are licensed by their state's Board of Accountancy. Becoming a CPA requires passing a national exam and meeting other state requirements. Almost all states require CPA candidates to complete 150 semester hours of college coursework to be certified, 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 (AICPA). 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 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) to 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 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 ABV requires a written exam and completion of at least six business valuation projects that demonstrate a candidate's experience and competence. The CITP requires 1,000 hours of business technology experience and 75 hours of continuing education. Candidates for the PFS also must complete a certain amount work experience and education, and pass a written exam.

Advancement

Some top executives and financial managers have a background in accounting, internal auditing, or finance.

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 and auditors 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.

Id. at "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited July 2, 2014).

The *Handbook* reports that some people with associate's degrees, 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.

Therefore, even if the proffered position were demonstrated to be an accountant position, the *Handbook* would not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In such a situation, if it is to satisfy that criterion at all, the petitioner must provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Assertions, absent supporting documentary evidence, are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

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. Even if it were demonstrated to be an accountant position, the classification of the proffered position as a Level I position would 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, we find 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, we find 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

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

In the instant case, the petitioner has not established that, even if it were shown to be an accountant position, the proffered position would fall 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 attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The record does contain the August 23, 2012 letter, described above, from the manager of [REDACTED]. As was noted above, it states that cost accountants are very important in its type of business, and that his restaurant only hires individuals with a bachelor's degree in finance, accounting, or business administration for that position.

As was observed above, the petitioner is a [REDACTED] sandwich shop franchise. The name of the restaurant described in the August 23, 2012 letter suggests that it is not such a franchise, and that it is not a sandwich shop. As such, although these two companies serve food, the record contains no evidence that the petitioner and the restaurant which describes itself as a "fine dining & banquet catering" business are similar organizations and that letter has not been shown, therefore, to be relevant to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), or to be otherwise relevant to the instant case.²

² Further, the letter from [REDACTED] indicates that an otherwise undifferentiated bachelor's degree in business administration would be a sufficient educational qualification for its cost accountant positions. A degree with a generalized title, such as business administration, without

The August 10, 2009 evaluation prepared by Professor [REDACTED] states that the proffered position is similar in nature to other cost accountant positions and that the duties of a cost accountant would require either a bachelor's degree in accounting or professional expertise equivalent to a bachelor's degree in accounting.

Professor [REDACTED] evaluation does not list any reference materials on which he relied as a basis for his conclusion that cost accountant positions necessarily require a bachelor's degree or the equivalent. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment.

Further, Professor [REDACTED] demonstrated no familiarity with the duties of the proffered position as they would be performed within the petitioner's organization. He did not comment on the likelihood that the petitioner, a single sandwich shop franchise, would require the services of an in-house cost accountant. He did not address the fact that the *Handbook* indicates that some accountant positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. He did not distinguish the proffered position from those accountant positions that do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. He did not indicate whether or not he was aware that the petitioner designated the proffered position a Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). We find that the letter from Professor [REDACTED] does not establish that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner also provided four vacancy announcements, as was stated above.

However, the vacancy announcements were placed for positions with a coffee distributor, a provider of hardscape and concrete products, and Nestlé, USA. Only one vacancy announcement was placed for a position with a restaurant company, and little else about that company is revealed. The number and type of restaurants it operates, its revenues, and the complexity of its operations are not revealed.

further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. If the letter from [REDACTED] had been shown to be relevant to the requirements of the proffered position, it would be evidence that the proffered position *does not* require a minimum of a bachelor's degree in a specific specialty or its equivalent.

As such, none of the vacancy announcements provided have been shown to be for positions with similar organizations in the petitioner's industry.

Further, one vacancy announcement states that it requires an accounting degree, but not that the requisite degree must be a minimum of a bachelor's degree. Another states that it requires a bachelor's degree, but not that the degree must be in any specific specialty.

Further still, although the LCA characterizes the proffered position as a Level I position, an entry-level position for an employee who has only basic understanding of the occupation, all of the vacancy announcements provided require accounting experience, which indicates that they are not entry-level positions. One vacancy announcement states that the position announced would involve conducting moderately complex audits, which also suggests that it is not a Level I position.

In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I positions, entry-level positions requiring only a basic understanding of accountancy, require a minimum of a bachelor's degree in a specific specialty or its equivalent. That proposition cannot be supported with vacancy announcements for positions that are not Level I positions.

Finally, even if the proffered position had been demonstrated to be an accountant position, and even if all of the 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 would have failed to demonstrate what statistically valid inferences, if any, can be drawn from four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

Thus, even if the proffered position had been shown to be an accountant position, the evidence of record would not 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. Even if the proffered position were demonstrated to be an accountant position, therefore, the evidence of record would not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so

³ USCIS "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that, even if the proffered position had been demonstrated to be an accountant position, the petitioner would have failed to credibly demonstrate that the duties that comprise the proffered position 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 that collectively constitute the proffered position 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.

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

The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Therefore, even if the proffered position were demonstrated to be an accountant position, the evidence of record would 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 there is a spectrum of degrees acceptable for such positions, including degrees less than a bachelor's degree and degrees not in a specific specialty. In other words, the record 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, we could not conclude that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We 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.⁴

In his August 22, 2012 letter, the petitioner's president appeared to state that the petitioner previously employed [REDACTED] as its cost accountant, and that he was hired pursuant to a policy of requiring a bachelor's degree in accounting or a similar field for the position. No evidence of [REDACTED] degree was provided, nor was any evidence that the petitioner employed him as a cost accountant. Further, the petitioner never identified the field in which Mr. [REDACTED] received his degree, or the fields the petitioner deems sufficiently "similar" to accounting that a degree in those fields would be considered a sufficient qualification for the proffered position.

Subsequently, counsel stated that the proffered position was previously filled by [REDACTED] who has a bachelor's degree in finance, and who now works as the petitioner's general manager. She did not, however, further comment on the assertions pertinent to Mr. [REDACTED]. The evidence is therefore insufficient to demonstrate that both of the two people identified as having worked as the petitioner's cost accountant had a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, we observe that the petitioner was established during 2009. The record contains no evidence, nor even an assertion, that the petitioner has not employed any other people in the proffered position during the ensuing years. For this additional reason, because it has not established how many people it has employed in the proffered position, the petitioner has not established that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in 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 both reasons, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we 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, such as preparing, examining, and analyzing accounting records, financial statements, or other financial reports; analyzing business operations, trends, costs, revenues, financial commitments and obligations; etc., as they would be performed in the context of the petitioner's operations, have not been shown to be of a nature so specialized and complex that they require knowledge associated with a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of accountant and auditor positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I accountant position, a position for a beginning level employee with only a basic understanding of accountancy. Even if the proffered position had been shown to be an accountant position, this would not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to accounting, especially as the *Handbook* indicates that some accountant positions require no such degree.

For the reasons discussed above, even if the proffered position were shown to be an accountant position, the evidence of record would not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that, even if the proffered position were demonstrated to be an accountant position, the evidence would satisfy any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, even if the proffered position were demonstrated to be an accountant position, it would not have been demonstrated to qualify as a specialty occupation. Even if the proffered position were demonstrated to be an accountant position, the appeal would be dismissed and the petition denied for this reason.

V. ADDITIONAL ISSUE

The record suggests an additional issue that was not addressed in the decision of denial.

The beneficiary has not been shown to possess a minimum of a bachelor's degree in any subject. To attempt to show that she is qualified for the proffered position, the petitioner provided two evaluations of the beneficiary's previous employment.

The regulation at § 214.2(h)(4)(iii)(C)(4) does permit the petitioner to show that the beneficiary is qualified for the proffered position through employment experience. However, in order to show that the beneficiary's previous employment is equivalent to a bachelor's degree in a specific specialty, 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) requires an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. The record contains two evaluations of the beneficiary's employment experience.

On evaluation, prepared by [REDACTED] and dated August 12, 2009, states that the beneficiary's employment experience is equivalent to a bachelor's degree in accounting. Evidence in the record shows that she has a bachelor's degree in history, but not that she has authority to grant college-level credit for training and/or experience in the specialty at any college or university. Her evaluation is of no weight in the analysis of the beneficiary's employment experience in terms of its equivalence to a college degree.

The other evaluation, dated August 10, 2009 and prepared by Professor [REDACTED], also states that, based on her employment experience, the beneficiary has the equivalent of a bachelor's degree in accounting. That evaluation, as was noted above, is accompanied by letters from two deans stating that Professor [REDACTED] has authority within the [REDACTED] to (1) grant credit by examination, (2) waive courses within the business school, and (3) sponsor internship credits. Neither letter, however, states that Professor [REDACTED] has authority to grant college-level credit for training and/or experience or that [REDACTED] has a program for granting such credit based on an individual's training and/or work experience. That evaluation is also of no weight in demonstrating that the beneficiary's employment experience is equivalent to a bachelor's degree pursuant to the pertinent regulations.

The petitioner has not demonstrated, pursuant to the pertinent regulations, that the beneficiary has a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the beneficiary has not been shown to be qualified to work in any specialty occupation position. The visa petition will be denied on this additional basis.

VI. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

(b)(6)

NON-PRECEDENT DECISION

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