



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 20 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 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 ("the director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 16-employee specialty pharmaceutical business established in [REDACTED]. In order to employ the beneficiary in a position in what it designates an "Accountant" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the evidence of record did not establish that the duties of the proposed position comprise the duties of a specialty occupation.

The record of proceeding before this office contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Notice of Appeal or Motion (Form I-290B), the petitioner's brief and additional documentation. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

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

## I. FACTS AND PROCEDURAL HISTORY

In a letter, dated March 31, 2014, the petitioner stated that it is a specialty pharmaceutical business "involved in distribution, research, marketing, dispensing, export and pharmaceutical services serving the community of [REDACTED] and surrounding areas" with over \$6 million in gross revenue. The petitioner stated its desire to hire the beneficiary in the capacity of accountant and indicated that in this position "she will analyze financial information, prepare balance sheet, profit & loss statements, analyze daily transactions, reconciling, billing accounts, compute, classify, record and verify financial and accounting data, etc." The petitioner also stated that the usual minimum requirement to perform the job duties of this position with its company "is a Bachelor's degree or its equivalent (i.e. education and experience) in accounting, commerce or equivalent and some relevant experience or a Master's degree in lieu of the Bachelor's degree and experience."

The petitioner noted that the beneficiary had obtained a Bachelor of Commerce degree in 2011 from the [REDACTED] in India and had three years of "relevant experience in the specialty occupation of accountant." The petitioner included copies of the beneficiary's diploma and

<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

transcripts, as well as her resume and two letters commenting on the beneficiary's volunteer work as an intern and as an office assistant.

The petitioner submitted the required Labor Condition Application (LCA) in support of the instant H-1B petition. The certified LCA designation for the proffered position corresponds to the occupational classification "Accountant" - SOC (ONET/OES) code 13-2011, at a Level I (entry-level) wage.<sup>2</sup>

Upon review of the initial record, the director requested additional information including a more detailed description of the work to be performed to demonstrate that the proffered position qualified as a specialty occupation.

In a letter, dated July 25, 2014, submitted in response to the director's RFE, the petitioner provided a more detailed description of the beneficiary's proposed duties, indicating her duties would include:

1. Keep the financial books and records of the Pharmacy.
2. Review, collect, organize and present the financial data of the Pharmacy in reports such as a Balance Sheet, P/L statement and Cash Flow statements on a periodical basis and at the end of the year.
3. Will be responsible for Accounts Receivable, including sending out invoices and following up on payments.
4. Will be responsible for Accounts Payable including preparing purchase orders and vouchers and setting a schedule of payments to gain maximum benefit from pre-payment discounts, etc.
5. Will be responsible for setting up a system of checks, balances and controls to assure against fraud and theft.

The petitioner noted that the Department of Labor (DOL) stated that the SVP (Specific Vocational Preparation) range for the position of an accountant is 7.0 < 8.0. The petitioner claimed that an "SVP 7 equates to a Bachelor's degree + 2 years of experience and SVP 8 is a Bachelor's degree + 8 years of experience." In support of this claim, the petitioner submitted printouts from the DOL's *Occupational Outlook Handbook (Handbook)* and the Occupational Information Network (O\*NET) Summary Report, on the position of Accountant. The petitioner also submitted copies of five job postings and included printouts providing general history of the SVP, Job Zones, and the *Dictionary of Occupational Titles (DOT)*.

The petitioner further submitted an evaluation of the beneficiary's training, education, and experience, prepared by [REDACTED] dated June 13, 2014.

<sup>2</sup> 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Upon review of the record, the director denied the petition, determining that the record did not include sufficient evidence to establish that the proffered position is a specialty occupation.

On appeal, the petitioner asserts that most of the duties the beneficiary will perform are the duties of an accountant. The petitioner explains that to the extent the duties of the proffered position overlap with the duties of a bookkeeping position or appear to be solely bookkeeping duties, these duties are ancillary to and supportive of her primary duties. The petitioner points out that it has attested that the proffered position falls within the occupational classification of an accountant as certified on the LCA and that it has agreed to pay the higher salary of an accountant. The petitioner asserts that it has established that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the specialty occupation.

The petitioner also includes a copy of its Internal Revenue Service (IRS) 2012 Form 1120S, U.S. Income Tax Return for an S Corporation on appeal, which shows its gross revenue as over six million dollars and also shows that it was prepared by a third party financial services company.

## II. SPECIALTY OCCUPATION

The issue here is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

### A. The Law

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.

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.

### B. Analysis

At the outset we find 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, we concur with the director's determination that 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.

That being said and with the understanding that we are incorporating these comments and findings as part of our basis 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 our determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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. We recognize the DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup>

Although the petitioner implicitly asserts that the duties it describes are those of an accountant and thus more complex than the duties of a bookkeeping clerk who checks the accuracy of basic mathematical calculations, the petitioner offers no analysis or evidence in support of this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). A reading of the duties of the proffered position demonstrates that the petitioner believes its accountant: will be responsible for accounts receivable, including sending out invoices and following up on payments, will be responsible for accounts payable including preparing purchase orders and vouchers and setting a schedule of payments, will review, collect, organize and present balance sheets, profit/loss and cash flow statements, periodically, and will generally keep the financial books and records of the pharmacy. The petitioner, however, does not to provide any evidence that would establish these duties require more than performing

<sup>3</sup> Our 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/>.

routine bookkeeping/auditing duties.<sup>4</sup> The petitioner does not provide evidence that any of these broadly-stated duties require the practical and theoretical application of at least a bachelor's degree level of knowledge in accounting or a related specialty.

Although the petitioner claims on appeal that any "bookkeeping" duties are ancillary to the beneficiary's primary "accounting" duties, the petitioner does not provide an allocation of the beneficiary's time to any specific duty. Accordingly, it is not possible to ascertain from the record, how the beneficiary's time is divided among the generally described duties. Further, when the record is reviewed in its totality, the petitioner has not established how much of the beneficiary's time can actually be devoted to accounting duties above those usually performed by a junior accountant or a bookkeeping, auditing, or accounting clerk. 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 of the record regarding the petitioner's business and the proffered position, we have also reviewed the information in the *Handbook* regarding the occupational category "Accountants."

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 April 8, 2015). 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 individuals 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 evidence of record does not 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.

<sup>4</sup> 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> (April 8, 2015).

Contrary to the assertions of the petitioner, the O\*NET Summary Report for 13-2011.01 - Accountants does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O\*NET does not indicate that the four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, the O\*NET Summary Report referenced by the petitioner is not probative of the proffered position being a specialty occupation.

We have also reviewed the petitioner's assertions regarding the SVP range for an "Accountant." In that regard, we note that the applicable SVP range for an Accountant is 7.0 to < 8.0. As such, the applicable range is less than 8 and, thus, does not include the SVP rating of 8 which is denoted by "[o]ver 4 years up to and including 10 years" of training. Moreover, an SVP rating does not indicate that at least a four-year bachelor's degree is required for an occupational category that has been assigned such a rating or, more importantly, that such a degree must be in a specific specialty directly related to the occupation. Rather, the SVP rating for "Accountants" simply indicates that the occupation requires over 2 years up to and including 4 years of training of the wide variety of forms of preparation described in the documentation the petitioner provided, including experiential training. Accordingly, the *DOT* does not indicate that at least a bachelor's degree in a specific specialty (or its equivalent) is normally the minimum requirement for entry into this position.

Upon review of the record, the evidence of record does not establish 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 evidence of record therefore does not satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the evidence of record does not satisfy the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

In determining whether there is 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)).

As previously 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 the previous discussion on the matter. Also, the petitioner has not submitted

documentation from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In the letter submitted in support of the petition, the petitioner stated that it is a specialty pharmaceutical business with 16 employees and over six million dollars in gross revenue. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 446110. According to the U.S. Census Bureau, 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 April 8, 2015). The NAICS code specified by the petitioner is designated for "Pharmacies and Drug Stores," and is defined by the U.S. Department of Commerce, Census Bureau as an "industry comprise[d of] establishments known as pharmacies and drug stores engaged in retailing prescription or nonprescription drugs and medicines."

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 446110 – Pharmacies and Drug Stores, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited April 8, 2015).

In response to the RFE, the petitioner provided printouts of five online job announcements. However, this documentation does not establish that the proffered position qualifies as specialty occupation. As a preliminary matter, we note that 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.

For the petitioner to establish that an organization is similar, it must demonstrate that it shares the same general characteristics with the advertising organization. Without such evidence, documentation submitted by a petitioner is 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 to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the advertisements, the submissions do not provide sufficient information regarding the advertising organizations to establish that the advertising organizations are similar to the petitioner. It appears the advertisers include a financial firm, a medical partnership, a medical group, a payment processing firm, and an undefined company. The record does not include evidence that these companies are in the same industry as the petitioner, employ a similar number of people, or generate a similar revenue. Further, all of the advertisements provided state the duties of the advertised positions in general and abbreviated terms so that we are unable to ascertain if the duties expected to be performed are parallel to the proffered position. While

we are unable to determine the actual duties of the advertised positions, they all appear to be more senior than the proffered position. Each of the five advertisements lists between two and five years of required experience in addition to a bachelor's degree. In this matter, we note that the petitioner has characterized the proffered position as a Level I (entry-level) position on the LCA. DOL guidance states that Level I positions are appropriate for a worker-in-training or an individual performing an internship.<sup>5</sup> Accordingly, the proffered position is not parallel to positions requiring a bachelor's degree and additional experience as such a position would be designated at a higher wage level on the LCA.

The job advertisements do not establish that similar organizations to the petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the petitioner's industry. Further, 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 does not demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.<sup>6</sup>

Thus, based upon a complete review of the record of proceeding, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner. Thus, for the reasons discussed above, the evidence of record does not satisfy 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.

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<sup>5</sup> For additional information regarding wage levels, see DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>6</sup> 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 job announcements supported the finding that the position (for organizations similar to the petitioner) required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted general information regarding its business operations and a copy of its 2012 federal tax return.

Upon review of the record of proceeding, however, the petitioner has not credibly demonstrated 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. The petitioner has not established why a few related courses or industry experience alone is insufficient preparation for the proffered position. 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.

Consequently, as the petitioner does not 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).

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, USCIS reviews the petitioner's past recruiting and hiring practices, information

<sup>7</sup> This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. More specifically, the LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, the wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Upon review of DOL's instructive comments, we observe that the petitioner did not designate the proffered position as involving even "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II) when compared to other positions within the same occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

regarding employees who hold or have previously held the position, as well as any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, however, 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. 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. According to the Court in *Defensor*, "To interpret the regulations any other way would lead to an absurd result." *Id.* at 388. 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.*

In this matter, the petitioner has not submitted evidence that it previously employed or employs an individual who will specifically carry out the duties it ascribes to the proffered position. Upon review of the record, the petitioner has not submitted sufficient probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the evidence of record does not satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the evidence of record does not satisfy the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. We have reviewed the petitioner's 2012 IRS Form 1120S and the petitioner's assertion on appeal that this document demonstrates the size and scope of the job duties. However, we observe that this document was prepared by a third party financial services firm and the petitioner has not claimed that the beneficiary will be involved in preparing the petitioner's tax filings. Moreover, the volume of the petitioner's transactions does not elevate the position to a specialty occupation. Again, the petitioner's description of duties and the nature of its business is insufficient to establish that the beneficiary will perform specialized and complex duties or that the duties will otherwise require the practical and theoretical application of at least a bachelor's degree level of knowledge in accounting or a related specialty. We again note that 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.<sup>8</sup> Such a classification is inconsistent with the petitioner's claim that the duties are specialized and complex. The record does not include sufficient consistent and probative evidence to establish that the position proffered here encompasses the performance of specialized and complex duties the nature of which requires knowledge usually associated with at least a bachelor's degree in a specific specialty.

Upon review of the totality of the record, the petitioner has not established 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.

### III. BENEFICIARY'S QUALIFICATIONS

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, the claimed equivalency was based in part on experience, and there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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<sup>8</sup> 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

#### IV. CONCLUSION

The petition must be denied for the above stated reasons.<sup>9</sup> In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.<sup>10</sup>

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

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<sup>9</sup> We are without authority to address the beneficiary's maintenance of status issue. Our jurisdiction is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003).

<sup>10</sup> As the identified ground of ineligibility is dispositive of the petitioner's appeal, we need not address any additional issues in the record of proceeding.