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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: APR 0 3 2015 OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF THE 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on January 15, 2014. On the Form I-129, the petitioner describes itself as an "academic and preparatory tutoring company" that was established in In order to continue to employ the beneficiary in what it designates as an accountant position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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 director's denial letter; and (5) the Form I-290B and supporting documentation. We have reviewed the record in its entirety before issuing this decision.

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. Factual and Procedural History

In this matter, the petitioner stated in the Form I-129 petition that it seeks the beneficiary's continued services as an accountant to work on a part-time basis for 25 hours per week for its tutoring business. In a support letter dated December 23, 2013, the petitioner further explained the nature of its business operations, claiming that it provided assistance to students preparing for standardized tests such as the SAT, PSAT, ACT, , and various others. The petitioner claimed that its office was one of six branches of the business located in the area.

Regarding the duties of the proffered position, the petitioner stated as follows:

> In this professional capacity, [the beneficiary] will be responsible for in-house preparation [of] all financial accounting documents and financial reports while utilizing computer accounting and tax software. In order to better present his professional duties, we can further break them down as follows:
>
> He will continue to prepare tax and financial reports, payroll, budget reports and projections, as well as cost and asset management reports. This will also include preparation and posting of accounting and journal entries, weekly wage entries and reports, preparation of the required business tax documentation and reports for

records and filing, as well as review of monthly financial statements and budget reports. [The beneficiary] will conduct internal audits to ensure compliance with accounting principles and state and federal tax and financial reporting requirements. He will also prepare Budget Analysis and Financial Forecasting in order to monitor and ensure financial health of the company.
Approximate Percentage of Time Spent: 70%

He will also match invoices, time slips and related orders and batch invoices for check run.
Approximate Percentage of Time Spent: 10%

Furthermore, [the beneficiary] will prepare weekly, monthly, quarterly and annual financial reports (payroll, budget, income and expense) in a form of computerized spread sheets and present it in an "easy to read format."
Approximate Percentage of Time Spent: 10%

Finally, [the beneficiary] will manage the process of tracking and collecting administrative documents pertaining to non-payroll related expenditures and allocations (i.e., receipts and contracts) in order to track our inflow and outflow on periodic basis and enable a complete picture into our income and expenditures.
Approximate Percentage of Time Spent: 10%

The petitioner indicated that the beneficiary is qualified to perform services in the proffered position by virtue of his foreign degree, which was evaluated to be the equivalent of a U.S. bachelor's degree in business studies and one year of graduate study in accounting. In support of this contention, the petitioner submitted copies of the beneficiary's academic records and an educational credentials evaluation prepared by

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. We note that the LCA was certified for use with a job prospect within the occupational classification "Accountants and Auditors" - SOC (ONET/OES) code 13-2011, at a Level I (entry level) wage.

Finally, the petitioner submitted additional documentary evidence, such as a copy of its 2012 federal income tax return, copies of quarterly tax returns, and copies of the beneficiary's pay records.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on February 28, 2014. We note that the director specifically requested that the petitioner submit probative evidence to establish that the proffered position is a specialty occupation. The director outlined the evidence to be submitted.

On May 22, 2014, former counsel for the petitioner responded to the director's RFE by providing a brief and additional evidence. The documentation included an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* regarding "Accountants and

Auditors"; an evaluation of the academic degree requirement for the proffered position prepared by , Ph.D.; and copies of job vacancy announcements for positions the petitioner deemed parallel to the proffered position in similar industries. Counsel for the petitioner also addressed the question of whether a license was required for accountants in the State of New York, and submitted documentation in support of the contention that the proffered position did not require state licensing.

The director reviewed the information provided in response to the RFE. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on June 12, 2014. Newly-retained counsel for the petitioner submitted an appeal of the denial of the H-1B petition, the contents of which will be addressed in detail later in this decision.

II. Statutory and Regulatory Framework

For an H-1B specialty-occupation petition to be approved, the petitioner must provide sufficient evidence to establish that the particular position for which the petition was filed meets the applicable statutory and regulatory requirements.

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

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

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

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

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

> *(1)* A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

III. Analysis

For reasons that we shall discuss, we agree with the director's conclusion that the evidence fails to establish that the position as described constitutes a specialty occupation.

As will be evident in the discussions which will follow below, the evidence of record does not include either documentation or persuasively comprehensive descriptions of whatever particular financial matters would engage the beneficiary if this extension petition were approved. So, too, the petitioner has not elaborated whatever concrete aspects of matters upon which the beneficiary would work are such that they would require him to theoretically and practically apply at least a bachelor's degree level of a body of highly specialized knowledge in accounting or a closely related specialty. These deficiencies fatally undermine the petitioner's specialty-occupation claim, for – as will be discussed below – a position's inclusion within the Accountants occupational category is not sufficient to establish it as a specialty occupation.

We here again quote the following position descriptions from the petitioner's December 23, 2013 letter submitted to support the petition:

> In this professional capacity, [the beneficiary] will be responsible for in-house preparation [of] all financial accounting documents and financial reports while utilizing computer accounting and tax software. In order to better present his professional duties, we can further break them down as follows:
>
> He will continue to prepare tax and financial reports, payroll, budget reports and projections, as well as cost and asset management reports. This will also include preparation and posting of accounting and journal entries, weekly wage entries and reports, preparation of the required business tax documentation and reports for records and filing, as well as review of monthly financial statements and budget reports. [The beneficiary] will conduct internal audits to ensure compliance with accounting principles and state and federal tax and financial reporting requirements. He will also prepare Budget Analysis and Financial Forecasting in order to monitor and ensure financial health of the company.
> ***Approximate Percentage of Time Spent: 70%***
>
> He will also match invoices, time slips and related orders and batch invoices for check run.
> ***Approximate Percentage of Time Spent: 10%***
>
> Furthermore, [the beneficiary] will prepare weekly, monthly, quarterly and annual financial reports (payroll, budget, income and expense) in a form of computerized spread sheets and present it in an "easy to read format."
> ***Approximate Percentage of Time Spent: 10%***
>
> Finally, [the beneficiary] will manage the process of tracking and collecting administrative documents pertaining to non-payroll related expenditures and

allocations (i.e., receipts and contracts) in order to track our inflow and outflow on periodic basis and enable a complete picture into our income and expenditures.
Approximate Percentage of Time Spent: 10%

We find that the need for a specialty degree is not evident in the petitioner's descriptions of the duties comprising the proffered position. They comprise a skeletal outline of broad functions stated in exclusively generalized and generic terms. There is no attempt to provide a substantive description of the scope and complexity of matters upon which the beneficiary would work, or to explain how specific aspects of the work would require a person with at least a bachelor's degree in a specific specialty closely related to that type of work. To determine whether a particular job qualifies as a specialty occupation, USCIS focuses on the record's evidence of specific work involved in actual performance of the job. *See generally Defensor,* 201 F.3d 384. If the evidence of record fails to develop the performance aspects of the proffered position in terms sufficiently detailed to manifest that they involve the application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, the petition will fail to establish a specialty occupation. Such is the case here.

The support letter ascribes to the proffered position responsibility for "in-house preparation [of] all financial accounting documents and financial reports, while utilizing computer accounting and tax software." We note first that the record of proceeding contains no discussion or documentary evidence addressing what particular educational level - if any – in accounting or a closely related specialty would be required to employ that unspecified "computer accounting and tax software" to the extent required by whatever accounting or tax matters would engage the beneficiary.

The petitioner's support letter also states that the beneficiary "will continue to prepare tax and financial reports, payroll, budget reports and projections, as well as cost and asset management reports." However, the petitioner provides no substantive information about those just-quoted work matters that would provide us with a reasonable basis for finding that the particular content and preparation requirements of any of them are such that their preparation within the context of the petitioner's particular business operations and financial dimensions would require the theoretical and practical application of any particular educational level of accounting knowledge. In that regard, we also note that the petitioner has not presented any documentary evidence to support a finding that the preparation of any and all business tax reports, payroll reports, budget reports, and budget projections, cost reports, cost management reports, and asset management reports would require at least a bachelor's degree level of a body of highly specialized knowledge in accounting or any other specialty.

We note the petitioner's assertion that the beneficiary will "conduct internal audits to ensure compliance with accounting principles and state and federal and tax requirements." However, the record leaves unaddressed the substantive nature of such audits, as well as both (1) the specific accounting principles that would be applied in the audits and (2) why the requisite application of those principles would require specialty-occupation level knowledge in accounting or a closely related specialty.

The record of proceeding contains no evidence that describes and explains, or documents, the content and associated knowledge of accounting that would be involved in producing the "Budget Analysis and Financial Forecasting" that the petitioner identifies as aspects of the position.

With regard to the other duties that the petitioner ascribes to the proffered position, we see no evidentiary basis for finding that they – as generally described as they are - would exceed those of a bookkeeper or accounting clerk position.

Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, 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."

We find that the petitioner describes the proposed duties in terms of generalized and generic functions that fail to convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The relatively abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary "will be responsible for the preparation of all in-house financial accounting documents and financial reports." The petitioner does not illuminate either the particular content requirements for such "accounting documents and financial reports" or the methodologies and accounting knowledge that must be applied to produce such work-products. The petitioner's statement does not provide any probative insight into the substantive nature of the beneficiary's actual duties; nor does it include any concrete information regarding either the specific tasks that the beneficiary will perform or the complexity of particular work products that the beneficiary would provide.

Additionally, the petitioner claims that the beneficiary will be responsible for "match invoices, time-slips and related orders and batch invoices for check run." The petitioner fails to demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The petitioner further claims that the beneficiary will be responsible for preparing "weekly, monthly quarterly and annual financial reports." The petitioner's statements do not convey any pertinent details as to either the content requirements of such reports or the actual accounting-work involved in producing those reports within the context of the petitioner's operations. Furthermore, the petitioner fails to convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform these tasks.

Thus, the petitioner relates duties and responsibilities for the proffered position as generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, in which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. We also observe, therefore, that it is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in accounting or any other specific specialty directly related to the duties and responsibilities of the proffered position.

The petitioner fails to convey either the substantive nature of the work that the beneficiary would actually perform in the context of the petitioner's business operations, any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform the duties, or the educational level of any such knowledge that may be necessary. The record of proceeding presents the proffered position's responsibilities as generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the petitioner's business operations.

The petitioner claims that the beneficiary has served in the proffered position since March of 2011. However, the petitioner has not provided sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary performs. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the associated tasks, and (3) the correlation between that work and a need for a particular educational level of highly specialized knowledge in a specific specialty.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Nevertheless, for the purpose of providing a comprehensive discussion that will identify additional evidentiary deficiencies, we will now discuss in detail the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will continue our discussion regarding the duties and the evidence in the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*). This criterion requires that the petitioner establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position which is the subject of the petition.

The petitioner stated that the beneficiary would be employed in a part-time accountant position. However, 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.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[1] As previously discussed, the petitioner designated the proffered position in the LCA under the occupational category "Accountants and Auditors."

We reviewed the chapter of the *Handbook* entitled "Accountants and Auditors" including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Accountants and Auditors" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. This fact is significant, for it means that a particular position's inclusion within the Accountants and Auditors occupational group would not in itself suffice to establish the position as one for which, in the words of this criterion, "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position."

Also, when reviewing the *Handbook*, we must note that the petitioner submitted an LCA that had been certified for a Level I (entry) position. By doing so, the petitioner in effect attested that it viewed the proffered position as a comparatively low, entry-level position relative to others within the occupation and signified that the beneficiary is only expected to possess a basic understanding of the occupation. Furthermore, the petitioner's designation of the position under this wage level signifies that the beneficiary will be expected to work under close supervision and receive specific instructions on required tasks and expected results. Additionally, the Level I designation reflects that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment, and that the beneficiary's work will be closely monitored and reviewed for accuracy.

[1] All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/. We hereby incorporate into the record of proceeding the chapters of the *Handbook* discussed in this decision.

DOL guidance indicates that a job offer for a research fellow, a worker in training, or an internship is an indicator that a Level I wage should be considered.[2]

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, we note that there is no indication that the petitioner requires the beneficiary to have obtained the designation Certified Public Accountant (CPA), Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position. In fact, counsel for the petitioner specifically distinguished the proffered position of in-house accountant from that of CPA or other similar position requiring certification and licensing compliance.

While the *Handbook* states that most accountant positions require at least a bachelor's degree in accounting or a related field, the *Handbook* continues by stating the following:

> 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Accountants and Auditors, on the Internet at http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4 (last visited March 24, 2015).

The *Handbook* does not support a finding that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. More specifically, the *Handbook* reports that some graduates from junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to accountant positions by demonstrating their accounting skills. According to the *Handbook*, 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 the 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. The *Handbook* states that most accountants and auditors need at least a bachelor's degree, however, this statement does not support the view that any accountant job qualifies as a specialty occupation as "most" is not indicative that a particular position within the wide spectrum of accountant jobs is one that normally requires at least a bachelor's degree in a specific specialty, or its equivalent.[3] More specifically, "most" is not indicative that a position normally requires at least a

[2] A more detailed discussion of the implications of the submission of an LCA certified for a Level I prevailing wage rate appears later in this decision.

[3] For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the

bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*)). 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.

We also reviewed the section of the *Handbook* relating to "Bookkeeping, Accounting, and Auditing Clerks" because, to the extent that the proposed duties are described in the record, it is not clear that their actual performance in the particular context of the petitioner's accounting and finance matters would exceed the work that the *Handbook* attributes to bookkeeping, auditing, and accounting clerks, which the *Handbook* describes as follows:

> Bookkeeping, accounting, and auditing clerks produce financial records for organizations. They record financial transactions, update statements, and check financial records for accuracy.
>
> Duties
> Bookkeeping, accounting, and auditing clerks typically do the following:
>
> - Use bookkeeping software, 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

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positions require at least a bachelor's degree in a specific specialty, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exists. 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." Section 214(i)(1) of the Act.

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, on the Internet at http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2 (last visited March 24, 2015).

We find that the *Handbook* does not indicate that bookkeeping, accounting, and auditing clerks comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree, in a specific specialty, or the equivalent. The *Handbook* provides the following information in the subsection entitled "How to Become a Bookkeeping, Accounting or Auditing Clerk" for this occupational category:

> Most bookkeeping, accounting, and auditing clerks need a high school diploma, and they usually learn some of their skills on the job. They must have basic math and computer skills, including knowledge of spreadsheets and bookkeeping software.
>
> Education
> Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting.
>
> Training
> Bookkeeping, accounting, and auditing clerks usually get on-the-job training. Under the guidance of a supervisor or another experienced employee, new clerks learn how to do their tasks, including double-entry bookkeeping. (Double-entry bookkeeping means that each transaction is entered twice, once as a debit (cost) and once as a credit (income) to ensure that all accounts are balanced.)
>
> Some formal classroom training also may be necessary, such as training in specialized computer software. This on-the-job training typically takes around 6 months.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 Edition*, Bookkeeping, Accounting, or Audit Clerks, on the Internet at http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-4 (last visited March 24, 2015).

We note that the *Handbook* does not report that, as an occupational group, Bookkeeping, Accounting or Auditing Clerks normally require at least a bachelor's degree in a specific specialty for entry. The *Handbook* explains that most bookkeeping, accounting, and auditing clerks need a high school diploma. The *Handbook* continues by stating that some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. The *Handbook* further states that workers usually receive on-the-job training. The *Handbook* does not indicate that

at least a baccalaureate degree in a specific specialty (or its equivalent), is normally the minimum requirement for entry into the occupation.

In response to the RFE, former counsel submitted an evaluation by Ph.D., Department Head and Professor of Accounting at Specifically, Dr. states that, based on a review of the duties of the proffered position, such a position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Accounting, Business Administration, or a related area, or the equivalent."

Dr. provided a summary of his education and experience and attached his curriculum vitae. He described his qualifications, including his educational credentials and professional experience, and provided a list of the publications he has written. However, based upon a complete review of Dr. letter and curriculum vitae, he has not provided sufficient information regarding the basis of his claimed expertise on this particular issue. Dr. claims that he is qualified to comment on the position of accountant because of the position he holds at as well as his professional experience and academic training. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of tutoring companies similar to the petitioner for accountant positions (or parallel positions).

Dr. opinion letter and curriculum vitae do not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for accountants (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. The opinion letter contains no evidence that it was based on scholarly research conducted by Dr. in the specific area upon which he is opining. In reaching this determination, Dr. provides no documentary support for his ultimate conclusion regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). Dr. asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement.

Upon review of the opinion letter, there is no indication that Dr. possesses any knowledge of the petitioner's proffered position beyond the job description. The fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. Dr. does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. His submission does not relate his opinion to specific, concrete aspects of this petitioner's business operations, so as to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. For instance, there is no evidence that Dr. has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Dr. provides general conclusory statements regarding accountant

positions, but he does not provide a substantive, analytical basis for his opinion and ultimate conclusions.

Importantly, there is no indication that the petitioner advised Dr. that it characterized the proffered position as a low, entry-level position (as indicated by the wage-level on the LCA). As previously discussed, the wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. It appears that Dr. would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Dr. possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine similar positions based upon job duties and responsibilities.

Finally, Dr. opined that the proffered position could be performed by a person with a bachelor's degree or its equivalent in business administration. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a 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). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

In summary, and for each and all of the reasons discussed above, we conclude that the advisory opinion rendered by Dr. is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Dr. lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record.

We may, in our discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion, and for

the reasons discussed above, the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding Dr. opinion letter into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For the reasons set forth above, we find that the letter from Dr. is not probative evidence towards establishing that the proffered position is a specialty occupation.

Finally, we note that, on appeal, newly-retained counsel for the petitioner submits a copy of the O*Net Online "Summary Report for Accountants." We reviewed the printout in its entirety. However, we find that it is insufficient to establish that the position qualifies as a specialty occupation for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. A designation of Job Zone 4 -- Education and Training Code: 5 indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Moreover, the O*Net Online Help Center explains that Job Zone 4 signifies only that *most*, but not all, of the occupations within it require a bachelor's degree. *See* the O*NET OnLine Help Center, at http://www.onetonline.org/help/online/zones. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. *Id.* Therefore, the O*NET information is not probative of the proffered position qualifying as a specialty occupation. It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference our previous discussion on the matter. The record does not contain any letters from the industry's professional association, indicating that it has made a degree a minimum entry requirement.

In response to the director's RFE, former counsel submitted copies of 10 job-advertisements as support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. We further note the submission of additional job-vacancy announcements on appeal. However, upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.

We note first that the record contains no independent evidence of how representative the job advertisements are of the advertising employers' recruiting history for the type of jobs advertised. Also, as the advertisements are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

Furthermore, in the Form I-129, the petitioner stated that it is an academic and preparatory tutoring company established in The petitioner also stated that it has eight employees. Although requested on the Form I-129, the petitioner failed to provide its gross annual income, but a copy of its most recent federal tax return demonstrates that for 2013, it has gross receipts or sales in the amount of $1,722,826. Additionally, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 611691.[4] The AAO notes that this NAICS code is designated for "Exam Preparation and Tutoring."

The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

> This U.S. industry comprises establishments primarily engaged in offering preparation for standardized examinations and/or academic tutoring services.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 611691 – Exam Preparation and Tutoring, on the Internet at http://www.census.gov/cgi-bin/sssd/naics/naicsrch# (last visited March 31, 2015).

[4] According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. *See* http://www.census.gov/eos/www/naics/ (last visited March 31, 2015).

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising 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). It is not sufficient for the petitioner and counsel to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. As previously mentioned, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Upon review of the documentation, we find that the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Although the petitioner submits numerous job-postings, these postings do not conform to the in-the-petitioner's-industry requirement of this criterion. For instance, the advertisements submitted in response to the RFE include positions with , a magazine publisher which operates a property casualty insurance company; and a number of blind listings for companies in the fashion, legal, and financial industries. Also, without further information, the advertisements appear to be for organizations that are not similar to the petitioner - and the petitioner has not provided any probative evidence to suggest otherwise.

On appeal, we note the submission of job postings for accountant positions with and While we note that these companies are engaged in the same industry as that of the petitioner, they also differ greatly in terms of size and scope of operations. For example, indicates on its website that it has over 400 locations in 25 countries, and indicates that, in addition to its test preparation services, it also provides higher education and international programs.[5] We cannot deem this company to be similar in scope of operations to the petitioner's eight-employee firm. Similarly, the claims to employs over 5,000 teachers throughout the U.S., Canada, and internationally.[6] Consequently, the record is devoid of sufficient information regarding the employers to conduct a legitimate comparison of the organization to the petitioner. The petitioner and counsel failed to supplement the record of proceeding to establish that the employers are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with these organizations. It also follows, without persuasive evidence to the contrary, that there is not a reasonable basis for us to assume that the extent and complexity of financial matters requiring accountant services would be the same in those organizations in the petitioner's industry.

[5] *See* http://www / (last accessed March 3, 2015).
[6] *See* http://www. (last accessed March 3, 2015).

In addition, contrary to the purpose for which the advertisements were submitted, some of the postings do not specify at least a bachelor's degree in a specific specialty, or its equivalent, as required for the positions. For example, some of the postings state that a bachelor's degree is required, but they do not provide any further specification. Thus, they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. We here reiterate that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. Moreover, we observe that counsel submitted some advertisements indicating that a bachelor's degree in business is acceptable. As previously mentioned, 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 at 147.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that similar organizations in the same industry require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.[7]

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are (1) in the petitioner's industry; and also (2) located in organizations that are 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*).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

We note that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the

[7] Furthermore, 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. at 376. 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).

size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties.

The record demonstrates that the petitioner operates a tutoring company. Again, the petitioner stated on the Form I-129 that it employed eight persons, one of whom was the beneficiary. The job description provided is entirely too vague and general to establish whatever objective level of complexity or uniqueness may reside in the position. In any event, in the context of a petitioner's claim of requiring a person with at least a bachelor's degree level of highly specialized knowledge in accounting or a related specialty, it is both reasonable and responsible for USCIS to consider the evidence of record related to the extent and nature of the business and financial matters in which the beneficiary would perform the accounting duties. After all, the substantive nature and performance requirements of the beneficiary's accounting duties will necessarily be decided in material part by the financial dimensions of the business operations generating those duties.

We note that the petitioner submitted copies of its U.S. federal tax returns for 2011, 2012, and 2013. We note specifically that each return was prepared by an outside CPA; namely, of . The record, however, indicates that the beneficiary began H-1B employment with the petitioner in March of 2011 as an accountant, and that his duties included all financial and tax documentation and preparation. It is unclear, therefore, why the petitioner would employ the outside services of an accounting firm to prepare a routine income tax filing. 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).

On appeal, counsel claims that the petitioner's gross receipts in excess of $1.7 million, coupled with the combined staff of 20 employees over the petitioner's various branch offices, necessitate the employment of the beneficiary as in-house accountant on a part-time basis. However, the record is devoid of evidence to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent.[8] Furthermore, the petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. Additionally, we find that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher

[8] Moreover, the petitioner has not provided sufficient evidence to establish that the beneficiary has been performing, and will continue to perform, the duties as described by the petitioner.

degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) position after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.[9] DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

> Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

Thus, upon review of the assertions made by the petitioner and both former and current counsel, we must question the level of complexity, independent judgment and understanding actually required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described in the record of proceeding conflict with the prevailing-wage element of the LCA submitted by the petitioner,

[9] A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1"or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, by submitting an LCA certified for a Level I job opportunity, the petitioner basically attests that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. As noted above, a job offer for a research fellow, a worker in training, or an internship is an indicator that a Level I wage should be considered.

The petitioner fails to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the 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 proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

We observe that the petitioner has indicated that the beneficiary's educational background and his prior experience working for the petitioner will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. In the instant case, the petitioner does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner fails to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of

proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Counsel claims on appeal that the petitioner clearly stated a requirement for a degree in accounting/business for the proffered position, and asserts that the beneficiary meets those requirements. Counsel resubmitted a copy of the beneficiary's academic credentials and evaluation prepared by as well as a new educational credentials evaluation from of in support of the contention that the beneficiary holds the specialized degree mandated by the petitioner.

This evidence is not persuasive, as it does not establish that the petitioner has a history of exclusively hiring only specialty-degreed individuals for the proffered position. While the petitioner may believe that its self-imposed academic prerequisites and the beneficiary's satisfaction

of those prerequisites would satisfy this criterion, the submission of documentation regarding the beneficiary, who is the first individual to hold this position within the petitioner's enterprise, is not sufficient to establish eligibility under this criterion of the regulations. Specifically, evidence of the petitioner's employment of just one person who holds the same specialty degree that the petitioner claims as a necessary prerequisite for entry into the proffered position would not establish a recruiting and hiring history sufficient to satisfy this third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).[10]

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

As previously discussed, the petitioner and its counsel claim that the petitioner plans to expand and develop its business operations. However, the petitioner failed to provide probative evidence to substantiate the claims. Moreover, even in light of the claimed plans for expansion/development, the petitioner and counsel did not establish that the proffered position qualifies as a specialty occupation.

We reviewed all of the evidence in the record of proceeding, including the job description and the evidence regarding the petitioner's business operations, including the petitioner's tax documents. We find that the petitioner's statements and the submitted documentation fail to support the nature of the proposed duties as possessing the relative complexity and specialization required to satisfy

[10] Also, we afford little weight to Dr. evaluation as evidence that the beneficiary holds the foreign-education equivalent of a U.S. "Bachelor of Science degree in Accounting," as opined by Dr. The first academic credentials evaluation contained in the record, prepared by equated the beneficiary's foreign academic credentials to the following U.S. education: (1) a bachelor's degree in "Business Studies" and (2) "[o]ne year of graduate study in Accounting." Dr. evaluation, however, which was prepared approximately one month after the petition was denied, equates the beneficiary's academic achievements to a U.S. bachelor's degree in Accounting. We note that the reliability of Dr. evaluation is undermined by the fact that it does not even address, let alone resolve, its apparent conflict with the conclusions of the evaluation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.*

this criterion.

We also reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the Level I wage designation is appropriate for a low, entry-level position relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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

IV. Prior Approvals

We observe that the instant petition seeks to extend the beneficiary's H-1B employment with the petitioner, and note that we are 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).

If the previous nonimmigrant petition was approved based on the same description of duties and assertions that are contained in the current record, that would constitute material and gross error on the part of the director. 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, we 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).

V. Conclusion

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

ORDER: The appeal is dismissed.