



U.S. Citizenship
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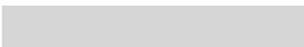
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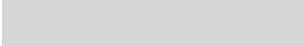
JUN 02 2015

DATE:

PETITION RECEIPT #: 

IN RE:

Petitioner: 

Beneficiary: 

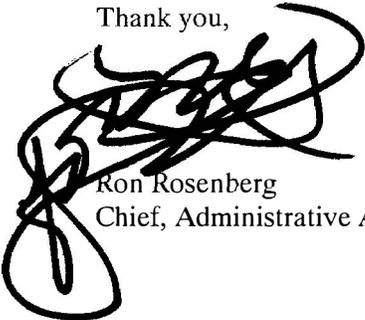
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:


Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). 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 engaged in the "cut stone and stone product manufacturing" business. In order to employ the beneficiary in what it designates as an "Internal Auditor and Bookkeeper" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director denied the petition, finding that the petitioner did not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, the petitioner asserts that the Director's basis for denial of the petition was erroneous and contends that it satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, we have determined that the Director's decision to deny the petition because the petitioner did not establish that the proffered position qualifies as a specialty occupation was correct and that the petitioner's appeal has not overcome those grounds. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.¹

I. SPECIALTY OCCUPATION

A. The Law

¹ Beyond the Director's decision, the petitioner should also note that there is an additional aspect of the record which, although not addressed in the Director's decision, nonetheless would preclude approval of this petition - even if the petitioner had overcome the grounds for the Director's denial. That aspect is the absence of the signature of an authorized official at the required certification, at page 12 of the Form I-129 Supplement H, which reads:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

We conduct appellate review on a *de novo* basis, and it was in the course of that review that we observed this defect. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We shall address this additional issue in more detail towards the end of this decision.

The issue on appeal is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable 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 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.

B. Analysis

1. Preliminary comments and findings

Here we will focus on some aspects of the record of proceeding that we think deserve mention at the outset because of their bearing on the specialty occupation issue. We have, of course, reviewed not only the documents mentioned below, but also the totality of the evidence submitted into the record at every stage of the proceeding from the petition's filing through the appeal, examining each

piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence.

Regarding the petitioner's claims on appeal

The petitioner should note that we have fully considered all of the reasons that it has voiced to support its position. Based upon our independent review of all of the documentary evidence submitted into the record, we find that the evidentiary record does not support all of the claims stated in the petitioner's December 5, 2014 letter on appeal, which we shall here address in the order in which they appear in the letter.

The petitioner claims that "[the beneficiary's] bookkeeping and auditing position clearly requires the daily deployment of academic research, data analysis and computing skills, the totality of which could not be satisfactorily performed by an individual lacking the research"; and that "[the beneficiary] is undertaking complex and sophisticated work of an accountant and auditor to provide indispensable expert opinions on the development of the company in terms of finance and legal tax evasion." The copies of business records submitted into the record are not such as to manifest what particular "daily deployment of academic research, data analysis, and computing skills" would engage the beneficiary, let alone that such deployment would require any particular level of higher education in any specific specialty, whether at a junior college, community college, or four-year college or university.

We also find that the petitioner has not presented an evidentiary, factual basis for its claim that the work of the proffered position requires "undertaking complex and sophisticated work of an accountant and auditor to provide indispensable expert opinions for the development of the company in terms of finance and legal tax evasion."

So, too, we find nothing on the face of the record's evidence that substantiates the petitioner's claims (1) that "[the beneficiary's] work is easily comparable in complexity to that undertaken by accountants or financial analysts at large corporate firms or self-employed CPA's"; (2) and that "[the beneficiary's duties] are no less intellectually rigorous" than work that would be performed "by paraprofessionals at Wall Street financial firms, whose duties focus upon the preparation and review of litigation documents or materials relating to corporate mergers, public offerings, or dissolutions." Further, the evidence of record did not demonstrate the accuracy of those 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. 1972)).

We also are not persuaded by the petitioner's statements about its future expansion or its planning for the same. On appeal, for example, we see the petitioner stating "[i]n particular" that it "has been planning expansion to another state and country, which will make [the petitioner] face more complex financial and taxation situations that will definitely require a highly professional financial clerk like [the beneficiary] in the company's development." We find that the petitioner did not submit evidence showing that, at the time of the petition's filing, its expansion and/or expansion-

planning had progressed to a stage that would require the services of the beneficiary in any related H-1B-caliber work. The evidence of record does not establish such progress. Further, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *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).

December 9, 2014 letter from [REDACTED]

This letter does not show that, if this petition were approved, the beneficiary would be engaged in accounting work that would require at least a bachelor's degree of a body of highly specialized knowledge in accounting or any closely related specialty. The letter attests that [REDACTED] has accepted the petitioner's offer to form a joint venture in a particular part of China in the Spring of 2015. It also states that "the joint venture will be funded by the two companies in equal shares and will split all profits and debt equally," and that "the bylaws and articles of the new company will comply with the laws of the People's Republic of China and the United States of America as well as the as well as the local laws and policies where the two countries are based." However, the letter does not detail any substantive work that would involve the beneficiary's performance of the duties that the petitioner ascribes to the proffered position.

December 6, 2014 letter from the president of [REDACTED]

We recognize that the author's firm is likely engaged in the same industry as the petitioner, as the record reflects that the petitioner also engages in preparing and installing stone-work and other additions to homes. However, the author's ultimate conclusion, that is, the author's agreement with the petitioner's president that a "college-educated individual is necessary for his company's operation and expansion," falls short of endorsing the proffered position as meriting recognition as a specialty occupation, as it does not state a need for at least a bachelor's degree in a specific specialty, or its equivalent. Further still, while the author cites his experience as the foundation of his opinion, he does not detail the extent and substance of that experience. Also, while the author states that he now relies on a person who has a degree (level not specified) in accounting, the author does not recount whether or not his firm has recruited and/or hired persons without an accounting degree for the position. Finally, the letter does not reveal the extent of the author's knowledge about the petitioner's specific operations and needs.

Regarding the proposed duties and the particular context in which they would be performed

For the description of the proposed duties the petitioner asserted the following at page 11 of the Form I-129 Supplement H:

Keep records of daily transaction, prepare Biweekly pay check for employees, prepare and [analyze] annual financial report, check internal control, and improve financial activities.

Several documents accompanying the petitioner's RFE-reply address the proffered position.

There is an unsigned document entitled "A Letter from manager" which bears a signature line for [REDACTED] a person whom the petitioner's organization chart identified as being in charge of the petitioner's Marketing and Customer Service. The letter states, in pertinent part, that the petitioner's internal auditor and bookkeeper position, the subject of this petition, requires a person who (1) "must master all kind[s] of accounting knowledge," (2) has "a basic understanding of [the petitioner's] business, know how to read a construction layout[,], and know how to calculate the total footage" for related home design/installation projects; and (3) is bilingual, that is, one "who can help us to communicate with American partners and Customers," in part because the petitioner's owner is "a Chinese American who cannot speak English fluently.. The author also comments on the beneficiary's work in F-1 status, remarking that the beneficiary "perfectly fits all three requirements" and has prepared many invoices for us, payroll paperwork[,], [and] tax documents." The document also identifies some types of payment that the author states must be entered into the computer using the Quick Book application; and the author also states that the position involves handling "a lot of returns and cancellations" which "cannot be handled by anyone who does not have an accounting background."

Also submitted as part of the petitioner's RFE-reply is an "Accountant Job [D]escription" document, whose content we quote below:

Accountant Job [D]escription

Under the manager's supervision, the staff accountant performs accurate and timely technical accounting work, including but not limited to the following:

- Invoice and accounts receivable
- Accounts payable
- Account reconciliations and maintain accurate and complete financial records
- Internal and external reporting requirements
- Other duties as assigned

Specific duties and responsibilities

- Accounts receivable cycle -- Includes collection of accurate time from employees to producing timely and accurate invoices, and the maintenance of the A/R ledger.
- Accounts payable cycle -- Includes review and inputting of vendor invoices and employee expense reports, aging, payment, and maintenance of the A/R ledger and accruals.
- Payroll -- Provide payroll assistance as needed.

- Tax – Assist with tax related, including preparing various monthly, quarterly and year-end analysis and reports.

Although there are five individuals, this position is too complex to be handled by [just] any individual[;] one person [with an] accounting major is necessary.

1. Account payable

- **For granite**

We have 2 local suppliers [redacted]
[and] [a]nother 2 suppliers in Ohio [redacted] [.]

Normally bills need to be paid in 30, 60, or 90 days. [This] is One Complicated payment method which is very normally in [the] granite business. And the surface of granite is very easy to be scratched, so there a lot of returns and changes in this business.

With a complicated payment [process] and many returns and changes, a professional accountant is necessary.

- **For cabinets**

We are dealing with 5 cabinetry suppliers at the same time. [redacted]

There are also many returns, changes and cancellations in [the] Cabinetry business. All bills are needed to be paid correctly under a timely manner. Individual in accounting major [is] a must for all those complex account[s] payable.

2. Account receivable

We are not only a local dealer[;] we are also doing business with another local company[,] which is [redacted] We are fabricating granites for that company, [and] after the job [is] finished, we need to send bills over by a weekly manner. They pay twice a month. So there are also many works on account receivable.

3. Payroll

We have hired 5 full time and one part time [person] [, and] right now we really need one accountant to handle all payroll paper work and taxation documents[.] [W]e hired an accounting firm last year to prepare all of them last year and the first two quarters this year, which cost us a lot.

Another reason to hire an accountant is [that] we have paid a lot to that accounting firm which is enough to hire an accountant for us.

4. Taxation

In [redacted] we are in a granites and cabinets business. The Law regulates that in this business if [a] retailer does the installation for [its] customers, no tax charges. If customers just order cabinets or granites from a retailer and customers will do the installation by themselves, there is 7% tax need[ed] to be paid.

This complicated situation is difficult to be handled by any Individual. A well trained accountant is a must under such a circumstance, [he or she] can save us a lot of troubles.

We have considered all of the evidence that the petitioner has submitted with regard to its internal organization, its business operations, and particular accounting-matters upon which the beneficiary would work if the petition were approved. Our review included, but was not limited to, the following documents in the record of proceeding: (1) the petitioner's tax documents; (2) the samples of the petitioner's advertising and marketing efforts; (3) and the entire spectrum of business-record copies that the petitioner submitted to reflect the volume and variety of accounting-related actions that would involve the beneficiary (including, for instance, invoices, billing statements, delivery orders, consignment lists, purchase orders (with drawings or diagrams), delivery orders, sales orders, project/item estimate sheets, shipping receipts, bills of lading, and a copy of a signed "Granite Material Fabrication & Installation Service Agreement."

We have also considered the information that the petitioner presented about its gross income and net income.

2. Application of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)

Taking into account all of the comments and findings that we have already made, we shall now specifically apply the supplementary criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence of record.

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied by establishing that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We recognize the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² We shall first review the *Handbook's* information regarding the Bookkeeping, Accounting, and Auditing Clerks occupational classification, because comparing the scope of the duties that the *Handbook* attributes to this occupational group, on the one hand, with the scope of the duties that the petitioner ascribes to the proffered position indicates that a substantial portion of the types of work that the beneficiary would perform fall within the realm of bookkeepers, accounting clerks, and auditing clerks. We quote below the section entitled "What Bookkeeping, Accounting, and Auditing Clerks Do":

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks need to use specialized accounting software, spreadsheets, and databases.

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

² All of our references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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, on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited May 28, 2015.)

The *Handbook's* section on "How to Become a Bookkeeping, Accounting, or Auditing Clerk" includes the following information, which indicates that a bachelor's or higher degree in a specific specialty, or its equivalent, is not normally a requirement for entry into this occupational field:

Most bookkeeping, accounting, and auditing clerks need a high school diploma, and they usually learn some of their skills on the job. They must have basic math and computer skills, including knowledge of spreadsheets and bookkeeping software.

Education

Most bookkeeping, accounting, and auditing clerks need a high school diploma. However, some employers prefer candidates who have some postsecondary education, particularly coursework in accounting.

Training

Bookkeeping, accounting, and auditing clerks usually get on-the-job training. Under the guidance of a supervisor or another experienced employee, new clerks learn how to do their tasks, including double-entry bookkeeping. (Double-entry bookkeeping means that each transaction is entered twice, once as a debit (cost) and once as a credit (income) to ensure that all accounts are balanced.)

Some formal classroom training also may be necessary, such as training in specialized computer software. This on-the-job training typically takes around 6 months.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Bookkeeping Accounting, and Auditing Clerks, on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited May 28, 2015.)

While comparison of the *Handbook* information above with the record's descriptions and documentary evidence of the proffered position and its proposed duties indicates that many of the aspects of the proffered position appear to be encompassed by the "Bookkeeping, Accounting, or Auditing Clerks" occupational group, we shall also review information from the *Handbook's* "Accountants" chapter, because the petitioner claims that the beneficiary would be performing accounting services that exceed those provided by accounting clerks and should be evaluated as those of an accountant. For that

reason, too, the petitioner submitted a Labor Condition Application (LCA) that had been certified for use with a job prospect in the "Accountants and Auditors" occupational group.

The subchapter of the *Handbook* entitled "How to Become an Accountant or Auditor" states, in part, the following about this occupation:

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.

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 May 28, 2015).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the Accountants occupational group. Rather, the *Handbook's* information indicates that the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. The *Handbook* reports that most accountants and auditors need at least a bachelor's degree in accounting or a related field. However, this statement does not support the view that any accountant job, within the wide spectrum of accountant positions, qualifies as a specialty occupation as "most" is not indicative that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.³ More specifically, "most" is not indicative that a

³ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions need at least a bachelor's degree, it could be said that "most" of the positions need 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. (We note that the proffered position has been designated by the petitioner in the LCA as a low, entry-level position relative to others within the occupation.) Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited

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

Also, the *Handbook's* narrative indicates that in some cases persons who have an associate's degree may be promoted to accountant positions after working as junior accountants, by showing their accounting skills on the job. The *Handbook* also reports that in some cases bookkeepers or accounting clerks who meet the education and experience requirements set by their employers may also advance through junior-account positions to accountant positions, by showing their accounting skills on the job.

A position's inclusion within the Accountant's occupational group by a petitioner is not in itself sufficient to establish that position as one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally a minimum requirement for entry. Further, the *Handbook* does not support the claim that the occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here, an entry-level position, would normally have such a minimum, specialty degree requirement or its equivalent.

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

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.

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there is no documentation from a professional association in the petitioner's industry.

With regard to the December 6, 2014 letter from the president of [REDACTED] we refer the petitioner back to our earlier comments about the limitations of the letter. Further, we note that the letter's content does not fall within the scope of the criterion now being discussed: the author does not attest to an industry-wide practice of routinely hiring for accountant positions only persons with a bachelor's degree in accounting or a closely related specialty, and the letter does not provide a sufficient factual foundation for the author to render a probative assessment of industry-wide practices.

In sum, we find that the petitioner did not 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. Therefore, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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.

The evidence of record is not sufficient to establish the level of complexity or uniqueness required to satisfy this criterion. We have considered the petitioner's claims in this regard, but we find that they are not substantiated by the evidence of record. The petitioner submitted a substantial amount of documentary evidence reflecting the variety and volume of work that would likely engage the beneficiary if the petition were approved; but we find that, even in the aggregate, the documentary evidence does not provide an adequate basis for us to reasonably conclude that the position would be so complex or unique as to require the services of a person with at least a bachelor's degree in accounting, or its equivalent. The requisite level of complexity or uniqueness is not self-evident in the totality of the evidence, and the petitioner has not presented any objective standard by which it measures the proffered position as meeting the requisite level of complexity or uniqueness. The evidence of record has not distinguished either the proposed duties, or the position that they comprise, from generic bookkeeping or accounting work, neither of which, the *Handbook* indicates, necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent.

Because the evidence of record does not show that the particular position that is the subject of this petition is so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty, or its equivalent, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that 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. 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 persons 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

In the Form I-129 petition, the petitioner reported that it has five employees and was established in 2012 (approximately two years prior to the filing of the H-1B petition). The petitioner stated that it had previously hired two individuals who did not have accounting backgrounds to serve in the proffered position. The petitioner did not provide any further information regarding the individuals' credentials. Therefore, the evidence does not establish that the petitioner 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.

Based upon our review of all of the evidence presented in support of the petition, we find that the petitioner has established that performance of the duties of the proffered position would require the application of some accounting knowledge, but that it has not, however, established that their performance would require a level of knowledge that is usually associated with the attainment of at least a bachelor's degree in accounting, or its equivalent. In particular, we find that the evidence of record does not demonstrate that the nature of the duties of the proffered position as specified in the record is more specialized and complex than the nature of the duties of such bookkeeping clerk, accounting clerk, auditing clerk, and accountant positions that the *Handbook's* information indicates

are performed with accounting knowledge short of that usually associated with attainment of at least a bachelor's degree in accounting or a related specialty.

As the petitioner has not established that the duties of the position are 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, we conclude that 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.

II. CERTIFICATION REQUIRED BY THE FORM I-129 SUPPLEMENT H

As already noted, the petitioner did not provide the signature of an authorized official required for a certification at page 12 of the Form I-129 Supplement H. As we shall now briefly explain, this defect also requires that the petition be denied.

The regulation at 8 C.F.R. § 103.2(a)(1) states, in pertinent part, the following:

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.

The instructions for Form I-129 state that the petition must be properly signed. The instructions further indicate that a petition that is not properly signed will be rejected. Moreover, according to the instructions, a petitioner that does not completely fill out the form will not establish eligibility for the benefit sought and the petition may be denied.

The regulation at 8 C.F.R. § 103.2(a)(2), which concerns the requirement of a signature on petitions, states the following:

An applicant or petitioner must sign his or her benefit request. . . . By signing the benefit request, the applicant or petitioner . . . certifies under penalty of perjury that the benefit request, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct. Unless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS is one that is either handwritten or, for benefit requests filed electronically as permitted by the instructions to the form, in electronic format.

Pursuant to 8 C.F.R. § 103.2(a)(7)(i) and (iii), a petition which is not properly signed shall be rejected as improperly filed, and will not retain a filing date.

The regulation at 8 C.F.R. § 103.2(b)(1) provides, in pertinent part, the following:

An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions.

The petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. All required petition forms must be properly completed and filed with any initial evidence required by applicable regulations and the form instructions. *See* 8 C.F.R. § 103.2(b)(1).

In the instant case, the petitioner did not properly complete, sign and file the petition (specifically page 12). Notably, page 12 contains a signature block that reads, in pertinent part, as follows:

As an authorized official of the employer, I certify that the employer will be liable for the reasonable costs of return transportation of the alien abroad if the beneficiary is dismissed from employment by the employer before the end of the period of authorized stay.

Accordingly, the petitioner has not certified, as required, that it will comply with § 214(c)(5) of the Act, which states the following:

In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

The regulation at 8 CFR § 214.2(h)(4)(iii)(E) further states, in pertinent part, the following:

The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. . . . Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H-1B status.

Here, the petitioner has not demonstrated that it will meet its obligations with regard to the return transportation costs if the beneficiary is dismissed.

The instant petition has not been properly filed. Pursuant to 8 C.F.R. § 103.2(a)(7)(i), a petition which is not properly completed shall be rejected as improperly filed, and no receipt date can be assigned to an improperly filed petition. *See also*, 8 C.F.R. § 103.2(b)(1). While the Service Center did not reject the petition, we are not controlled by service center decisions. *Louisiana*

Philharmonic Orchestra v. INS, 2000 WL 282785 at 3 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). The integrity of the immigration process depends on the employer properly signing and submitting the official immigration forms. As already noted, we conduct appellate review on a *de novo* basis, and it was in the exercise of this function that we identified these additional grounds for dismissing the appeal. See *Soltane v. DOJ*, 381 F.3d 145. Thus, for the reasons discussed, the petition may not be approved.

III. CONCLUSION AND ORDER

An application or petition that does not 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts 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 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.