



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 13 2014** OFFICE: VERMONT SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

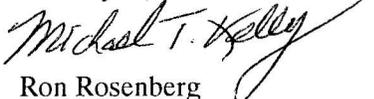
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 Director, Vermont Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to continue the employment of the beneficiary as an "Accountant" from October 1, 2012, until October 1, 2015. Accordingly, the petitioner endeavors to extend the beneficiary's classification as an H-1B 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, determining that the record did not establish that the job offered qualifies as a specialty occupation.

I. Statutory and Regulatory Framework

The principle issue in this matter is whether the director correctly determined that the petitioner failed to establish that the proffered position is a specialty occupation. To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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, supra*. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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, United States Citizenship and Immigration Services (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.

II. Salient Aspects of the Record

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the denial decision; and (5) the Form I-290B (Notice of Appeal or Motion) and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.¹

While the AAO bases its ultimate conclusion upon its independent review and analysis of the totality of the evidence in the record of proceeding, we will here highlight some major aspects of the evidentiary record.

A. The Petitioner and Its Business Operations

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it operates a "Retail" business. The petitioner indicates that it was established in 2007, employs 3 persons in the United States, and reported a \$238,130 gross annual income when the petition was filed.

The petitioner listed its North American Industry Classification System (NAICS) Code on the Form I-129 H-1B Data Collection Supplement, Part A, Question 6, as 447110, "Gasoline Stations with Convenience Stores."²

In its July 18, 2012 "Support Letter" filed with the Form I-129 the petitioner described itself as "an acquisition, management[,] and development firm, primarily in the business of managing convenience stores and other retail sales operations." In this regard, we note that the record of proceeding contains no substantive evidence of any acquisition project at all, let alone one that at the time of the petition's filing had progressed to any level that would indicate an impact upon the duties and responsibilities of the proffered position. We also note that, while the petitioner cited its "business structure" as among the elements combining to require the educational credentials asserted in the petition, the evidence of record does not convey any substantive

¹ The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "447110 Gasoline Stations with Convenience Stores," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

information about the "business structure" that would show it as embedded in finances and associated accounting matters that would require the application of at least a bachelor's degree of highly specialized knowledge in accounting or a closely related specialty. In fact, the record indicates that the petitioner only had three employees at the time of the petitioner's filing, and the record does not show that, at the time of the petition's filing, the petitioner had secured for the beneficiary any definite, non-speculative work that would extend beyond one business establishment.

As the petitioner asserts that the beneficiary would provide accounting services at a specialty occupation level, the financial dimensions of the petitioner's operations are of particular interest. However, that July 2012 support letter specified a gross income of only \$238,130 for the prior fiscal year. Further, while the petitioner's response to the RFE includes a range of documentary evidence reflecting the type of work that would engage the petitioner, that evidence is not indicative of accounting duties that would require the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in accounting or a closely related field.

B. The Proffered Position

On the Form I-129, the petitioner specified "Accountant" as the proffered position's job title.³ The petitioner also submitted a Labor Condition Application (LCA) that had been certified for use with a job opportunity within the "Accountant" occupational group, SOC (ONET/OES) Code 13-2011, at a Level I (entry-level) wage.⁴ The LCA had been certified on April 11, 2012 for a validity period from October 1, 2012 to October 1, 2015.

In its July 18, 2012 letter in support of the petition, the petitioner stated that it is an "acquisition, management and development firm, primarily in the business of managing convenience stores and other retail sales operations." The petitioner noted that its "business structure, the varied needs of their employees and customers, as well as the highly specialized and competitive nature of the retail sales [it] provide[s] in today's market, mandates that [the petitioner] employ a professional as an Accountant who possesses wide-ranging skills and specialized knowledge of the principals [*sic*], theories, body of knowledge and applications in the related position." The petitioner described the beneficiary's specific duties as:

- i. Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards;

³ U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "447110 Gasoline Stations with Convenience Stores," <http://www.census.gov/cgi-bin/sssd/naics/naicsreh>.

⁴ 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.

- 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
- vii. Analyzing operating statements, reviewing cost control programs, and making strategy recommendations to management.

The petitioner asserted that "[d]ue 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]." The petitioner asserted that the minimum prerequisite for the proffered position is a bachelor's degree in business administration, accounting, finance, or a related field.

Upon review, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE.

In a response dated February 13, 2013, counsel for the petitioner listed responsibilities for an accountant for [REDACTED] a company not established as affiliated with the petitioner, which corresponded partially to the petitioner's initial description of duties.⁵ Counsel repeated the record's earlier itemization of the duties of the proffered position and added to it an allocation of time spent on each of those previously described duties, as follows:

- Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards (30%);
- Preparing entries and reconciling general ledger accounts, documenting transactions, and summarizing current and projected financial position. Preparing detailed balance sheet, profit and loss, and cash flow statements (20%);

⁵ It is not clear from the record if counsel's reference to the duties associated with an accountant at a different company is a typographical error, and that the amended description and allocation of time is for the duties the beneficiary will perform for the petitioner.

- Auditing orders, contracts, individual transactions (5%);
- Preparing depreciation schedules to applied to capital assets (10%)
- Preparing compliance reports for taxing authorities (10%);
- Analyzing operating statements, reviewing cost control programs, and making strategy recommendations to management (25%).

Counsel asserted that the above described duties show that the beneficiary spent 95 percent of his time on accounting functions and only five percent of his time on bookkeeping functions. However, neither counsel nor the petitioner explained why the description in response to the RFE, excluded the initially described duties of:

- i. Maintaining payable and receivable records, detailing assets, liabilities, capital; and
- ii. Reconciling cash and sales reports, prepare cash flow statements and deposits.

Counsel added that the most lucrative part of the petitioner's convenience store business is its check cashing services which includes cashing over \$100,000 a month in checks. Counsel asserted that since the petitioner handles large amounts of cash it must employ a professional accountant to "oversee this transfer of cash by ensuring the Company has sufficient liquidity, preparing/reconciling ledger entries, preparing financial reports, reconciling accounts, auditing transactions and advising [the] President on methods to protect [the] Company from defaults and NSF, [and] working with taxing authorities for compliance reporting."

Counsel asserted further:

Due to the complexity of the voluminous transactions taking place, [the petitioner] strongly believes that having an in-house full-time Accountant will be efficient, cost-effective, and highly beneficial for the company. [The beneficiary's] responsibilities primarily include managing and directing the financial activities, rather than performing the day-to-day bookkeeping function. [The beneficiary] would be spending [the] majority of his time in preparing, reviewing, and evaluating financial and tax records, implementing cost management techniques, and advising management in financial investment decisions to contribute to [the] financial success of [the petitioner]. In addition to supervising individuals who perform routine bookkeeping services, [the beneficiary] will spend a bulk of his time in establishing operational and financial security procedures and advising upper management with cost saving and investment strategies.

Counsel noted that prior to hiring the beneficiary, the petitioner employed independent contractors to perform these services and that "[t]hose individuals had education and experience equivalent to a U.S. Bachelor's degree in Business Administration, Accounting, Finance, or a related degree which requirements have remained consistent in [the] staffing of [the beneficiary]."

The petitioner also provided a number of advertisements posted on the Internet and in newspapers for accounting positions from a variety of organizations.⁶ The Internet advertisements for the positions of accountant, junior accountant, and senior accountant were posted by organizations involved in fashion, car rental, restaurant, and grocery retail. The majority of the ten Internet advertisements for positions in accounting indicated that a bachelor's degree in accounting or finance was required. The three newspaper advertisements for the position of accountant were either illegible or indicated that a bachelor's degree in business was either preferred or required.

The record also included the petitioner's sales and tax permit and licenses, the petitioner's bank statements, a sampling of the petitioner's invoices, the Internet printout from the Department of Labor's *Occupational Outlook Handbook (Handbook)* and Occupational Information Network (O*NET Online) for the occupation of accountant, and pay stubs issued by the petitioner for the beneficiary's employment.

Upon review, including the petitioner's response to the RFE, the director determined that the record did not establish that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner claims that an accountant with the specific duties listed "would be considered a professional position and would normally be filled by a graduate with a minimum of a Bachelor's Degree in Business Administration, Accounting, Finance, or a related area, or the equivalent." Counsel paraphrases and repeats his response to the director's RFE and contends that the duties of the position and the nature of the petitioner's business requires the services of an accountant and that the industry standard requires a minimum of a bachelor's degree in business administration. Counsel asserts that the petitioner "is seeking new opportunities to establish an internet business for a retail store." Counsel contends: "[a]ccountants at [the petitioner] help to ensure that the company is functioning more efficiently, its financial records are kept more accurately, and its taxes are paid properly and on time." Counsel provided a slightly revised description of the beneficiary's responsibilities and allocation of duties as follows:

- Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards (30%);

⁶ The petitioner also included several Internet and newspaper advertisements for the position labeled financial analyst. These advertisements did not provide sufficient information to conclude that the positions were similar to that of the proffered position of accountant.

- Preparing entries and reconciling general ledger accounts, maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit and loss, and cash flow statement (20%);
- Auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets (5%);
- Preparing compliance reports for taxing authorities (10%);
- Reconciling cash and sales reports, prepare cash flow statements and deposits (10%);
- Analyzing operating statements, reviewing cost control programs, and making strategy recommendations to management (25%)

Counsel asserts that "the industry standard for a position such as Accountant for [the petitioner] is to be filled through recruiting a college graduate with the minimum of a Bachelor's Degree in Business Administration, Accounting, Finance, or a related area, or similar preparation." Counsel avers that the petitioner's position of accountant requires the theoretical and practical application of a body of highly specialized knowledge.

III. Analysis

At the outset the AAO finds that, as reflected in the duty descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of general and generic functions. As will be later discussed, many of these duties appear to fall within the purview of bookkeeping, accounting, and auditing clerks. Further, the evidence of record does not describe any of the listed functions in sufficient detail to either establish the substantive nature and associated complexity or specialization of the petitioner's matters that the beneficiary would have to address, or to establish whatever training, education, or education-equivalence level that performance of those functions would require, let alone that the performance would require the practical and theoretical application of at least a bachelor's degree level of knowledge in accounting or a related specialty, as would be required to establish the proffered position as a specialty occupation.

Also, the record's descriptions of the proposed duties and the position that they are said to comprise are not sufficiently detailed and concrete to establish either the duties or the proffered position as particularly complex, unique, and/or specialized. Rather, the AAO finds, the proffered position, and its constituent duties, are described in terms of relatively abstract and generalized functions, that, as such, do not demonstrate whatever academic and/or experience-derived level of accounting knowledge the beneficiary would have to apply to the petitioner's business matters if this petition were approved. Additionally in this regard, we find that, while the documentary evidence submitted into the record as examples of the type of work product generated in the proffered position indicates a need for close attention to detail and some

knowledge of general accounting principles, that evidence does not itself demonstrate the need for at least a bachelor's degree level of education of accounting or any other specific specialty, and the petitioner has not supplemented that evidence with persuasive explanations of how it is that those work-product samples indicate such a need. That being said and with the understanding that we are incorporating these comments and findings as part of our bases of the analysis of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii), we shall now separately address each of those criteria.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. The AAO recognizes the Department of Labor's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁷

Preliminarily, we observe that the petitioner has not provided a consistent version of the duties of the proffered position. The petitioner initially includes tasks that are associated more closely with the occupation of a bookkeeper, such as maintaining payable and receivable records and reconciling cash and sales reports.⁸ In addition, counsel for the petitioner claimed that the beneficiary would supervise individuals who perform the routine bookkeeping services and would advise upper management. However, the petitioner does not explain the role its reported three employees have in operating its convenience store and gas station. That is, there is no probative evidence in the record that the petitioner employs individuals who perform bookkeeping or other routine tasks in the operation of its gas station/convenience store. The petitioner does not include an organizational chart or any substantive evidence on the petitioner's business structure. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to accounting duties above those usually performed by bookmaking, auditing, or accounting clerks. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition to the insufficiency and inconsistent information regarding the petitioner's business and the proffered position, the AAO has also reviewed the information in the *Handbook* regarding the occupational category "Accountants."

⁷ The AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

⁸ The *Handbook* reports that most bookkeeping, accounting, and auditing clerks need a high school diploma. In other words, a bachelor's degree in a specific specialty is not required for bookkeeping, accounting and auditing clerk positions. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Bookkeeping, Accounting and Auditing Clerks," at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (Feb. 7, 2014).

We observe that the *Handbook* states only that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Accountants and Auditors," at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited Feb. 7, 2014). The *Handbook* does not indicate that such a degree is a normal minimum entry requirement for all accountant and auditor positions. A normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." See section 214(i)(1) of the Act. Moreover, the *Handbook* indicates that some without a bachelor's degree or even a postsecondary degree may "advance to accountant positions by demonstrating their accounting skills on the job." *Id.* In this matter, even if the proffered position is an accounting position, the petitioner has failed to establish that any accounting duties to be performed by the beneficiary would require the practical and theoretical application of highly specialized accounting knowledge attained by at least a bachelor's degree, or the equivalent, in accounting, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation.

In that regard, we also observe that the petitioner accepts that "a person of exceptional ability and skills in business administration is capable of qualifying as an Accountant for [the petitioner]" and acknowledges that the minimum prerequisite for the proffered position is a bachelor's degree in business administration, accounting, finance, or a related field. A minimum requirement of a bachelor's degree in business administration is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed above, 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's acceptance of a bachelor's degree in business administration, among other disciplines, is tantamount to an admission that the proffered position is not in fact a specialty occupation.

The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a requirement for at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has failed to satisfy the first criterion of 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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As already discussed, the *Handbook* does not report an industry-wide requirement for at least a bachelor's degree in a specific specialty for the proffered position. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree in a specific discipline is a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry.

We do note, however, that the record of proceeding contains several job announcements.

On the Form I-129, the petitioner states generally that it is a "Retail" business with a gross annual income of \$238,130 when the petition was filed. The petitioner's NAICS Code of 447110 listed on the Form I-129 H-1B Data Collection Supplement, Part A, Question 6, more completely describes the petitioner as "Gasoline Stations with Convenience Stores." Although the petitioner provided advertisements from organizations in fashion and other retail companies, the petitioner did not submit any advertisements from gas stations with convenience stores. Moreover, the petitioner did not present any evidence establishing that any of advertising organizations in retail are similar to the petitioner in type, scope of operations, or level of revenue or staffing. For the petitioner to establish that the organizations advertising for accounting positions are similar to its organization, it must demonstrate that it and the organization share the same general characteristics. Such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). The job postings submitted did not include any from gas station/convenience stores with three employees and approximately, \$250,000 in gross annual revenue. Thus the petitioner did not present probative evidence establishing that these organizations are similar to the petitioner in type, scope of operations, level of revenue or level of staffing.

Moreover, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Additionally, it must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the content of the job announcements had satisfied the requisite foundational elements for consideration under this alternative prong (i.e., that (1) the advertising organizations were in the petitioner's industry, (2) those organizations were similar to the petitioner, (3) they routinely required a bachelor's or higher degree in a specific specialty or its equivalent for the positions advertised, and (4) those advertised positions are parallel to the one proffered in this petition – none of which is the case here) still such a limited number of advertisements that appear to have been consciously selected would not be sufficient to satisfy this prong. That is, the advertisements do not establish that, in the words of this alternative prong, "[t]he degree requirement is common to the industry in parallel positions among similar organizations. "

Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to 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 complex or unique that it can be performed only by an individual with a degree."

As noted earlier, we here incorporate into our analysis of this prong our earlier comments and findings regarding the generalized descriptions of the duties presented as comprising the proffered position. As reflected in our earlier discussions, the evidence of record fails to develop relative complexity or uniqueness as an aspect of its claimed accountant position so as to elevate it above positions that involve some application of accounting principles but not at a level requiring a person who has at least a bachelor's degree in accounting or a closely related specialty.

Although counsel for the petitioner asserted that the petitioner's accounting position is complex and demanding, the implicit claim that the beneficiary must operate at an advanced level is undermined by the Level I prevailing-wage-rate in the certified LCA that the petitioner submitted into the record. That Level I salary is inconsistent with such a claim.

The evidence of record does not establish that this position is significantly different from other junior accountant or bookkeeping positions that require at most a general bachelor's degree to perform the attendant responsibilities. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than accounting or clerical positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other accounting positions 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).

Turning to the third criterion, the AAO observes that the petitioner has not stated that it previously employed anyone, other than the beneficiary, to perform the duties of the proffered position.⁹ The record does not identify any other employees that held the position, or contain evidence of their degrees, duties, and wages paid. Accordingly, the petitioner's recruiting and hiring history is insufficient to establish this element.

We also observe that while a petitioner may believe and assert that a proffered position requires a degree in a specific specialty, 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

⁹ 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. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, it 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). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). 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 nonimmigrant petitions on behalf of a 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).

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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties whose nature is so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties as described do not show that they are more specialized and complex than a junior accounting or bookkeeping position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. In addition to the lack of sufficient specificity to distinguish the proffered position from other accounting positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform the associated duties, 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.¹⁰

Moreover, the Level I wage rate is only appropriate for positions in which the beneficiary would perform routine tasks requiring limited, if any, exercise of independent judgment; the beneficiary's work would be closely supervised and monitored; and that he will receive specific instructions on required tasks and expected results; and his or her work would be reviewed for accuracy. See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

For these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

¹⁰ 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 current record does not establish that the petitioner has satisfied the statutory requirement for a specialty occupation found at section 214(i)(1) of the Act and further has failed to satisfy any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to conclude that it requires 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. Thus, we do not reach the question of the beneficiary's qualifications and whether his coursework in obtaining his degree qualifies him to perform the duties of the position because the record does not establish that the proffered position is a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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