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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

DATE: FEB 06 2015

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a four-employee "Retail" business established in [REDACTED]. The petitioner seeks to continue the employment of the beneficiary as an "Accountant" from October 1, 2013 to October 1, 2016. Accordingly, the petitioner endeavors to extend the beneficiary's classification as an H-1B nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation in accordance with the applicable statutory and regulatory provisions.

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

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's grounds for denying this petition. Accordingly, the appeal will be dismissed and the petition will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

As noted above, the petitioner indicated on the Form I-129 that it is a four-employee "Retail" business. The petitioner indicated that it seeks to continue the beneficiary's employment as an accountant to work on a full-time basis at an annual salary of \$38,709. The petitioner further indicated that the beneficiary will work solely at the address of [REDACTED] Texas, and will not work off-site. The petitioner indicated on its 2012 and 2013 federal tax returns, U.S. Income Tax Return for an S Corporation (Form 1120S), that it is a gasoline station and that its product or service is "GROCERY N GAS."

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an Accountant, and that it corresponds to Standard Occupational Classification (SOC) code and title "13-2011, Accountants and Auditors," from the Occupational Information Network (O*NET). The LCA states that the proffered position is a Level I, entry-level, position.

On the LCA and on the Form I-129 H-1B Data Collection Supplement, the petitioner listed its North American Industry Classification System (NAICS) Code as 447110, "Gasoline Stations with

Convenience Stores."¹

In a letter dated September 16, 2013 submitted with the petition, the petitioner described itself as a corporation "primarily in the business of retail distribution of food, automotive and household products." The petitioner stated that it has "about 4 employees." The petitioner asserted that, due to its "business structure," "the varied needs of their employees and customers," "the highly specialized and competitive nature of the retail sales . . . market," as well as its "goal of becoming a major participant in the industry," it is "imperative" for the petitioner to employ an employee "in the specialty occupation of an Accountant." The petitioner then described the duties and requirements of the proffered position as follows:

Job Duties

In this position, [the beneficiary's] specific duties will include: (i) compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards; (ii) preparing entries and reconciling general ledger accounts, documenting transactions, and summarizing current and projected financial position; (iii) maintain or examine the records of government agencies, and preparing detailed balance sheet, profit & loss, and cash flow statements; (iv) inspect account books and accounting systems for efficiency and use of accepted accounting procedures; (v) compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements; and (vi) analyzing operating statements, reviewing cost control programs, and making strategy recommendations to management.

Minimum Job Requirements

Due to the complex and demanding requirements of the position of an Accountant, only a person of exceptional ability and skills in business administration, accounting, and/or financial management is capable of qualifying as an Accountant for [the petitioner]. These minimum prerequisites for the offered position require a skilled professional with a Bachelor's degree in Business Administration, Accounting, Finance, or a related field.

In the same letter, the petitioner asserted that the beneficiary is qualified to perform services in the proffered position by virtue of his education and work experience, which includes his continuous employment with the petitioner as an Accountant since 2009.

¹ U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "447110 Gasoline Stations with Convenience Stores," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Jan. 29, 2015).

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

In response to the RFE, counsel for the petitioner submitted the following slightly revised list of the duties of the proffered position, along with the percentage of time spent on each duty:²

- Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards (30%);
- Preparing entries and reconciling general ledger accounts, maintaining payable and receivable records, detailing asserts, liabilities, capital, and preparing detailed balance sheet, profit and loss, and cash flow statement (20%);
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures (5%);
- Compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements (10%);
- Analyzing operating statements, reviewing cost control programs, and making strategy recommendations to management (10%).

Counsel added that the most lucrative part of the petitioner's convenience store business is its check cashing services which includes cashing over \$98,000 a month in checks. Counsel asserted that since the petitioner handles large amounts of cash, it must employ a professional accountant to "oversee this transfer of cash by ensuring that the Company has sufficient liquidity, preparing/reconciling ledger entries, preparing financial reports, reconciling accounts, auditing transactions and advising [the] President on methods to protect [the] Company from defaults and NSF, [and] working with taxing authorities for compliance reporting." Counsel further asserted that a "general bookkeeper could not be entrusted with such a vital role with little or general supervision." Counsel elaborated:

Due to [the] complexity of the voluminous transactions taking place, [redacted] strongly believes that having an in-house full-time Accountant will be efficient, cost-effective, and highly beneficial for the company. [The beneficiary's] responsibilities primarily include managing and directing the financial activities, rather than performing the day-to-day bookkeeping function. [The beneficiary] would be spending a majority of his time preparing, reviewing, and evaluating financial and tax records, implementing cost management techniques, and

² These duties only add up to a total of 75%.

³ Counsel has not explained the relationship between the petitioner and [redacted]

advising management in financial investment decisions to contribute to [the] financial success of [the petitioner]. In addition to supervising individuals who perform routine bookkeeping services, [the beneficiary] will spend a bulk of his time in establishing operational and financial security procedures and advising upper management with cost saving and investment strategies.

Counsel asserted that the beneficiary is more than just a bookkeeper, as he is "also a business consultant . . . [who] is able to interpret the financial and operational data of a business and offers valuable advice regarding operations and growth including providing advice on cash flow management, inventory management, price control, and business financing." Counsel asserted that the beneficiary spends 95 percent of his time on accounting functions and only five percent of his time on bookkeeping functions.

In response to the RFE, the petitioner also submitted, *inter alia*, the following:

1. The company's 2012 federal and state tax returns, which were prepared by an outside accounting firm, [REDACTED]
2. The petitioner's quarterly federal tax returns for all quarters of 2012 and 2013;
3. The petitioner's lease for property located on the corner of [REDACTED]
4. Various permits and licenses in the name of the petitioner under the trade name [REDACTED] located at [REDACTED]
5. Various permits and licenses in the name of the petitioner under the trade name [REDACTED] located at [REDACTED];
6. Invoice addressed jointly to the petitioner and [REDACTED] located at [REDACTED]
7. Several invoices addressed to [REDACTED] located at [REDACTED]
8. Excerpt from the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* chapter on "Accountants and Auditors";
9. Print-out of the Occupational Information Network (O*NET) OnLine Summary Report for the occupation "Accountants";
10. Copies of bank statements showing separate accounts for [REDACTED] and [REDACTED];
11. Copies of several job postings; and
12. Copies of paychecks and a 2013 Form W-2 Wage and Tax Statement issued by the petitioner to the beneficiary.

The director denied the petition, concluding that the evidence did not establish the proffered position as a specialty occupation.

Counsel filed an appeal. On appeal, counsel, who described the petitioner as "an acquisition, management and development firm, primarily in the business of retail distribution of food, automotive, and household products," largely reiterated the same assertions previously made in response to the RFE. Counsel provided yet another, slightly revised description of the duties of the proffered duties with revised percentages of time.

In response to a Notice of Derogatory Information and Intent to Dismiss that we subsequently issued, the petitioner submitted, *inter alia*, its 2013 federal and state tax returns, which were again prepared by an outside accounting firm, [REDACTED]

II. THE LAW

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of

the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

III. PRELIMINARY FINDINGS

Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

A. Description of Duties of the Proffered Position

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 attained through attainment of at least a baccalaureate degree in a specific discipline. We find that the petitioner has not done so here.

Here, the petitioner describes the duties of the proffered position in generalized terms. We note that the petitioner has described the duties of the beneficiary's employment in the same general terms as those used from various sources on the Internet; some of the wording of the duties, as stated by the petitioner, is recited almost verbatim from these other sources.⁴ This type of generalized

⁴ For example, duties for accountants as listed in the *Dictionary of Occupational Titles (DOT)* include "Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions" and "Analyzes financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statement, and other reports." *Id.* at <http://www.occupationalinfo.org/> [redacted] .html (last visited Jan. 29, 2015).

Similarly, duties as listed in the *Handbook* include "Inspect account books and accounting systems for efficiency and use of accepted accounting procedures" and "Compute taxes owed, prepare tax returns, and

description may be appropriate when defining the range of duties that may be performed within an occupational category, but is insufficient to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations. Such general descriptions cannot be relied upon by a petitioner when discussing the duties attached to specific employment for H-1B approval. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary, demonstrate a legitimate need for an employee exists, and substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

The generalized functions described by the petitioner do not provide sufficient substantive information about the proffered position and its duties. For instance, in response to the RFE, the petitioner states that the beneficiary will be responsible for "compiling and analyzing financial information and preparing financial reports." The petitioner then proceeds to explain the "[c]ommon duties for accountants" in general, without specifying the actual duties of the proffered position in the scope of the petitioner's actual business operations. These generalized statements fail to provide any insight into the nature of proffered position. Notably, the petitioner fails to explain how the performance of the proffered duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. The petitioner merely states in conclusory terms that "accounting skills" and "thorough knowledge of all laws and regulations relating to accounting and practices" are necessary to perform the proffered duties, but does not provide any further explanation or documentary evidence to support these assertions.

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)).

Thus, it is not evident that the proposed duties, as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested. The proposed duties as described do not persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position.

In addition, there are discrepancies and deficiencies within the record that raise doubt as to the credibility of the petitioner's statements and descriptions of the proffered position. For instance, in response to the RFE, the petitioner states that the beneficiary "will spend a bulk of his time in establishing operational and financial security procedures and advising upper management with cost

ensure that taxes are paid properly and on time." *Id.* at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-2> (last visited Jan. 29, 2015).

saving and investment strategies." However, in another section of the petitioner's RFE response in which the duties of the proffered position are listed with the approximate percentages of time spent on each duty, the petitioner states that the beneficiary will only spend 10% of his time "[a]nalyzing operating statements, reviewing cost control programs, and making strategy recommendations to management." The petitioner does not clarify what portion of this 10% will be spent on the particular duty of "making strategy recommendations to management." Nevertheless, even if the beneficiary were to spend the entire 10% on "making strategy recommendations to management," this would still fall significantly short of spending "a bulk of his time . . . advising upper management," as the petitioner asserts.⁵ Moreover, the petitioner does not list any duties involving establishing operational and financial procedures.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Significantly, while the petitioner claims that the beneficiary will supervise individuals who perform the routine bookkeeping services for the company, the record of proceeding does not corroborate this claim. That is, the petitioner has not identified and documented which of its four employees perform the routine bookkeeping services, as claimed. Further, the listed duties for the proffered position do not contain any supervisory duties. In fact, there is no explanation or documentation of the roles of the petitioner's employees in operating the business, or any substantive evidence of the petitioner's organizational structure. In other words, the record lacks probative evidence that the petitioner employs other individuals who perform the bookkeeping and other routine tasks necessary to the operation of the petitioner's business, in order to relieve the beneficiary of such duties. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to accounting duties. Again, doubt cast on any aspect of the remaining evidence offered in support of the visa petition. *Id.*

In the instant case, the petitioner claims that the beneficiary has served in the proffered position since 2009. However, the petitioner has not provided examples of the beneficiary's actual work, even though such evidence was specifically requested in the director's RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

⁵ On appeal, the petitioner increased the percentage of time spent on these particular duties to 25%, without explaining the reason for the increase. Regardless, even if the beneficiary spent all 25% of his time on these duties, it still would fall significantly short of spending "a bulk of his time," as asserted.

In particular, we note that the beneficiary's duties, as described by the petitioner, specifically include "compute taxes owed and prepare tax returns, ensuring compliance with payment, reporting or other tax requirements." However, the petitioner's 2012 and 2013 federal and state tax returns were prepared by an outside accounting firm, [REDACTED]. While the petitioner claims that these tax returns were "signed by an outside CPA" in order to "show independence," this explanation is neither credible nor supported by evidence. The petitioner has not sufficiently explained why an outside accounting service was required to prepare the petitioner's taxes while the petitioner claims to employ the beneficiary as a full-time accountant whose duties specifically include preparing the company's tax returns.⁶

We also note that the evidence of record is unclear as to the exact nature and scope of the petitioner's business operations. According to its NAICS code and the petitioner's descriptions on the Form I-129 and supporting documentation, the petitioner is a gas station with a convenience store located at [REDACTED] Texas. The petitioner indicates that the beneficiary will only work at this location and will not work off-site. However, the record of proceeding does not contain evidence establishing that the petitioner is actually doing business at this particular location, and that the beneficiary is working at this particular location. Again, 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. at 165.

Instead, the petitioner submitted evidence (e.g., licenses, permits, and invoices) reflecting that the petitioner is doing business as, or is otherwise associated with, the following businesses: (1) [REDACTED] located at [REDACTED]

located at [REDACTED]. The petitioner has not explained the nature of these other apparent businesses, their exact relationship to the petitioner, and the beneficiary's role with respect to these other businesses. As previously noted, the petitioner has not explained and documented the roles of the petitioner's employees or organizational structure. These apparent other businesses at different locations further call into question the petitioner's ability to relieve the beneficiary of non-accounting duties, especially considering that the petitioner only claims to employ four persons.

On appeal, the petitioner states for the first time that it is "an acquisition, management and development firm." If the petitioner is "an acquisition, management and development firm" as now claimed on appeal, this raises additional questions as to how the petitioner is able to relieve the beneficiary of performing non-accounting duties, especially considering that the petitioner only claims to employ four persons.

It is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See [REDACTED]

⁶ We observe that the petitioner's quarterly federal tax returns do not list the beneficiary as a third-party designee with whom the government may discuss the petitioner's returns.

Department of Homeland Security, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, we review the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in a position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in a specific specialty, or its equivalent. Additionally, when a petitioner employs relatively few people, it may be necessary for the petitioner to establish how the beneficiary will be relieved from performing non-qualifying duties. Although this concern was specifically addressed in the director's RFE and again in the denial notice, the petitioner has not addressed nor provided credible documentation as to how the beneficiary will be relieved from performing non-qualifying duties.

Finally, we observe that any claims about the high-level duties of the proffered position, such as "managing and directing the [company's] financial activities," supervising bookkeepers, and "establishing operational and financial security procedures and advising upper management with cost saving and investment strategies," are inherently contradictory to the level of responsibility conveyed by the Level I wage level indicated by the LCA submitted in support of petition. As will be discussed in more detail *infra*, the LCA designated the wage level for the proffered position as a Level I (entry) position, which corresponds to "job offers for beginning level employees who have only a basic understanding of the occupation . . . [and who] perform routine tasks that require limited, if any, exercise of judgment."⁷ Considering that the LCA is certified for a Level I entry-level position, we must further question the veracity of the petitioner's descriptions of the proffered position.

Overall, the above deficiencies and discrepancies in the record preclude a finding that the proffered position qualifies as a specialty occupation.

B. Academic Requirements for the Proffered Position

The academic requirement identified by the petitioner as the minimum education necessary to perform services in the proffered position does not qualify the position as a specialty occupation.

Specifically, the petitioner stated that the duties of the proffered position require an individual with "a Bachelor's degree in Business Administration, Accounting, Finance, or a related field." To qualify as a specialty occupation, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the duties and responsibilities of the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a general-purpose degree or a degree with a generalized

⁷ 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.

title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To 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. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose 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).⁸ The petitioner's assertions that a general purpose degree is sufficient to perform the duties of the position indicate that the proffered position is not in fact a specialty occupation.

IV. SPECIALTY OCCUPATION DISCUSSION

We will now address the director's basis for denial of the petition, namely that the petitioner did not establish that it would employ the beneficiary in a specialty occupation position. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

As previously discussed, the petitioner has failed to establish nature of the proffered position and in what capacity the beneficiary will actually be employed. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered

⁸ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, we will now address in detail the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Assuming, *arguendo*, that the duties of the proffered position as described by the petitioner would in fact be the duties performed by the beneficiary, we will now address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This criterion requires that the petitioner establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁹ As previously discussed, the petitioner designated the proffered position in the LCA under the occupational category "Accountants and Auditors."

Upon review, we note that the petitioner has not provided sufficient information to establish that the proffered position falls under the occupational category "Accountants and Auditors." Nevertheless, we reviewed the chapter of the *Handbook* entitled "Accountants and Auditors" including the sections regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Accountants and Auditors" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position as a Level I (entry) position in the LCA. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation. Furthermore, the petitioner's designation of the position under this wage level signifies that the beneficiary will be expected to work under close supervision and receive specific instructions on required tasks and expected results. Additionally, the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment. Moreover, the beneficiary's work will be closely monitored and reviewed for accuracy. DOL guidance indicates that a job offer for a research fellow, a worker in training, or an internship is an indicator that a Level I wage should be considered.

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, there is no indication that the petitioner requires the beneficiary to have obtained the designation Certified Public Accountant (CPA), Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position.

⁹ All of the references to the *Handbook* are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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

In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Accountants and Auditors, on the Internet at <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited Jan. 29, 2015).

The *Handbook* does not support a finding that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. More specifically, the *Handbook* reports that some graduates from junior colleges, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to accountant positions by demonstrating their accounting skills. According to the *Handbook*, individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and then advance to accountant positions. The *Handbook* does not state that this education and experience must be the equivalent to at least a bachelor's degree in a specific specialty.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* states that most accountants and auditors need at least a bachelor's degree, however, this statement does not support the view that any accountant job qualifies as a specialty occupation as "most" does not indicate that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent.¹⁰ More specifically, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the

¹⁰ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may 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." Section 214(i)(1) of the Act.

criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy 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 to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

In response to the director's RFE, the petitioner submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.¹¹

For instance, the petitioner has not established that it and the advertising organizations are similar and in the same industry. Without such evidence, postings submitted by a petitioner are generally

¹¹ Many of the internet postings the petitioner provided are partially or completely illegible.

outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner and in the petitioner's industry. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such assertions.¹² Moreover, many of the advertisements do not appear to be for parallel positions, as several of the postings were for senior-level accountants with several years of experience. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I (entry level) position. In addition, the petitioner did not provide any independent evidence of how representative the job advertisements are of the advertising employers' recruiting history for the type of jobs advertised. As the advertisements are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

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

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

As previously discussed, the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. That is, the evidence of record is insufficient to demonstrate the substantive nature of the duties the beneficiary will perform on a day-to-day basis such that complexity or uniqueness can even be developed. Furthermore, the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. For instance, the petitioner claims that it needs the services of an Accountant to expand its business operations, but did not provide documentation to support such a claim (e.g., a business plan; documentation substantiating the expansion of physical facilities;

¹² On appeal, counsel for the petitioner asserts that it had submitted internet postings for "convenient/retail business, posting for cell phone retail store, posting for several small-scale jewelry stores." However, the petitioner provided no objective evidence to support these characterizations. 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. at 165.

plans to hire staff; evidence substantiating that the petitioner intends to establish branch, subsidiary or affiliate offices; probative evidence substantiating investments or new revenue sources; or other documentation regarding development/expansion plans).¹³

The LCA submitted by the petitioner in support of the instant petition further undermines any claim of eligibility under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). 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 he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique.

The petitioner fails to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner has not submitted 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.

Overall, the evidence fails to demonstrate that the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To 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.

While a petitioner may assert that a proffered position requires a specific degree, that statement alone, without corroborating evidence, cannot establish the position as a specialty occupation.

¹³ Regardless, the claim that the petitioner intends to expand its business operations in the future is insufficient to demonstrate that the proffered position qualifies as a specialty occupation. That is, a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

In response to the RFE, counsel for the petitioner states that the proffered position "has always been [filled by individuals] with education and experience equivalent to a U.S. Bachelor's degree in Business Administration, Accounting, Finance, or a related degree which requirements have remained consistent in our staffing of [the beneficiary]." However, the petitioner has not provided any documentation to support this statement. 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. at 165.

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

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is

usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The submitted documentation fails to support the assertion that the proffered position satisfies this criterion of the regulations. The petitioner has failed to credibly demonstrate the duties the beneficiary will perform on a day-to-day basis such that specialization or complexity can be sufficiently developed as an aspect of the proffered position. We also reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels) position.

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

For the reasons related in the preceding discussion, the petitioner has 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. The appeal will be dismissed and the petition denied for this reason.

V. CONCLUSION

The instant petition seeks to extend the beneficiary's H-1B employment with the petitioner. We note that we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988).

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 145 (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

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

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