



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 11 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:

[REDACTED]

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 (hereinafter "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.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker, Form I-129, the petitioner describes itself as a 65-employee "Construction material testing" firm established in [REDACTED]. In order to continue to employ the beneficiary in what it designates as a "Director of Accounting" 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See*

Royal Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Director of Accounting" position, 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 further states that the proffered position is a wage Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in International Economics and Trade from [REDACTED] in China and a master's degree in business administration from [REDACTED]. An evaluation in the record states that the beneficiary's bachelor's degree, earned in China, is equivalent to a U.S. bachelor's degree in International Economics and Trade.

The petitioner also submitted a letter, dated November 8, 2013, from [REDACTED], signing as the petitioner's vice president, which states the following:

When the H-1B visa extension petition is approved, [the beneficiary] will continue to perform the following duties:

- In-House Accounting
- Book Keeping [sic]
- Accounts Receivable

- Accounts Payable
- Employee Payroll
- Preparing Financial Statements
- Bank Reconciliations

On February 14, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted: (1) copies of the petitioner's 2008, 2009, 2010, and 2012 Form 1120S, U.S. Income Tax Returns for an S Corporation; (2) copies of the petitioner's financial statements for 2009, 2010, 2011, 2012; (3) a portion of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to Accountants and Auditors; (4) an additional description of the duties of the proffered position, signed by [REDACTED] (5) a letter, dated April 29, 2014, from [REDACTED] of [REDACTED] [REDACTED]; and (6) evidence pertinent to [REDACTED] and [REDACTED], two employees of the petitioner.

The petitioner's 2008, 2009, 2010, and 2012 tax returns show that they were prepared by [REDACTED] [REDACTED], a certified public accountant (CPA) in New York. [REDACTED] also reviewed and signed the petitioner's financial statements.

The additional duty description provided states that, in the proffered position, the beneficiary would:

- Set up various accounts in the accounting system and insure that they are in accordance with Generally Accepted Accounting Principles. This will include asset accounts, liability accounts, equity accounts, expense accounts & others 5%
- Manage, review and approve the development of long and short term budgets 5%
- Review the accounting records for accuracy in items such as general ledger, cash receipts, and cash disbursements. 10%
- Closely monitor and manage key accounts, such as accounts receivables, accounts payables, and various expense accounts. 10%
- Review and approve payroll on either a weekly, bi-weekly, or monthly basis 10%
- Closely monitor and ensure that the company complies with all tax and accounting filings 10%
- Make any necessary adjustments to the books 2%

- Troubleshoot and provide solutions relating to accounting issues 2%
- Manage the process of reconciling various accounts 10%
- Monitor the financials and ensure that they are within budgets 2%
- Assist in preparing various financial reports 10%
- Review proposals and insure that pricing/customer information are correctly set up in the system 10%
- Insure that invoicing is processed in a timely manner and that they are accurate 10%
- Prepare/manage various reporting required by customers and agencies 4%

April 29, 2014 letter states that the duties described by are generally those of accountants at any company.

The evidence pertinent to shows that she studied economics at the . An unsigned, unattributed statement on the petitioner's letterhead describes ; duties and states that she works as the petitioner's budget analyst.

The evidence pertinent to shows that he has a bachelor's degree in business management from . A letter, dated April 25, 2014, from states that he works for the petitioner as its internal resource manager. That letter also describes some of his duties.

The director denied the petition on June 2, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director stated, "[I]t appears that the beneficiary will be performing the duties of a bookkeeper."

On appeal, counsel submitted (1) a letter, dated July 2, 2014, from the previously mentioned CPA; and (2) a brief.

July 2, 2014 from letter reiterates the duties previously provided. also stated:

I have read the job description of a "Director of Accounting" stated above and to my knowledge and experience, I believe that these duties are complex enough to be performed by an accountant and not a bookkeeper.

In the appeal brief, counsel asserted that the evidence submitted demonstrates that the proffered position is a specialty occupation position. Counsel further asserted that, because the instant visa petition is an extension petition, seeking continuation of the beneficiary's employment with the petitioner in the same position performing the same duties as those in a previously approved H-1B visa petition, the director should have accorded deference to the previous decision and approved the visa petition.¹

IV. ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2011, Accountants and Auditors from O*NET. The *Handbook* describes the occupation of "Accountants and Auditors" as follows:

What Accountants and Auditors Do

¹ USCIS computer records show that the petitioner filed an H-1B visa petition with receipt number [REDACTED] for the instant beneficiary, and that it was approved from employment from March 30, 2010 to January 18, 2013.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

Accountants and auditors prepare and examine financial records. They ensure that financial records are accurate and that taxes are paid properly and on time. Accountants and auditors assess financial operations and work to help ensure that organizations run efficiently.

Duties

Accountants and auditors typically do the following:

- Examine financial statements to ensure that they are accurate and comply with laws and regulations
- Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
- Inspect account books and accounting systems for efficiency and use of accepted accounting procedures
- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

In addition to examining and preparing financial documentation, accountants and auditors must explain their findings. This includes face-to-face meetings with organization managers and individual clients, and preparing written reports.

Many accountants and auditors specialize, depending on the particular organization that they work for. Some organizations specialize in assurance services (improving the quality or context of information for decisionmakers) or risk management (determining the probability of a misstatement on financial documentation). Other organizations specialize in specific industries, such as healthcare.

Some workers with a background in accounting and auditing teach in colleges and universities. For more information, see the profile on postsecondary teachers.

The following are examples of types of accountants and auditors:

Public accountants perform a broad range of accounting, auditing, tax, and consulting tasks. Their clients include corporations, governments, and individuals. They work with financial documents that clients are required by law to disclose. These include tax forms and balance sheet statements that corporations must provide potential investors. For example, some public accountants concentrate on tax matters, advising corporations about the tax advantages of certain business decisions, or preparing individual income tax returns.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms. Publicly traded companies are required to have CPAs sign documents they submit to the Securities and Exchange Commission (SEC), including annual and quarterly reports. External auditors review clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported.

Some public accountants specialize in forensic accounting, investigating financial crimes such as securities fraud and embezzlement, bankruptcies and contract disputes, and other complex and possibly criminal financial transactions. Forensic accountants combine their knowledge of accounting and finance with law and investigative techniques to determine if an activity is illegal. Many forensic accountants work closely with law enforcement personnel and lawyers during investigations and often appear as expert witnesses during trials.

Management accountants, also called *cost, managerial, industrial, corporate, or private accountants*, record and analyze the financial information of the organizations for which they work. The information that management accountants prepare is intended for internal use by business managers, not by the general public. They often work on budgeting and performance evaluation. They also may help organizations plan the cost of doing business. Some may work with financial managers on asset management, which involves planning and selecting financial investments such as stocks, bonds, and real estate.

Government accountants maintain and examine the records of government agencies and audit private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by federal, state, and local governments ensure that revenues are received and spent in accordance with laws and regulations.

Internal auditors check for mismanagement of an organization's funds. They identify ways to improve the processes for finding and eliminating waste and fraud. The practice of internal auditing is not regulated, but The Institute of Internal Auditors (IIA) provides generally accepted standards.

Information technology auditors are internal auditors who review controls for their organization's computer systems, to ensure that the financial data comes from a reliable source.

On the other hand, the *Handbook* describes the duties of Bookkeeping, Accounting, and Auditing Clerks as follows:

What Bookkeeping, Accounting, and Auditing Clerks Do

Bookkeeping, accounting, and auditing clerks produce financial records for organizations. They record financial transactions, update statements, and check financial records for accuracy.

Duties

Bookkeeping, accounting, and auditing clerks typically do the following:

- Use bookkeeping software, online spreadsheets, and databases
- Enter (post) financial transactions into the appropriate computer software
- Receive and record cash, checks, and vouchers
- Put costs (debits) and income (credits) into the software, assigning each to an appropriate account
- Produce reports, such as balance sheets (costs compared with income), income statements, and totals by account
- Check for accuracy in figures, postings, and reports
- Reconcile or note and report any differences they find in the records

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

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

These clerks use basic mathematics (adding, subtracting) throughout the day.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software, spreadsheets, and databases. Most clerks now enter information from receipts or bills into computers, and the information is then stored electronically. They must be comfortable using computers to record and calculate data.

The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, billing, purchasing (buying), and keeping track of overdue bills. Many of these functions require clerks to communicate with clients.

Bookkeeping clerks, also known as **bookkeepers**, often are responsible for some or all of an organization's accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income).

They also produce financial statements and other reports for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying receipts, and sending cash, checks, or other forms of payment to the bank. In addition, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

Accounting clerks typically work for larger companies and have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do.

Often, their responsibilities vary by level of experience. Entry-level accounting clerks may enter (post) details of transactions (including date, type, and amount), add up accounts, and determine interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may add and balance billing vouchers, ensure that account data is complete and accurate, and code documents according to an organization's procedures.

Auditing clerks check figures, postings, and documents to ensure that they are mathematically accurate and properly coded. They also correct or note errors for accountants or other workers to fix.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited Feb. 10, 2015).

Accountant positions are similar to bookkeeping or accounting clerk positions, in that both are responsible, to some degree, for a company's financial records. Both positions also involve some degree of analysis. The distinction between the duties of an accountant or auditor and the duties of a bookkeeping, accounting, or auditing clerk appears to be the complexity of analysis required by those duties.

Neither of the two duty descriptions provided by the petitioner contain any indication of analysis of a complexity that it would not be performed by a bookkeeping clerk or accounting clerk. In fact, the duty description first provided, in [REDACTED] November 8, 2013 letter, includes bookkeeping, maintaining accounts receivable and payable, running the employee payroll, and bank reconciliations, duties that are manifestly included in the duties of a bookkeeping or accounting clerk. The remaining two duties contained in that description, In-House Accounting and Preparing Financial Statements, would also typically be performed by a bookkeeping or accounting clerk. Financial statements thus compiled might then either be reviewed or audited by an accountant. In this case, the record contains the petitioner's financial statements, which were, in fact, reviewed by a CPA. Whatever duties the beneficiary could have performed in compiling those financial statements was likely within the ambit of a bookkeeping clerk's or accounting clerk's duties.

We find, by a preponderance of the evidence, that the proffered position is a bookkeeping or accounting clerk position. We further observe that such positions do not qualify as specialty occupation positions because they do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. *Id.* at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited Feb. 10, 2015). The appeal will be dismissed and the visa petition denied on this basis.

However, although the evidence is insufficient to demonstrate that the proffered position is an accountant position, as claimed, we will momentarily assume, *arguendo*, that the proffered position qualifies as such a position, so as to reach counsel's assertions pertinent to such positions.

The *Handbook* states the following about the educational requirements of accountant and auditor positions:

How to Become an Accountant or Auditor

Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Certification within a specific field of accounting improves job prospects. For example, many accountants become Certified Public Accountants (CPAs).

Education

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. 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.

Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

Licenses, Certifications, and Registrations

Every accountant filing a report with the Securities and Exchange Commission (SEC) is required by law to be a Certified Public Accountant (CPA). Many other accountants choose to become a CPA to enhance their job prospects or to gain clients. Many employers will often pay the costs associated with the CPA exam.

CPAs are licensed by their state's Board of Accountancy. Becoming a CPA requires passing a national exam and meeting other state requirements. Almost all states require CPA candidates to complete 150 semester hours of college coursework to be certified, which is 30 hours more than the usual 4-year bachelor's degree. Many schools offer a 5-year combined bachelor's and master's degree to meet the 150-hour requirement, but a master's degree is not required.

A few states allow a number of years of public accounting experience to substitute for a college degree.

All states use the four-part Uniform CPA Examination from the American Institute of Certified Public Accountants (AICPA). Candidates do not have to pass all four parts at once, but most states require that they pass all four parts within 18 months of passing their first part.

Almost all states require CPAs to take continuing education to keep their license. Certification provides an advantage in the job market because it shows professional competence in a specialized field of accounting and auditing. Accountants and auditors seek certifications from a variety of professional societies. Some of the most common certifications are listed below:

The Institute of Management Accountants offers the Certified Management Accountant (CMA) to applicants who complete a bachelor's degree. Applicants must have worked at least 2 years in management accounting, pass a two-part exam, agree to meet continuing education requirements, and comply with standards of professional conduct. The exam covers areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management.

The Institute of Internal Auditors (IIA) offers the Certified Internal Auditor (CIA) to graduates from accredited colleges and universities who have worked for 2 years as

internal auditors and have passed a four-part exam. The IIA also offers the Certified in Control Self-Assessment (CCSA), Certified Government Auditing Professional (CGAP), and Certified Financial Services Auditor (CFSA) to those who pass the exams and meet educational and experience requirements.

ISACA offers the Certified Information Systems Auditor (CISA) to candidates who pass an exam and have 5 years of experience auditing information systems. Information systems experience, financial or operational auditing experience, or related college credit hours can be substituted for up to 2 years of experience in information systems auditing, control, or security.

For accountants with a CPA, the AICPA offers the option to receive any or all of the Accredited in Business Valuation (ABV), Certified Information Technology Professional (CITP), or Personal Financial Specialist (PFS) certifications. The ABV requires a written exam and completion of at least six business valuation projects that demonstrate a candidate's experience and competence. The CITP requires 1,000 hours of business technology experience and 75 hours of continuing education. Candidates for the PFS also must complete a certain amount work experience and education, and pass a written exam.

Advancement

Some top executives and financial managers have a background in accounting, internal auditing, or finance.

Beginning public accountants often advance to positions with more responsibility in 1 or 2 years and to senior positions within another few years. Those who excel may become supervisors, managers, or partners; open their own public accounting firm; or transfer to executive positions in management accounting or internal auditing in private firms.

Management accountants often start as cost accountants, junior internal auditors, or trainees for other accounting positions. As they rise through the organization, they may advance to accounting manager, chief cost accountant, budget director, or manager of internal auditing. Some become controllers, treasurers, financial vice presidents, chief financial officers, or corporation presidents.

Public accountants, management accountants, and internal auditors can move from one aspect of accounting and auditing to another. Public accountants often move into management accounting or internal auditing. Management accountants may become internal auditors, and internal auditors may become management accountants. However, it is less common for management accountants or internal auditors to move into public accounting.

Important Qualities

Analytical skills. Accountants and auditors must be able to identify issues in documentation and suggest solutions. For example, public accountants use analytical skills in their work to minimize tax liability, and internal auditors do so when identifying fraudulent use of funds.

Communication skills. Accountants and auditors must be able to listen carefully to facts and concerns from clients, managers, and others. They must also be able to discuss the results of their work in both meetings and written reports.

Detail oriented. Accountants and auditors must pay attention to detail when compiling and examining documentation.

Math skills. Accountants and auditors must be able to analyze, compare, and interpret facts and figures, although complex math skills are not necessary.

Organizational skills. Strong organizational skills are important for accountants and auditors who often work with a range of financial documents for a variety of clients.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Accountants and Auditors," <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited Feb. 10, 2015).

The *Handbook* reports that some graduates from junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to accountant positions by demonstrating their accounting skills. That is, the *Handbook* reports that 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 equivalent to at least a bachelor's degree in a specific specialty. The *Handbook* does not indicate, therefore, that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including those less than a bachelor's degree in a specific specialty. Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 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 satisfies this criterion by a preponderance

of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. 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." 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. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

The letters from [REDACTED] and [REDACTED] both conclude that the duties attributed to the proffered position by [REDACTED] and submitted in response to the RFE are accountant duties, but neither states how he reached that conclusion. The duties described by [REDACTED] are entirely consistent with the duties of a bookkeeping or accounting clerk and the conclusions of [REDACTED] and [REDACTED], without any indication of how those conclusions were reached, are of very little evidentiary weight.

Further, although [REDACTED] and [REDACTED] both indicated that the duties described are accountant duties, neither stated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As was observed above, accountant positions do not, as a category, qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

We find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge in bookkeeping and accounting fields, but do not establish any particular level of formal education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Even assuming that the particular position here proffered is an accountant position, the evidence of record does not establish that it is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong 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 a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.³

Thus, even if the proffered position is assumed to be an accountant position, 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, and does not satisfy the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be

³ As was noted above, neither [redacted] nor [redacted] indicated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

beneficial, or even required, in performing certain duties of the proffered 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 particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I accountant, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of accountancy. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some accountant positions do not require such a degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees that are less than a bachelor's degree. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category 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).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁴

We observe that the petitioner has never stated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. [REDACTED] November 8, 2013 does not state that the proffered position has any educational requirement at all. The description of the proffered position submitted in response to the RFE, and signed by [REDACTED] also states no

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

educational requirement. Further, the record contains no evidence pertinent to anyone other than the beneficiary whom the petitioner has ever previously hired anyone to fill the proffered position. The petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them 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. The duties of the proffered position, such as setting up accounts in an accounting system; managing, reviewing, and approving the development of budgets; monitoring key accounts; reviewing and approving payroll; etc., contain no indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, even if the proffered position is assumed to be an accountant position, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of accountant positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I accountant position, a position for a beginning level employee with only a basic understanding of accountancy. 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. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to accounting, especially as the *Handbook* indicates that some accountant positions require no such degree.

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

V. CONCLUSION

We recognize that this is an extension petition. The director's decision does not indicate whether she reviewed the prior approvals of the previous nonimmigrant petition filed on behalf of the beneficiary. If the previous nonimmigrant petition was approved based on the same evidence contained in the current record, that approval would constitute material and gross error on the part of the director. 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). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.