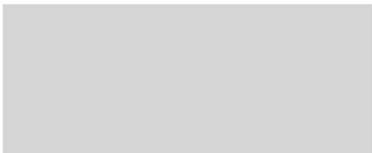


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

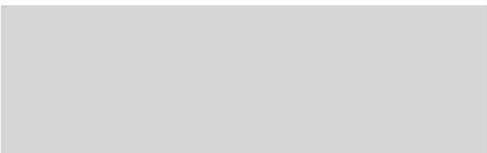


DATE: **MAY 01 2015** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

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

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 an eight-employee "Jewelry Wholesaler" established in [REDACTED]. In order to employ the beneficiary in what it designates as an "Accounting Clerk" 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, the petitioner 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 the petitioner'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 an Accounting Clerk position, and that it corresponds to Standard Occupational Classification (SOC) code and title 43-303, Bookkeeping, Accounting, and Auditing Clerks, 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, the petitioner also submitted an undated letter from its president, who provided the following list of the duties of the proffered position:

- Responsible for preparation, explanation and verification of any financial paperwork and records, oversee efficient use of funds for product production,
- Use Chinese language skills to reconcile and effectively respond to manufacturing requirements, billing, and invoice inquiries from manufacturers in China.
- Reviews the company's bank accounts, checks balances against ledger amounts and verifies that such amounts agree with financial statement items.
- Prepare and provide bi-annually financial statements, balance sheet, income statement, and general ledger for the company; prepared annual tax return for the company.
- Prepare and process documents to disburse funds, make deposits and prepare reports; compile and review information for accuracy.
- Enter information from an invoice, check request or expense report into accounting system. Process checks, electronic fund transfers and voided checks.

- Assist with the processing of credit applications.
- Responsible for preparation, explanation and verification of any financial paperwork and records, oversaw efficient use of funds for product production, and responded to customer billing inquiries.
- Perform a variety of accounting clerical tasks related to the maintenance/processing of payable account records, invoices, and product cost management.

The petitioner's president did not state any educational requirement of the proffered position, but stated:

**Licensure is NOT Required for the Position**

It is common in the jewelry wholesale business that a license is not required for accounting clerk position.

On April 29, 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, counsel submitted, *inter alia*: (1) evidence pertinent to the performance of the petitioner's bookkeeping duties, (2) evidence pertinent to other members of the petitioner's staff, and (3) a letter, dated May 8, 2014, from counsel.

The evidence pertinent to the performance of the petitioner's bookkeeping duties consists of an unattributed statement as follows:

Currently, we handle company accounting in the following way:

1. For Quarterly Federal and State returns we outsourcing with [REDACTED] in [REDACTED] Virginia
2. For Annual Federal, State, Personal Property returns, we outsourcing to [REDACTED], in [REDACTED] MD
3. For company A/R, A/P and all other account management, we have to split these duties among a few staff members, including the President.

In his May 8, 2014 letter, counsel stated:

Although the title of the job offered to the beneficiary is that of "Accounting Clerk," [the beneficiary's] proposed duties and responsibilities will require extensive knowledge and experience in various aspects of the accounting field, consistent [with] that of an accountant.

Counsel also provided the following revised description of the duties of the proffered position:

**Accounts payable/receivable function (50%)**

- Utilize accounting, as well as Chinese language, skills in reconciling and effectively responding to manufacturers' accounting issues, billing methodologies, and invoice/accounting-issue inquiries;
- Prepare detailed account analysis, reconcile sales data, and provide analysis of costs of goods, profitability margins, inventory controls, account receivables and payable by customer type;
- Analyze cost accounting data and assist with cycle count/physical inventory tracking ([the petitioner] has over 12,000 different products/SKUs);
- Review the company's general and payroll accounts, balance checks against ledger amounts and verifies that such amounts agree with financial statement items; and
- Prepare sales and profitability projections to customers.

**Inventory management function (20%):**

- Review and enforce internal cost controls and coordinate resolution of audit points and recommendations; and
- Perform regular inventory reconciliation analysis.

**Payroll & Benefits function (10%)**

- Record, balance, and reconcile payroll expenses and incorporating them into the company's financial statements;
- Monitor benefit enrollment dates and add or delete employees to and from the accounting system as required; and
- Track employee absences and benefit day balances and alert managers and supervisors of discrepancies.

**Tax preparation function (20%)**

- Maintain, develop, and document recordkeeping practices using the company's accounting systems; and
- Use accounting software to compute taxes owed and prepare quarterly state tax returns and annual Federal tax returns data for the company. Current accounting functions are being handled by outside accounting firms. By bringing in these responsibilities and functions, the Petitioner could decrease accounting costs significantly.

Counsel did not state any educational requirement of the proffered position. Counsel did state:

[The beneficiary] possesses a Master's degree in Accounting and Business Administration.<sup>1</sup> Her original transcript for her Master's degree in Accounting

<sup>1</sup> We find no evidence in the record of a degree in business administration.

received from [REDACTED] was submitted with I-129 petition. [The beneficiary] also has completed the two initial[] steps to become a fully licensed CPA. This position is offered in the expectation that she will obtain her CPA license and fully function and handle the responsibilities and duties of a licensed accountant. The salary offered to [the beneficiary] is \$45,000 per year. This amount is substantially higher in comparison to the published prevailing wage for entry-level accounting clerk, which is \$28,579.00. More importantly, the published prevailing wage for an entry level accountant is \$49,858.00. Because the proposed duties are more commensurate with [those] of an accountant, the Company offers a much higher salary to [the beneficiary] as an accounting clerk. Once [the beneficiary] is licensed as a CPA, the Company is expected to increase her pay to meet the prevailing wage.

The director denied the petition on May 22, 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).

On appeal, the petitioner submitted a brief, which reiterates various aspects of the petitioner's case. The brief states:

Pursuant to 8 U.S.C. § 1184(i)(3), the offered position of an accountant qualifies as a specialty occupation. A bachelor's degree is a minimum requirement for entry into [the petitioner's] offered accounting clerk/accounting (pending obtaining CPA license). The regulations recognize the position of an accountant as a specialty occupation. 8 C.F.R. § 214(h)(4)(ii).

The brief further states:

[T]he position offered by [the petitioner] is accounting clerk, with the expectation that [the beneficiary] would pass remaining two subjects of CPA exam and obtain her license as a certified public accountant. Consistent with her accounting duties and anticipation [sic] attainment of a CPA license, the offered salary to [the beneficiary] is \$45,000, much higher than that of an accounting clerk, because the proposed job responsibilities of [the beneficiary] involves [sic] all aspects of accounting that can only be done by an accountant.

The brief states, yet further:

[U]nder relevant state regulations, a bachelor of science is the minimum requirement to obtain a CPA license. And more importantly, without such license, that would constitute unauthorized [practice] of accounting in both Maryland and Virginia.

The brief concludes:

The beneficiary will work in a complex and highly specialized position as an accounting clerk/accountant. The attainment of a bachelor's degree is [the] minimum requirement for this position.

#### IV. ANALYSIS

As a preliminary matter, we observe that the petitioner has not stated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, the undated letter from the petitioner's president, submitted with the visa petition, did not state any educational requirement. None of the evidence provided in response to the RFE states any educational requirement for the proffered position. Finally, the appeal brief states that the proffered position requires a bachelor's degree, but not that the degree must be in any specific specialty or even in any range of specialties.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next 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 U.S. Department of Labor's *Occupational Outlook Handbook (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* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 43-3031, Bookkeeping, Accounting, and Auditing Clerks from O\*NET. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Bookkeeping, Accounting, and Auditing Clerks," including the sections regarding the typical duties and requirements for this occupational category.

<sup>2</sup> 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.

The *Handbook* states the following with regard to the duties of bookkeeping, accounting, and auditing clerks:

### **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 Apr. 29, 2015).

The petitioner has asserted, at different times, that the proffered position is an accounting clerk position, that it is an accountant position, that it is an accounting clerk position that will convert to an accountant position when the beneficiary receives her CPA license, and that the proffered position is a combination of the two positions. It is noted that, where a petitioner seeks to employ a beneficiary in two distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file

two separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally* 8 C.F.R. § 214.2(h); U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

In any event, we will therefore consider the duties of an accountant position. In the chapter entitled, Accountants and Auditors, the *Handbook* states the following about the duties of those positions:

#### **What Accountants and Auditors Do:**

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.

*Id.* at "Accountants and Auditors," <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-2> (last visited Apr. 29, 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.

Further, although the petitioner has at times asserted that the proffered position is an accounting clerk position, it has also at times implied that the beneficiary would perform the duties of an accountant. However, the evidence pertinent to the petitioner's employees does not indicate that it employs a bookkeeper or that it would employ an accounting clerk, other than the beneficiary. As the petitioner does not employ a bookkeeper or accounting clerk and as there is no evidence that the beneficiary would be relieved from performing the company's general, financial record keeping, such as recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeper and/or accounting clerk), it appears more likely than not that the beneficiary is being hired to perform, at least in substantial part, these duties.

We find, by a preponderance of the evidence, that the proffered position is a bookkeeping or accounting clerk position.<sup>3</sup>

<sup>3</sup> It is noted that the *Handbook* only states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." The *Handbook* does not state that such a degree is a

The *Handbook* states the following about the educational requirements of bookkeeping, accounting, and auditing clerk positions:

### **How to Become a Bookkeeping, Accounting, or Auditing Clerk:**

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.

### **Licenses, Certifications, and Registrations**

Some bookkeeping, accounting, and auditing clerks become certified. The Certified Bookkeeper (CB) designation, awarded by the American Institute of Professional

---

normal minimum entry requirement for all accountant and auditor positions. Moreover, the Occupational Information Network (O\*NET) Summary Report for 13-2011.01 - Accountants only states that most but not all of these occupations require a four-year bachelor's degree. The quote does not reference any specific specialty for the degree. As such, even if the proffered position were determined to be an accountant position, it cannot be concluded based on the *Handbook* or O\*NET that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in accounting, or its equivalent.

Even if the petitioner had prevailed in the assertion that the proffered position is an accountant position, this would have had other consequences to the approvability of the instant visa petition, which are discussed below.

Bookkeepers, shows that people have the skills and knowledge needed to carry out all bookkeeping tasks, including overseeing payroll and balancing accounts, according to accepted accounting procedures.

For certification, candidates must have at least 2 years of full-time bookkeeping experience or equivalent part-time work, pass a four-part exam, and adhere to a code of ethics.

The National Association of Certified Public Bookkeepers also offers certification. The Uniform Bookkeeper Certification Examination is an online test with 50 multiple-choice questions. Test takers must answer 80 percent of the questions correctly to pass the exam.

### **Advancement**

With appropriate experience and education, some bookkeeping, accounting, and auditing clerks may become accountants or auditors.

### **Important Qualities**

***Computer skills.*** Bookkeeping, accounting, and auditing clerks need basic computer skills. They should be comfortable using spreadsheets and bookkeeping software.

***Detail oriented.*** These clerks are responsible for producing accurate financial records. They must pay attention to detail to avoid making errors and to recognize errors that others have made.

***Integrity.*** Bookkeeping, accounting, and auditing clerks have control of an organization's financial documentation, which they must use properly and keep confidential. It is vital that they keep records transparent and guard against misappropriating an organization's funds.

***Math skills.*** Bookkeeping, accounting, and auditing clerks deal with numbers daily and should be comfortable with basic arithmetic.

*Id.* at "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited Apr. 29, 2015).

The *Handbook* makes plain that bookkeeping, accounting, and auditing clerk positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent, as it indicates that a high school diploma is typically sufficient for such positions, and that they receive their training on the job.

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 sufficient persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category establishes 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."

Further, 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 of the maintenance of financial records, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

It is noted that the petitioner relies on *Young China Daily v Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), asserting that the director erroneously focused on the size of the petitioner in reviewing the petition and reaching her decision. While we concur that USCIS should not limit its review to the size of a petitioner and must consider the actual responsibilities of the proffered position, it also notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the claimed duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the actual duties of a particular position. In this matter, the job description provided both initially and in response to the director's request for evidence identifies typical accounting duties, yet the record lacks sufficient evidence to demonstrate that the duties as described will actually be performed by the beneficiary or that the petitioner's organization actually has the need for an individual to perform such duties.

Specifically, we note that the organizational chart submitted with the petition names the following eight positions: (1) one "President"; (2) one "Website / Info System" employee; (3) one "Order Processing" employee; (4) two "Customer Service & Sales" employees; (5) two "Warehouse" employees; and (6) one "Accounting" employee. The organizational chart further indicates that the

one "Accounting" employee is responsible for "Accounts payable & Receivable, Payroll, tax, and management account." Furthermore, the petitioner's Form 1120, U.S. Income Tax Return for 2012 shows that it was prepared by an outside Certified Public Accountant (CPA), and the petitioner indicated in response to the RFE that it will still utilize an outside CPA for some of its accounting service needs. The petitioner submitted insufficient evidence demonstrating that the duties of the proffered position require duties beyond basic duties performed by bookkeeping and accounting clerks.

As discussed above, absent any independent documentary evidence to support a finding that the duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed accountant, or that a degree requirement is common to the industry, the petitioner's reliance on [REDACTED] is not persuasive. Regardless, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Based on the above analysis of the evidence contained in the record, we find that the petitioner has not demonstrated that the proffered position normally requires the incumbent to possess a high level of specialized knowledge that may be obtained only through at least a baccalaureate degree in accounting or its equivalent for entry into that particular position. Accordingly, 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.

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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 related courses may be 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 wage Level I accounting clerk, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the occupation of accounting clerk.<sup>4</sup> 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 accounting clerk positions typically 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 educational levels acceptable for such positions, including a high school

<sup>4</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) for an explanation of wage levels.

diploma. 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.<sup>5</sup> The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position,<sup>6</sup> and the petitioner has not, therefore, provided sufficient 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 preparing and explaining financial paperwork, reconciling and responding to billing and invoice inquiries, reviewing bank accounts and comparing them to ledger entries, preparing financial statements, making entries in the general ledger, compiling and reviewing information for accuracy, etc., contain

<sup>5</sup> 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").

<sup>6</sup> The petitioner may never have employed anyone in the proffered position. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

insufficient indication of a nature so specialized and complex they require knowledge usually associated attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of accounting clerk 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 wage Level I accounting clerk position, a position for a beginning level employee with only a basic understanding of the duties of an accounting clerk.<sup>7</sup> 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 the position, especially as the *Handbook* indicates that accounting clerk positions in general 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 position. The appeal will be dismissed and the petition denied for this reason.

## V. ADDITIONAL ISSUES

The record suggests additional issues that were not addressed in the decision of denial but will, nonetheless, be noted here.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether

<sup>7</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification . . . .*

[Italics added]

In response to the RFE, the petitioner asserted that the proffered position requires knowledge "consistent with that of an accountant." The petitioner's appeal brief repeatedly implies that the proffered position is an accountant position.<sup>8</sup>

If the petitioner were to prevail in the assertion that the proffered position is an accountant position, then the visa petition would be denied as it would not be supported by a corresponding LCA. The submitted LCA is certified only for the employment of an entry-level accounting clerk.

Further, the petitioner implied in response to the RFE, that if the instant visa petition were approved, the petitioner would be free, when the beneficiary received her CPA license, to employ her as an accountant. We reiterate that the LCA submitted with the visa petition is certified for employment of a wage Level I accounting clerk. It is not valid for employment of an accountant.

We note that the prevailing wage claimed by the petitioner on the LCA corresponds to the occupation "Bookkeeping, Accounting, and Auditing Clerks." The petitioner provided a Level I wage for "Bookkeeping, Accounting, and Auditing Clerks" which is \$13.74 per hour (\$28,579 per year) and indicated that it would pay the beneficiary \$13.80 per hour.

We observe that the prevailing wage for the position "Accountants and Auditors" at a Level I wage is significantly higher at \$23.97 per hour (\$49,858 per year) than the prevailing wage for "Bookkeeping, Accounting, and Auditing Clerks."

If the petitioner believed that the proffered position is a combination of O\*NET occupations, it should have chosen the relevant occupational code for the highest paying occupation, in this case "Accountants and Auditors." However, the petitioner chose the occupational category for the lower paying occupation "Bookkeeping, Accounting, and Auditing Clerks" for the proffered position. Had

<sup>8</sup> That brief states: "The regulations recognize the position of an accountant as a specialty occupation position," "Moreover, the position of an accountant is an occupation that requires the attainment of a bachelor's degree or higher," and "[T]he proposed job responsibilities [of the proffered position involve] all aspects of accounting that can only be done by an accountant.

the petitioner provided the occupational code and prevailing wage for accountants to the U.S. Department of Labor, it would have been required to pay a much higher wage to the beneficiary. In this case, the petitioner provided the occupational code and prevailing wage on the LCA for "Bookkeeping, Accounting, and Auditing Clerks" and was able to obtain an LCA certified for at a much lower rate of pay, i.e., \$13.74 per hour (\$28,704 per year), then turn to USCIS and claim that the position is for an accountant in an attempt to qualify the proffered position as a specialty occupation.

Finally, we also note a discrepancy in the wage that the petitioner claims it will pay the beneficiary. The petitioner states on the LCA that it will pay the beneficiary \$13.80 per hour which is equal to approximately \$28,704 per year; however, the petitioner states on the Form I-129 that it will pay the beneficiary \$45,000 per year. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

#### VI. CONCLUSION

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.