U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
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 28 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 7-employee, plus two owners, business established in . In order to employ the beneficiary in a position in what it designates as 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 petitioner 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), a brief and previously submitted documentation. We reviewed the record in its entirety before issuing our decision.[1]

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. FACTUAL AND PROCEDURAL HISTORY

In a letter, dated December 4, 2013, signed by the two shareholders of the petitioner, the petitioner stated that it owns and operates "two gas station/convenience store businesses directly, and [the] company also owns two large office rental complexes (the building sizes are about 14,000 and 12,000 sq. feet each) and [it] manage[s] these tenants." The petitioner noted that it also owns a four-acre commercial lot and hopes to develop it in the future. The petitioner specifically pointed out that it "also acts as a financial/accounting/operating management services firm and provides said services for several other companies, most of which are in the petroleum/C-store industry." The petitioner's shareholders emphasized in the letter that each of them "contract out [the petitioner's] management services to provide support in the incorporation, purchase, operations management and, if applicable, the sale of a given business."

In the same letter, the petitioner described the beneficiary's duties as follows:

> [The beneficiary] will manage our company's taxes, payroll, accounts payable/receivable, liaise with the bank for dep/withdrawals and provide profit/financial reports to our management. She will also regularly review our budgeting and costs. She will ensure that the tenants in our office buildings have paid up at the end of each month, and transfer funds from the budget for any

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

> maintenance or costs. She will also pay all applicable sales taxes for our organization on a monthly basis. She would utilize her knowledge of the petroleum sector to oversee payment recording methods, adjustment of tickets and entries, inventory determination, sales/consignment, purchase returns, notes receivable, disbursements, reconciliations, working with our vendors, creation of sales orders and reporting. – She would spend about 50% of her time in this capacity.
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> [The beneficiary] will produce financial projections and use them to monitor our pricing structure and inventory levels to generate maximum profits, review hundreds of retail inventory categories to select or deselect them (or increase/decrease supply) based on sales numbers, perishable dates, wholesaler costs etc. She would recommend optimal gasoline inventory levels based on projections and estimate gasoline consumption quantities so that we can better manage our petroleum inventory control, purchasing, and order processing to help reduce costs. – She would spend about 10% of her time in this capacity.
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> She would also review and be up to date on prices, payment terms with our petroleum distributors. [The beneficiary] will make certain that our retail systems as well as our financial systems are working effectively and that data entered is verified as correct. She would use our automated software order and delivery system for our industry which allows her to receive and submit invoices and review pricing information. – She would spend about 5% of her time in this capacity.

We observe that the petitioner has thus allocated 65 percent of the beneficiary's time to the above described tasks. The petitioner, however, also indicated that the beneficiary would spend 25 percent of her time working with the petitioner's clients.[2] In this capacity, the petitioner stated:

> [The beneficiary] will substantially assist in developing and managing our clientele's accounting workflow. She will manage our in-house client's accounting, financial and inventory counts, their petroleum distribution levels. She will manage our client company's taxes, payroll, accounts payable/receivable, and generate profit/financial reports for their management. She will also regularly review our client's budgeting and costs and recommend changes if necessary. And for our petroleum clients only: she would recommend optimal gasoline

[2] The petitioner in this matter is a separate and distinct entity from: A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm'r 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm'r 1980). Accordingly, if the beneficiary will perform duties, part-time, for entities other than the petitioner, those entities must file the appropriate petition on her behalf. Accordingly, the duties for entities other than the petitioner will not be considered.

> inventory levels based on projections and estimate gasoline consumption quantities so that client management can better manage their petroleum inventory control, purchasing, and order processing to help reduce costs.

The petitioner indicated that the beneficiary "has the necessary expertise and professional experience/education," that she has worked for the petitioner for almost three years, "has worked in that capacity well with little supervision," and that she has managed budgets of over $1,000,000. The petitioner noted that the beneficiary's "Indian Bachelor degree" and her experience combined to fill the position of accountant at the petitioner. The petitioner included a copy of the beneficiary's foreign degree, transcripts, and an evaluation of her academic and work experience.

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.

The petitioner also provided the director's denial of a previously filed Form I-129, photographs of the petitioner's offices, lease documentation, the petitioner's 2012 Internal Revenue Service (IRS) Form 1120S, U.S. Income Tax Return for an S Corporation, and corporate documents and tax returns of other companies owned or managed by one or both of the petitioner's shareholders.

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

In a letter, dated April 14, 2014, submitted in response to the director's RFE, the petitioner asserted that it had gross revenue of over four million dollars and buildings and other depreciable assets as shown on its 2012 tax return which demonstrates that it "maintains sufficiently complex accounting requirements justifying the retention of an accountant." The petitioner claimed that it has sufficient other employees who perform the duties required at its gas station/convenience store portion of its operations to relieve the beneficiary from these duties. The petitioner also contended that it "has established a need for the position of Accountant based on its existing need for and prior use of a Certified Public Accountant." The petitioner also submitted a statement, dated March 18, 2014, prepared by its Certified Public Accountant, who after review of the petitioner's description of duties regarding the proffered position, opined that the duties are "not the duties typically associated with a bookkeeper." The petitioner also included an evaluation of the duties of the proffered position prepared by who opines that companies such as the petitioner "seeking to employ an Accountant require prospective candidates to have a strong foundation in the field of Business Administration, Accounting, or a closely related field which can only be obtained through a Bachelor's degree in the field of Business Administration, Accounting, or a closely related field."

The petitioner asserted that based on this information and evidence, it is more likely than not that the proffered position is a specialty occupation.

The petitioner also submitted a revised description of the beneficiary's duties listing her responsibilities as follows:

- Maintain timely communication with client and vendor companies on purchase orders, sales orders, and accounting data.
- Manage company and client company's taxes.
- Works to resolve discrepancies with data and inventory by reviewing invoices, payment ledgers and bank deposit information.
- Participates in process improvements and cost saving initiatives while possessing the ability to identify and resolve situations timely and accurately.
- Resolves discrepancies with data and inventory by reviewing invoices, payment ledgers and bank deposit information. Reconciles bank statements and performs various duties which could impact financial and operational performance.
- Researches fuel prices and consumption and inventory for our and affiliated companies to ensure proper timely ordering of product for restock.
- Recommends optimal gas inventory levels based on projections and estimate gasoline consumption quantities so that client management can better manage their petroleum inventory control, purchasing, and order processing to help reduce costs.
- Establish relationships with third party vendors and suppliers organizing the business process through the use of mutually developed reports.
- Awareness of and strategic response to external influences, such as legislation, fuel costs, and environmental pressures. Response must include a systematic way to deal with delivery times, transport costs, and changing gas prices in the vicinity of the businesses.
- Review negotiated contract pricing and if necessary provide additional information regarding the validity or accuracy of the price quotes.
- Generating billing invoices, shipping invoices and updating the sales ledger account for client companies accordingly.
- Inventory Management to include stock control, forecasting, stock outs, stock levels, stock taking and reporting.
- Managing supply and purchase accounts for client companies (cash disbursement, cash receipt, payment request, weekly sales report and monthly reports).

The petitioner noted that its organization was comprised of a larger group of commonly controlled companies and that there were more than 25 individuals within these companies.[3]

[3] Again, the petitioner states on the Form I-129 that it employs seven individuals and has two owners. The petitioner has not established that the employees of entities, that are separate and distinct from the petitioning entity, are its employees.

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 the director did not give sufficient weight to the evidence submitted and avers that the director did not apply the preponderance of evidence standard when evaluating the evidence submitted.

II. STANDARD OF PROOF

In light of the petitioner's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.
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> * * *
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> The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.
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> * * *
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> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

As footnoted above, we conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe.* Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe,* we find that the director's determinations in this matter were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

III. 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)(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*, *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), 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. Material Findings

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. 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."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, such that USCIS may discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The petitioner has not done so here.

The petitioner here has provided a broad overview of the beneficiary's proposed duties. For example, the petitioner asserts that the beneficiary will spend 50 percent of her time managing the company taxes, payroll, accounts payable/receivable, liaising with the bank and providing reports to management as well as monitoring rent payments and budget and using her knowledge of the petroleum industry to perform certain tasks. The petitioner does not provide sufficient information regarding these duties to conclude that the duties are those of an accountant. The fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. It is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting. This, the petitioner did not do.

As observed above, the petitioner's claim that the beneficiary will spend an additional 25 percent of her time assisting other companies it or its owners have an interest in is not relevant to the instant petition.

Upon review of the occupation of a "Bookkeeper" as set out in the DOL's *Occupational Outlook Handbook* (*Handbook*) subchapter on "Bookkeeping, Accounting, and Auditing Clerks," the *Handbook* reports that individuals in these positions typically do the following:

- Use bookkeeping software, online spreadsheets, and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) and income (credits) into the software, assigning each to an appropriate account

- Produce reports, such as balance sheets (costs compared with income), income statements, and totals by account
- Check for accuracy in figures, postings, and reports
- Reconcile or note and report any differences they find in the records

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Bookkeeping, Accounting, and Auditing Clerks," http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2 (last visited Apr. 21, 2015).

Here, the petitioner does not differentiate the duties, which appear to be routine bookkeeping functions from duties performed by an accountant who is performing tasks that entail accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting.[4] Rather, as reflected in the job descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions which do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of accounting knowledge that the beneficiary would have to apply to those matters. As discussed in greater detail, *infra*, as the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner has not satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

[4] We have also reviewed the petitioner's description of duties submitted in response to the director's RFE. Although the petitioner does not allocate the percentage of time the beneficiary will spend on the tasks it described, the petitioner again indicated that the beneficiary would be involved in communication with companies regarding purchase orders, sales orders and accounting data, would work to resolve discrepancies with data and inventory, would reconcile bank statements, would generate billing and shipping invoices and update the sales ledger account, and would otherwise be involved in costs, prices, and inventory. The petitioner does not provide evidence or information demonstrating how these duties are elevated above the duties of a skilled and experienced bookkeeper or accounting clerk. 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)).

We have reviewed the letter, dated March 18, 2014, authored by the petitioner's former Certified Public Accountant (CPA), Mr. upon review of the same duties initially provided by the petitioner, opines: "they appear sufficiently complex to warrant a Bachelor's degree in Accounting, Finance, or related concentration, and not the duties typically associated with a bookkeeper." However, Mr. does not explain or otherwise clarify how duties relating to the petitioner and its clients inventory, how duties associated with accounts payable and receivable, or how generating billing and shipping invoices require the services of an individual with an accounting, finance, or related degree. Other than providing a conclusory statement, Mr. does not support his opinion with factual, objective evidence. Accordingly, Mr. unsupported opinion is accorded little probative value in this matter.

We have also reviewed the letter, dated March 9, 2014, prepared by submitted in response to the director's RFE. Notably, Dr. does not list the reference materials on which he relies as a basis for his conclusion. Rather, it appears that Dr. did not base his opinion on any objective evidence, but instead restates a portion of the revised duties the petitioner listed in response to the director's RFE. Based on his review of a partial list of the beneficiary's duties, Dr. finds that a company, such as the petitioner, "seeking to employ an Accountant requires prospective candidates to have a strong foundation in the field of Business Administration, Accounting, or a closely related field which can only be obtained through a Bachelor's degree in the field of Business Administration, Accounting, or a closely related field." However, the petitioner has not stated any degree requirement for the position proffered here. As Dr. does not identify the objective sources he reviewed and the petitioner does not list a specific degree requirement, it is not clear, where Dr. obtained his information.

Moreover, we observe that 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). 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). We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Here, we find that Dr. opinion is insufficient to support a finding that the proffered position is a specialty occupation.

Finally, to demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized

field of study or its equivalent. We note that the petitioner has not identified a minimum education requirement necessary to perform services in the proffered position. Consequently, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation, and the appeal may be dismissed and the petition denied on this basis alone.

C. Applying the Criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)

Nevertheless, assuming, *arguendo*, that the proffered duties are in fact accountant duties, we will nevertheless analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make a determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criteria 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 *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[5] 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 Apr. 21, 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 petitioner has not established 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.

When reviewing the *Handbook*, it also must be noted that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.[6] The wage levels are defined in DOL's

[5] All of 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/.

[6] Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience)

"Prevailing Wage Determination Policy Guidance."[7] 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, in designating the proffered position at a Level I wage, the petitioner has indicated that the proffered position is a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Based upon the petitioner's designation of the proffered position as a Level I (entry) position, it does not appear that the beneficiary will be expected to serve in a senior or leadership role. Although the petitioner indicated that the beneficiary required "little supervision" in her previous position, the petitioner's attestation that the position proffered here is a Level I (entry) position demonstrates the petitioner's belief that the position, according to DOL guidance, would involve limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review.[8]

generally required for acceptable performance in that occupation.

[7] 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) 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. 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.

[8] It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level II (qualified), a Level III (experienced), or a Level IV (fully

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 these positions. Thus, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. In this matter, the petitioner has not provided such evidence.

As the evidence in the record of proceeding does not 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 that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, we 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any

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competent) level. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Accountants and Auditors" http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-2011&year=14&source=1 (last visited Apr. 21, 2015).

letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

Thus, 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 to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted various documents, including evidence regarding its extensive business operations. As referenced above, the petitioner also submitted an opinion prepared by its former CPA and an opinion prepared by Dr. Here, we incorporate by reference our previous discussion regarding the deficiencies in these two proffered opinions. The petitioner in this matter also refers to its employment of a CPA to perform its accounting duties and asserts that this demonstrates that the position's duties are complex. However, in a letter, dated March 18, 2014, prepared by the petitioner's Certified Public Accountant (CPA) the CPA noted that the petitioner had decided "for cost containment reasons, to fulfill more of its own accounting work in-house, as well as for its commonly owned companies." It is not clear from this letter or the petitioner's statements what particular duties would now be fulfilled by the beneficiary and what duties, if any, would still be performed by the petitioner's CPA. That is, the petitioner in this matter does not identify which particular duties previously performed by the CPA would now be performed by the beneficiary. Nor has the petitioner explained how those particular duties are so complex that they require a bachelor's degree in a specific discipline.

Upon review of the record of proceeding, 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. Furthermore, 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 not demonstrated 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.[9]

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 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, 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

[9] 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.

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 an individual who performs the duties it ascribes to the proffered position. Although the petitioner previously employed a CPA to perform its tax filings, the record does not demonstrate what other duties the CPA performed for the petitioner. Moreover, the petitioner must still establish that the particular position proffered 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. 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 petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties 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 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.[10] Thus, the petitioner's implied assertions that the beneficiary will act with little supervision is materially inconsistent with its designation of the proffered position as a Level I (entry-level) wage. 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.

IV. CONCLUSION

The petition must be denied for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the

[10] *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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