



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAY 13 2015**

FILE #: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed 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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 57-employee "Design of digital products" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Staff Accountant" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the evidence submitted did not establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that it has 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.

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

With the visa petition, the petitioner submitted a diploma and unofficial transcript to show that the beneficiary received a bachelor's degree in business administration from [REDACTED]. The unofficial transcript states that the beneficiary majored in accounting. The petitioner also submitted a letter, dated March 31, 2014, from [REDACTED] signing as the petitioner's VP, Human Resources. As to the duties of the proffered position, that letter states:

As indicated, we wish to employ [the beneficiary] as a Staff Accountant with our organization at our office in [REDACTED] Pennsylvania. In this position, she will be responsible for assisting with the monthly financial statement close process, as well as for ensuring that financial transactions are recorded accurately and in a timely fashion. She will prepare journal entries, account reconciliations and reporting packages for corporate entities and other centrally managed accounts, and will assist

in the implementation of changes in generally accepted accounting principles. Further, she will assist in the accounting, analysis and budgeting of various accounts. [The beneficiary] will also interact with internal and external auditors and business units to accomplish goals, and will handle vendor relations. With respect to vendors, she will review vendor invoices, obtain W-9 processing checks and perform other duties relative to management of the accounts payable process.

Additionally, [the beneficiary] will be responsible for maintaining all general ledger accounts as well as for processing employee reimbursements and reviewing employee expense account purchases. She will perform QuickBooks data entry as well as month-end reconciliation and closing. She will also prepare quarterly sales tax reports for review and processing, variance analyses as needed, and 1099s on an annual basis. Further, she will assist with the preparation of budgets, forecasts and other financial reports as needed for chapter operations, management review and external reporting. [The beneficiary] will also prepare monthly financial reports in collaboration with the CFO, and will assist the CFO with maintenance of federal and state compliance. She will provide support, as needed, to generate customer/revenue invoices and ensure the timely collection of receivables, and will reconcile and record cash receipts.

On May 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, the petitioner submitted: (1) a description of the proffered position; (2) a printout of a [redacted] article pertinent to accountant positions; (3) a printout from the website of the American Institute of Certified Public Accountants (AICPA) pertinent to the requirements for certified public accountant (CPA) positions; (4) a printout of a portion of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* chapter on accountants and auditors; (5) a letter, dated June 25, 2014, from [redacted]; and (6) a letter, dated July 3, 2014, from counsel.

The [redacted] article states, *inter alia*, the following:

Accountants need at least a bachelor's degree in accounting or a related field, and may choose to obtain certification, like Certified Public Accountant. "The main focus after graduating from college is getting your Certified Public Accountant license. Those three letters [CPA] really make your career." [redacted] manager of investigations and forensics for the internal audit department at [redacted] says. "They will identify you in the marketplace, in the business world and in your career path as a professional willing to hold yourself to a higher standard and operate under a set of guidelines and principles that really set you apart."

The description of the proffered position states the following as to its duties:

Position Description

The Staff Accountant will assist in the monthly financial statement close process, ensures financial transactions are recorded accurately and timely.

Essential Duties and Responsibilities

- Prepares journal entries, account reconciliations and reporting packages for corporate entities and other centrally managed accounts. (5%) (ACCT115 – Financial Accounting Foundations, ACCT321 – Financial Reporting I)
- Assists in the implementation of changes in generally accepted accounting principles. (As needed)
- Assists in the accounting, analysis and budgeting of various accounts. (5%) (ACCT116 – Managerial Accounting Foundations, ACCT331 – Cost Accounting)
- Interacts with internal and external auditors and business units to accomplish goals. (10%) (ACCT321 --- Financial Reporting I, ACCT322 – Financial Reporting II, Acct341 – Principles of Auditing)
- Handles vendor relations, including reviewing vendor invoices, obtaining W-9s, processing checks and other duties relative to management of the accounts payable process. (10%) (ACCT 115 – Financial Accounting Foundations, ACCT321 – Financial Reporting I)
- Maintains all general ledger accounts and prepare and record journal entries accordingly. (5%) (ACCT115 – Financial Accounting Foundations, ACCT321 – Financial Reporting I, ACCT322 – Financial Reporting II)
- Processes employee reimbursements and review employee expense account purchases to ensure appropriate approval and documentation are included. (15%) (ACCT341 – Principles of Auditing, ORG300 – Organizational Behavior)
- Performs QuickBooks data entry. (10%) (ACCT115 – Financial Accounting Foundations)
- Performs month-end reconciliation and month-end closing in a timely manner. (5%) (ACCT115 – Financial Accounting Foundations, ACCT321 – Financial Reporting I)
- Prepares quarterly sales tax reports for review and processing. (As needed) (ACCT341 – Principles of Auditing)
- Prepares 1099's on an annual basis. (As needed)

- Prepares variance analyses as needed. (10%) (ACCT115 – Financial Accounting Foundations, ACCT321 – Financial Reporting I, STAT201 – Introduction to Business Statistics, STAT202 – Business Statistics II)
- Assists with preparation of budgets, forecasts and other financial reports as needed for chapter operations, management review and external reporting. (As needed) ACCT116 – Managerial Accounting Foundations, ACCT331 – Cost Accounting, FIN301 – Introduction to Finance)
- Prepares monthly financial reports, in collaboration with the CFO. (10%) (ACCT321 – Financial Reporting I, ACCT322 – Financial Reporting II)
- Provides support, as needed, to generate customer/revenue invoices and ensure timely collection of receivables. (10%) (ACCT115 – Financial Accounting Foundations, ACCT321 – Financial Reporting I)
- Assists the CFO in maintaining federal and state compliance. (As needed)
- Reconciles and Records Cash Receipts. (5%) (ACCT115 – Financial Accounting Foundations).

In her June 25, 2014 letter, [REDACTED] listed various classes the beneficiary attended in acquiring her degree and stated that they prepared the beneficiary for the proffered position. As to the educational requirement of the proffered position, Ms. [REDACTED] stated: "There should be no doubt but that the position of Accountant is one that requires someone to have a bachelor's degree in accounting," and further:

The position which is the subject of this petition is with respect to the first time that our company has hired a full[-]time in-house accountant. Nevertheless, not only is it hard to imagine that any company would hire someone to perform these duties who did not have a bachelor's degree in accounting but I can assure you that our company would not.

In his July 3, 2014 letter, counsel observed that many colleges have degree programs in accounting, and asserted that the evidence submitted shows that the proffered position is a specialty occupation position.

The director denied the petition on August 18, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director concluded that the duties of the proffered position are consistent with the duties of a bookkeeping, accounting, or auditing clerk as described in the *Handbook*, and observed that the *Handbook* does not indicate that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, the petitioner asserts that the proffered position is an accounting position, not a bookkeeping, accounting, or auditing clerk position, and that accountant positions are specialty occupation positions. The petitioner contends that the evidence satisfies at least one of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner also stated, "The [*Handbook's*] 'Accountants and Auditors' classifications [sic] clearly states that most such positions require at least a bachelor's degree in accounting or a related field."

II. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. The Law

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.

B. Analysis

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ As previously noted, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Accountants and Auditors." When reviewing the *Handbook*, we must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.² That is, in accordance with the

¹ 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/>. We hereby incorporate into the record of proceeding the chapters of the *Handbook* regarding "Accountants and Auditors" and "Bookkeeping, Accounting, and Auditing Clerks."

² The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work

relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary will perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I designation should be considered for positions in which the employee will serve as a research fellow, worker in training, or an intern.

In the decision dated August 18, 2014, the director found that the duties described for the proffered position are most comparable to the duties of "Bookkeeping, Accounting, and Auditing Clerks." On appeal, the petitioner asserts that "[f]undamentally, the duties of this position are those of an Accountant, and – as established by the [*Handbook*] – positions within the field of accounting are specialty occupations normally requiring at least a relevant bachelor's degree."

We reviewed both chapters of the *Handbook* on "Accountants and Auditors" and "Bookkeeping, Accounting, and Auditing Clerks" including the sections regarding the typical duties and requirements for this occupational category.³ However, 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 either of these occupational categories.

The subsection of the *Handbook* entitled "How to Become an Accountant or Auditor" states the following:

under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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.

³ For additional information regarding the occupational category "Accountants and Auditors," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Accountants and Auditors, <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm> (last visited May 6, 2015).

Further, for additional information regarding the occupational category "Bookkeeping, Accounting, and Auditing Clerks," see 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> (last visited May 6, 2015).

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

Education

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

A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

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

Licenses, Certifications, and Registrations

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

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

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

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

Almost all states require CPAs to take continuing education to keep their license.

Certification provides an advantage in the job market because it shows professional competence in a specialized field of accounting and auditing. Accountants and auditors seek certifications from a variety of professional societies. Some of the most common certifications are listed below:

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

The Institute of Internal Auditors (IIA) offers the Certified Internal Auditor (CIA) to graduates from accredited colleges and universities who have worked for 2 years as internal auditors and have passed a four-part exam. The IIA also offers the Certified in Control Self-Assessment (CCSA), Certified Government Auditing Professional (CGAP), and Certified Financial Services Auditor (CFSA) to those who pass the exams and meet educational and experience requirements.

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

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

Advancement

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

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

transfer to executive positions in management accounting or internal auditing in private firms.

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

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

Important Qualities

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Accountants and Auditors, <http://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-4> (last visited May 6, 2015).

The *Handbook* reports that those with associate's degrees and bookkeepers and accounting clerks who meet the education and experience requirements set by employers can get junior accounting positions and advance to accountant positions by showing their accounting skills. That is, the

Handbook reports that individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and then advance to accountant positions. The *Handbook* does not state that this education and experience must be the equivalent to at least a bachelor's degree in a specific specialty.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into accountant positions. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty. The *Handbook* states that most accountants and auditors need at least a bachelor's degree, however, this statement does not support the view that any accountant job qualifies as a specialty occupation as "most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree in a specific specialty, or its equivalent.⁴ More specifically, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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)). Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* would not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Further, as mentioned, the *Handbook* also does not indicate that the occupational category "Bookkeeping, Accounting, and Auditing Clerks" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree, in a specific specialty, or its equivalent.

The *Handbook* provides the following information in the subsection entitled "How to Become a Bookkeeping, Accounting, or Auditing Clerk" for this occupational category:

⁴ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which is designated as a Level I position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

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. In 2009, 25 percent of these workers had an associate's or higher degree.

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 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.

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-4> (last visited May 6, 2015).

The *Handbook* does not report that "Bookkeeping, Accounting, or Auditing Clerks" comprise an occupational category for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty (or its equivalent) for entry. The *Handbook* explains that most bookkeeping, accounting, and auditing clerks need a high school diploma. The *Handbook* continues by stating that some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. The *Handbook* further reports that workers usually receive on-the-job training. The *Handbook* does not indicate that at least a baccalaureate degree in a specific specialty (or its equivalent), is normally the minimum requirement for entry into the occupation.

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion.

To satisfy this criterion, the petitioner provided the [REDACTED] article described above. While the [REDACTED] article states that accountant positions require a minimum of a bachelor's degree in accounting or a related field, that article is has not been demonstrated to be authoritative in itself, and it gives no authority as support for its conclusory statement. Further, if that conclusion was drawn from data, the data was not provided and we cannot determine that it supports the conclusion drawn in that article.

The petitioner also submitted the printout from AICPA's website described above.⁵ The printout submitted by the petitioner is concerned exclusively with the requirements of CPA positions. The record does not contain evidence that the position proffered in the instant case requires CPA certification or is in any sense a CPA position; therefore, the requirements of CPA positions are not directly relevant to any material issue in this case.

The record of proceeding does not contain sufficient persuasive documentary evidence from any relevant authoritative source establishing that the proffered position, whether it is an accountant position or a bookkeeper position, is, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

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 bookkeeping and accounting practices, 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.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent, 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

⁵ The AICPA describes itself on its website as the "world's largest member association representing the accounting profession, with more than 400,000 members in 145 countries" See AICPA, About the AICPA, on the Internet at <http://www.aicpa.org/About/Pages/About.aspx> (last visited May 6, 2015). The AICPA website also states that the AICPA "develops and grades the Uniform CPA Examination, and offers specialty credentials for CPAs who concentrate on personal financial planning; forensic accounting; business valuation; and information management and technology assurance" and "[t]hrough a joint venture with the [REDACTED] it has established the [REDACTED] designation which sets a new standard for global recognition of management accounting." *Id.*

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.

As stated earlier, 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 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.

The petitioner did submit the AICPA article described above. The AICPA is, in fact, a professional association of accountants. The printout submitted by the petitioner, however, is concerned exclusively with the requirements of CPA positions. Again, the record contains no indication that the position proffered in the instant case requires CPA certification or is in any sense a CPA position; therefore, the requirements of CPA positions are not directly relevant to any material issue in this case.

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 parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is

required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be 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 accountant. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the duties of the petitioner's proffered position are "so complex or unique" as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."⁶

Therefore, even assuming that the proffered position is an accountant position, the evidence of record does not establish that this position is significantly different from other accountant positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of acceptable paths (e.g., community college and/or experience) for such positions, including degrees less than a bachelor's degree. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other accountant positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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.

⁶ For additional information on wage levels, 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.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner has indicated that it has never previously 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.

In sum, the evidence is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent, for the proffered position, and does not, therefore, satisfy 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 recording journal entries; reconciling accounts; reviewing vendor invoices; obtaining W-9 forms; processing checks; performing various duties pertinent to accounts payable; maintaining the general ledger; reviewing employee expense accounts; processing employee reimbursements; performing QuickBooks data entries; performing month-end reconciliations and closings; preparing monthly financial reports; preparing quarterly sales tax reports for review and processing; preparing 1099s, assisting with preparation of budgets, forecasts, and other financial reports; preparing invoices; ensuring timely collection of receivables; assisting the CFO in maintaining federal and state compliance; recording and reconciling cash receipts; etc., contain insufficient indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

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

Further, we reiterate our earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Accountants and Auditors," and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

Upon review of the record of proceeding, we find that the evidence of record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

III. 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.