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U.S. Citizenship
and Immigration
Services



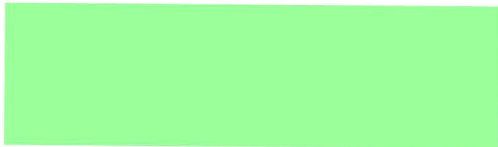
NOV 29 2013

DATE: Office: CALIFORNIA 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:



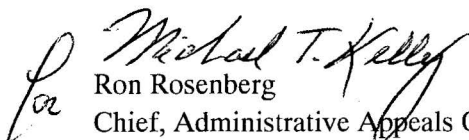
INSTRUCTIONS:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center acting director (“director”) denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner, through counsel, submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center. On the Form I-129 visa petition, the petitioner describes itself as a specialty food manufacturing business¹ with seven employees,² established in 2010. In order to employ the beneficiary in a position to which it assigned the job title of “accountant,” 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 the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted an appeal of the decision. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition on the specialty occupation issue was erroneous. In support of this assertion, counsel submits a brief and supporting documentation.

The record of proceeding before the AAO contains: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director’s notice denying the petition; and (5) the petitioner’s Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director’s decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof

¹ In the Form I-129, at Part 5, section 4, the petitioner lists the North American Industry Classification System (NAICS) Code as “311412” which corresponds to “Frozen Specialty Food Manufacturing.” Specifically, the 2012 NAICS Definition for “311412 - Frozen Specialty Food Manufacturing,” states that “[t]his U.S. industry comprises establishments primarily engaged in manufacturing frozen specialty foods (except seafood), such as frozen dinners, entrees, and side dishes; frozen pizza; frozen whipped topping; and frozen waffles, pancakes, and [F]rench toast.” North American Industry Classification System, 2012 NAICS Definition, 311412 - Frozen Specialty Food Manufacturing,” available online at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited September 25, 2013).

In its support letter, dated June 5, 2012, the petitioner states that it is a “manufacturing facility producing Chinese dim sum. . . .”

² In contrast, in the petitioner’s “Declaration” in response to the request for evidence, dated November 15, 2012, the petitioner certified that it has a “total of 18 employees.” Also, the petitioner’s “Employer’s Quarterly Contribution and Wage Report” for the quarter ending 09/30/12 indicates that wages were paid to 22 individuals. No explanation was provided for the variances.

in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must 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 illogical and absurd 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.

As noted earlier, the petitioner describes itself as a manufacturer of specialty food and identifies its industry as food manufacturing. The petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as an accountant to work on a part-time basis (20 hours per week) at a salary of \$21.10 per hour. In addition, the petitioner stated that it requires a Bachelor's degree for the proffered position.

As the Labor Condition Application (LCA) for this petition, the petitioner submitted an LCA that had been certified for use with a job prospect that would be within the occupational classification of "Accountants and Auditors" – SOC (ONET/OES) Code 13-2011.00, and for which the appropriate wage level would be Level I (the lowest of the four assignable wage levels).

According to the petitioner's Business Plan document, the petitioner conducts its manufacturing operations in a "long-term leased facility of 27,000 square feet of open warehouse space."

The petitioner specified neither its Gross Annual Income nor its Net Annual Income, but left blank the appropriate boxes for that information, at Part 5, items 14 and 15 of the Form I-129.

The petitioner stated that "[the beneficiary] received her Master of Business Administration degree in Accounting at the University of La Verne [in California]."

In its support letter, dated June 5, 2012, the petitioner provided the following description of the proffered position:

[The beneficiary] is being offered a position of an Accountant. In this capacity, she will be responsible for applying principles of accounting to analyze financial information and preparing financial reports for our company. She prepares journal entries, manages account receivables and payables for the company. In addition, she will prepare financial statements (i.e., balance sheet & incomes [sic] statements), cash flow analysis and budget projections on a regular basis. Moreover, she will prepare payroll and tax filing for the company. She also needs to prepare and gathers [sic] accounting data collection, analysis and record[s] on all *patients'* statistical data. She will perform billing submissions and data with *dental procedures* detailed notes entry. (Emphasis added.)

In order for a candidate to perform the above-referenced duties effectively and efficiently, this job requires a bachelor's degree with accounting major because of our complex accounting systems and billing procedures as well as our many complex insurance procedures.

At the outset, the AAO notes that the petitioner's owner/manager signed this letter of support. Apparently, though, he did not pay sufficient attention to the document to recognize that it ascribed to the proffered position accounting duties related to patients and dental-procedures – unlikely work for a specialty food manufacturer. The lack of attention-to-detail shown by the petitioner's owner/manager attesting, by his signature to the letter, that the beneficiary would perform such duties for the petitioner impact negatively upon the reliability of this statement submitted by the petitioner. Further, that the letter ascribes dental-treatment related duties to the proffered position and at least partly relies upon such duties to support the need for a bachelor's degree in accounting depletes this letter of any probative value.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

Counsel for the petitioner responded to the RFE and submitted the petitioner's response letter and additional evidence. Among the evidence submitted in response to the RFE, the petitioner provided the following revised description of the duties of the proffered position:

Job description for an In-house Accountant

100% of time the In-house Accountant will be performing the following duties:

Apply the accounting principles to analyze financial data. Compile financial information to prepare general ledger, balance sheet, income statement, and budget to reflect company's assets, liabilities and capital. Process and maintain schedule of accounts receivable/payable and payroll. Prepare reports on revenue

and expenditure patterns. Prepare and monitor year-end closing procedures. Specifically, she will perform the following duties:

- Budgeting: - Forecast and budget the upcoming sales and expenses by examining and analyzing financial statements and monthly reports.
- Accounting Monitoring: - Identify and resolve client record keeping discrepancies; design and implement a new daily report system to monitor sales, receivables and expenses; simplify verification of cash flows and provide accountability.
- Financials Reporting: - prepare financial and cash flow statements; generate financial ratios spreadsheet for studies and improve the process of producing monthly and yearly financial reports.
- Investment Opportunity[:] – Analyze company financial data and provide details of growth in various areas of company’s investment ventures[.]
- Account Payable: - prepare weekly and monthly reports for management; analyze spending pattern; prioritize invoices and expense, and pay vendors on a timely manner.
- Account Receivable: - manage various accounts on invoice collection; research past due accounts and prepare weekly and monthly delinquent reports; define and implement accounting procedures to collect past due and shorten the receivable periods.
- Tax preparation and banking liaison: Prepare sales tax reports, federal, state and local tax and regulatory filings and handle banking activities, such as credit line applications, compliance, and advance draw and pay down.
- Payroll Preparation: Prepare monthly payroll and quarterly filings to government.

Hours per week are 20.

The minimum requirement for this job is a bachelor’s degree or its equivalent in Accounting or related major.

The petitioner’s RFE response also included a “Declaration” document signed by the petitioner’s manager, which states, in part:

The type of accountant I need is a cost accountant and not a bookkeeper. The industrial standard for a cost accountant is a person who has a degree in accounting at a bare minimum and who has studies cost accounting. A graduate degree is a plus.

That “Declaration” also states, in part, that the petitioner needs such an accountant to provide the petitioner with “in house knowledge” that is “necessary to maintain a steady profit margin.”

The AAO is not persuaded by the "Declaration" that the beneficiary would indeed function as a cost accountant, in light of the fact that neither the petitioner's letter of support nor the above-quoted "Job description for an In-house Accountant" (submitted at the same time as the "Declaration" document) mentions cost accounting or list duties that appear to comprise those of a position focused upon cost accounting. Further with regard to the "Declaration," the AAO finds not only (1) that the evidence of record does not substantiate the document's assertion that the beneficiary would be performing the duties of a cost accountant, but also (2) that the evidence of record does not establish an evidentiary basis for the document's assertion regarding the "industrial standard for a cost accountant."

On February 22, 2013, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel for the petitioner submitted a timely appeal of the denial of the H-1B petition.

The AAO reviewed the record of proceeding in its entirety and will make some preliminary findings that are material to the determination of the merits of this appeal.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position, so as to communicate the substantive nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge obtained through attainment of at least a baccalaureate degree in a specific discipline. The AAO finds that the petitioner has not done so.

The AAO finds that, as reflected in the duty descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of general and generic functions. As will be later discussed, most of these duties appear to fall within the purview of bookkeeping, accounting, and auditing clerks. Further, the evidence of record does not describe any of the listed functions in sufficient detail to either establish the substantive nature and associated complexity or specialization of the petitioner's matters that the beneficiary would have to address, or to establish whatever training, education, or education-equivalence level that performance of those functions would require, let alone that the performance would require the practical and theoretical application of at least a bachelor's degree level of knowledge in

accounting or a related specialty, as would be required to establish the proffered position as a specialty occupation.

Also, the record's descriptions of the proposed duties and the position that they are said to comprise are not sufficiently detailed and concrete to establish either the duties or the proffered position as particularly complex, unique, and/or specialized. Rather, the AAO finds, the proffered position, and its constituent duties, are described in terms of relatively abstract and generalized functions, that, as such, do not demonstrate whatever academic and/or experience-derived level of accounting knowledge the beneficiary would have to apply to the petitioner's business matters if this petition were approved.

Additionally, the petitioner's "Declaration on Taxes Document" indicates that the petitioner employs an outside accountant (a particular accounting firm in Binghamton, New York) which the "Declaration on Taxes Document" refers to as "our accountant." The author of this document, the petitioner's manager, states therein that the petitioner has been "doing accounting for myself, my wife, my family, and many companies I have been involved with for over 30 years." That document also identifies a particular person as "[t]he CPA now working with us." The "Declaration" indicates that the accounting firm prepares the petitioner's taxes. However, the document does not indicate any limit to the range of accounting work that the firm and the CPA perform for it, and neither this document nor any other evidence in the record of proceeding states that the beneficiary would assume any of the duties of the accounting firm or the CPA. These factors also call into question the level of accounting knowledge that the beneficiary would actually have to apply to perform the proffered position.

It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into this decision's discussion and analysis of the application of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO also finds that the petitioner did not submit a copy of the petitioner's federal income tax return for 2011, as requested in the director's RFE, and that the petition can also be denied for this reason. The petitioner stated that "due to our ignorance of [some] requirements, we have not been able to get our accountant to complete our 2010 and 2011 taxes yet. . . ." However, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). This is not to say that the AAO has any reason to doubt the veracity of the petitioner's November 16, 2012 "Declaration on Taxes." Here the issue is not the credibility of the petitioner's explanation for not producing the requested tax returns. Rather, the issue is the fact that petitioner has not produced that requested evidence for USCIS review.

The AAO will now address the director's basis for denial of the petition, namely, that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

The AAO will now focus upon the application of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner stated that the beneficiary would be employed in an accountant position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered 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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational category "Accountants and Auditors."

The AAO reviewed the chapter of the *Handbook* entitled "Accountants and Auditors," including the sections regarding the typical duties and requirements for this occupational category. The AAO also reviewed the chapter of the *Handbook* entitled "Bookkeeping, Accounting, and Auditing Clerks," including the sections regarding the typical duties and requirements for this occupational category. Although the petitioner titled the position "accountant," upon review of the job descriptions provided by the petitioner and the totality of the evidence of record, the AAO finds that the proffered position most closely aligns with the occupational classification of "Bookkeeping, Accounting, and Auditing Clerks." However, as will now be discussed, the *Handbook* does not indicate 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 groups.

Accordingly, the proffered position's inclusion in either of these occupational groups would not be in itself sufficient to satisfy this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that is, by establishing that the particular position that is the subject of this petition is one that normally requires for entry at least a bachelor's degree, or its equivalent, in a specific specialty.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

The subsection of the *Handbook* entitled "What Accountants and Auditors Do" states the following about the duties of this occupation:

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 be sure 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 decision makers) 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 four main types of accountants and auditors are the following:

Public accountants do 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.

External auditors review clients' financial statements and inform investors and authorities that the statements have been correctly prepared and reported.

Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

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 may also 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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2> (last visited September 26, 2013).

The narrative of the *Handbook* indicates that government accountants work in the public sector, and internal auditors check for mismanagement, waste or fraud. These descriptions of

accountants clearly do not apply to the proffered position. Moreover, under the *Handbook's* description, it appears to be unusual for small businesses to employ a public accountant, since public accountants are usually Certified Public Accountants (CPAs) with their own business or employed by accounting firms.

The *Handbook* reports that certification may be advantageous or even required for some accountant positions. However, the AAO notes that the petitioner did not state that a license is required for this position. Thus, there is no indication that the petitioner requires the beneficiary to have obtained the designation CPA, Certified Management Accountant (CMA) or any other professional designation to serve in the proffered position.

When reviewing the *Handbook*, the AAO must note that, as the LCA supporting the petition, the petitioner submitted one that had been certified for only a Level I prevailing wage, and that, therefore, is only intended for use with a petition for a position which only merits a Level I (entry level) wage-rate.⁴ This Level I wage designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁵ That is, in accordance with the

⁴ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁵ 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 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.

relevant DOL explanatory information on wage levels, this Level I wage-rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. By submission of the LCA certified for a Level I wage-rate, the petitioner also attested that the beneficiary 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. While not dispositive, the petitioner's submission of an LCA for a Level I wage level reflects an assessment by the petitioner that the beneficiary would be operating at a relatively low level of occupational knowledge and responsibility. This aspect does not weigh in favor of the claim that performance of the proffered position requires at least a bachelor's degree, or its equivalent, in a specific specialty, where, as here, the claimed occupational category (Accountants) is not limited just to positions that require at least a bachelor's degree level of knowledge in accounting or a related specialty.

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

In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Accountants and Auditors, available on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4> (last visited September 26, 2013).

The *Handbook* reports that some graduates from junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks meeting education and experience requirements set by employers, can advance to accountant positions by demonstrating their accounting skills. That is, the *Handbook* reports that individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain junior accounting positions and then advance to accountant positions. The *Handbook* does not state that this education and experience must be the equivalent to at least a bachelor's degree in a specific specialty. Therefore, the *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the Accountants occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

The *Handbook* states that most accountants and auditors need at least a bachelor's degree; however, this statement does not support the view that any accountant job qualifies as a specialty occupation, as "most" 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.⁶ More specifically, "most" is not indicative that a position normally requires at least a

⁶ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely

bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). Therefore, even if the proffered position were determined to be an accountant position, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Accordingly, the proffered position's inclusion within the Accountants occupational category would not be sufficient to establish that particular position as one for which the minimum entry requirement would normally be at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO finds that the duties of the proffered position most closely resemble those described in the chapter "Bookkeeping, Accounting, and Auditing Clerks" of the *Handbook*. As will now be discussed, the *Handbook* also does not indicate that 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* states, in pertinent part, the following about this occupational category:

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

51% of the positions need at least a bachelor's degree, it could be said that "most" of the positions need such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner, which as previously discussed is designated by the petitioner as a Level I (entry) position in the LCA. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." § 214(i)(1) of the Act.

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 up 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, 2012-13 ed.*, Bookkeeping, Accounting, and Auditing Clerks, available on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited September 26, 2013).

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

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Bookkeeping, Accounting, and Auditing Clerks, available on the Internet at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Bookkeeping-accounting-and-auditing-clerks.htm#tab-4> (last visited September 26, 2013).

The *Handbook* does not report that "Bookkeeping, Accounting, or Auditing Clerks" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree, or the equivalent, in a specific specialty. 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 (and that in 2009, about 25 percent of these workers had an associate's or higher degree). 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.⁷

On appeal, counsel provides (as Exhibit A) a copy of the one-page Wage Search Results obtained by running a prevailing-wage search of DOL's Federal Employment and Training Administration's OnLine Wage Library's (OWL's) All Industries database for 7/2011 – 6/2012 for the occupational title "Accountants and Auditors." Counsel refers to the Education & Training Code segment of the following entry:

O*NET™ JobZone: 4 – Education & Training Code: 5 – Bachelor's Degree

Counsel cites the above Education and Training Code statement for the proposition that it is "well established that a position of an accountant requires at least a bachelor's degree."

As will now be explained, it appears that counsel misapprehends the purpose and implication of the Education and Training Code entry "5 – Bachelor's Degree" on the Wage Search Results page of the OWL (which is commonly referred to as the OWL).

The Wage Search Results page that counsel submits on appeal was obtained by using one of the OWL's two search utilities, which are accessible through the main page of DOL's Employment and Training Administration Center's (DOLETA's) Foreign Labor Certification Data Center (FLC Data Center) at <http://flcdatacenter.com>.

The Online Wage Library Users Guide (Version 2.0) is a comprehensive guide to using the OWL and its Search Wizard functions, and it also provides a basic understanding of the OWL's components. This FLC Data Center resource is accessible on the Internet at http://www.flcdatacenter.com/download/owl_userguide.doc.

As the User Guide's introductory section conveys, the purpose of the OWL and its search-utility results is to assist in determining which one of the four prevailing-wage levels is appropriate for a position submitted to DOLETA for a Prevailing Wage Determination. That introductory section states:

The Online Wage Library was created in the fall of 2000 to make the Occupational Employment Statistics Wages for Alien Labor Certification

⁷ Here, there is no evidence of how the beneficiary would be relieved from performing non-qualifying tasks, such as the company's general, financial record keeping, recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeper and/or accounting clerk). Based upon the petitioner's job description and the totality of the evidence presented about the proffered position and the petitioner's business, the AAO finds that it does not appear that the petitioner has established that the beneficiary's work would require the practical and theoretical application of accounting knowledge above that required for bookkeepers, accounting, and auditing clerks.

available over the Internet. Designed as a replacement for the ALCATS system, the OWL integrated OES wage and O*Net™ occupational information with an easy to use search interface.

With the arrival of major changes to the Prevailing Wage Program in early 2005, OWL was modified to facilitate the work of prevailing wage specialists operating under the new guidance to assign one of the four wage levels to an occupation.

The OWL includes two separate search utilities, a Search Wizard and a Quick Search. Both interfaces provide a list of OES occupations, and a set of help links.

Employment and Training Administration, Foreign Labor Certification Data Center, U.S. Department of Labor, Online Wage Library Users Guide (Version 2.0), on the Internet at http://www.flcdatacenter.com/download/owl_userguide.doc (last visited November 25, 2013).

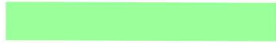
The AAO’s point is that the segment identified by counsel relates to prevailing wage determinations; and it is not intended as a tool for determining whether a particular occupation, or a particular position within a particular occupation, requires a bachelor’s degree in a specific specialty.

The Education and Training Code in question appears in the following listing at the opening of above referenced Appendix A to the Preamble of DOL’s PERM regulations (whose formal title is “Appendix A to the Preamble – Professional Recruitment Occupations – Education and Training Categories by O*NET – SOC Occupation”), at the Federal Register publication of the Final Rule on Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, 69 Fed. Reg. 77326, 77377 (December 27, 2004).

Code	Education and training category
1	1st professional degree
2	Doctoral degree
3	Master’s degree
4	Work experience plus bachelor’s or higher degree
5	Bachelor’s degree

To further help in grasping the significance of the “Education & Training Code: 5 – Bachelor’s Degree” in the prevailing-wage determination process, we have excerpted below some of the pertinent sections of DOLETA’s *Prevailing Wage Determination Policy Guidance (Nonagricultural Immigration Programs, Revised November 2009)*:

The PERM regulation lists professional O*NETSOC occupations and their designated education and training categories. Those education and training categories shall be used when considering the education and training generally required for performance in that occupation (see Appendix D). This guidance has been divided into several sections for easy reference.



The regulatory scheme at 20 CFR 655.10/11 or 20 CFR 656.40/41 must be followed in determining the prevailing wage. The same policies and procedures shall be followed for the permanent labor certification program, the nonimmigrant program pertaining to H1B or H1B1 professionals in specialty occupations or as fashion models, and the H2B temporary nonagricultural labor certification program.

* * *

The step by step process described in Section II. B. represents the approach for determining the appropriate prevailing wage. All prevailing wage determinations shall start with an entry level wage and progress to a wage that is commensurate with that of a qualified, experienced, or fully competent worker only after considering the experience, education, and skill requirements of an employer's job description (opportunity).

Under [20 C.F.R.] § 656.40, the relevant factors in determining a prevailing wage rate are the nature of the job offer, the area of intended employment, and jobs duties for workers that are similarly employed.

* * *

Professional Occupations by O*NETSOC category and the related education and training category code are listed in Appendix A to the Preamble of the PERM regulations. The education and training categories assigned to those occupations shall be considered the usual education and training required when considering the education level for prevailing wage determinations. A listing of occupations designated as professional occupations and the related education and training category can be found in Appendix D of this document.

- If the education required on the prevailing wage determination request form is equal to or less than the usual education contained in Appendix D, make no entry in the Wage Level Column.
- If the education required on the prevailing wage determination request form is more than the usual education contained in Appendix D by one category, enter a 1 on the worksheet in the Wage Level Column.
- If the education required is more than the usual education contained in Appendix D by more than one category, enter a 2 on the worksheet in the Wage Level Column.

For all other occupations, use the education level for what 'most of these occupations' require or 'these occupations usually require' described in the O*NET Job Zone for that occupation.

As the Educational and Training Codes are to be used as a tool in the Prevailing Wage Determination process, which is governed by DOL regulations and policy, the relevance of the Education and Training Code to the appeal is not apparent, and counsel has not cited any authority establishing relevancy. In any event, the crucial and decisive aspect of the Education and Training Code 5 cited by counsel is that it is only an index regarding a degree-level, rather than a degree in any particular major or academic concentration. Accordingly, Education Level 5 is not probative evidence that a bachelor's degree, or the equivalent, in a specific specialty is a minimum requirement for entry into the Accountants occupational category.

As previously discussed, the petitioner has not established that the proffered position falls under the occupational category "Accountants and Auditors." Nevertheless, the AAO reviewed the O*NET information, including the fact the O*NET assigns this occupation a Job Zone Four rating, which groups it among occupations that are described as follows: "Most of these occupations require a four-year bachelor's degree, but **some do not**" (emphasis added). In any event, the O*NET does not report that, for those occupations with an academic degree requirement, such a degree must be in a specific specialty directly related to the occupation. As previously stated, 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 duties and responsibilities of the position.

When, 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 the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such 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." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the evidence of record does not satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This first alternative prong calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common

to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference its previous discussion on the matter. Further, the record of proceeding does not contain any submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that a degree requirement is common to the industry for individuals employed in positions parallel to the proffered position.

On appeal, the petitioner submits copies of nine job-vacancy announcements placed by various firms for accountant positions.

As noted earlier, the petitioner belongs to the specialty food manufacturing industry. The AAO will first survey the job-vacancy advertisements to see if they were issued by organizations in the petitioner's industry,

The first advertisement, placed by [REDACTED] on behalf of an unnamed client, does not specify the client's industry. Therefore, this document's relevancy to the criterion has not been established.

The [REDACTED] advertisement is also not for a position within the specialty food manufacturing industry. Rather, it is for a position at a 500 full-time-employee plant engaged in the manufacture of both gas and diesel emission controls (for the [REDACTED] and components of for the [REDACTED] emission control.

The job-vacancy announcement placed by [REDACTED] is also outside the zone of consideration of this first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This is because the advertisement does not identify the industry of the client for whom Staffing Options issued this job-vacancy advertisement.

The [REDACTED] Contractors job vacancy announcement also falls outside the zone of consideration, as it advertises a job opportunity in the residential & commercial/office construction industry – not in the specialty food manufacturing industry.

The [REDACTED] advertisement also does not pertain to the petitioner's industry: the advertisement describes [REDACTED] as a "mid-size energy company."

The next job-vacancy advertisement is also not a proper subject for consideration under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) either, as the advertising employer, [REDACTED], seeks an accountant in what the advertisement identifies as the Real Estate/Property Management industry.

As [REDACTED] advertisement is for a position with an Investment Management Company, it also does not pertain to the petitioner's industry.

Next, as the [REDACTED] on [REDACTED] for a Staff Accountant does not indicate the industry for which the advertisement was placed, it also has not established itself as pertinent to this prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)

Finally, there is nothing within the Staff Accountant advertisement by [REDACTED] to suggest that it pertains to any position within the petitioner's industry.

Thus, the above survey of the submitted advertisements establishes that those advertisements do not merit consideration under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that they pertain to the petitioner's industry, or any organization within that industry.

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

Although obviously not necessary for adjudication of the evidence of record pertaining to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) in this matter, the AAO will also address the fact that, even if the evidence had established that the submitted advertisements pertained to positions within organizations in the petitioner's industry and that those organizations were similar to the petitioner - which, of course, is not the case here - the advertisements here would not have established that the proffered position and those advertised were parallel. Consequently, the evidence of record still would not satisfy this prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Simply put, neither the advertisements nor this record of proceeding's descriptions of the proffered position present the related positions with sufficient detail to provide for helpful comparisons of the substantive accounting matters that each particular employer's operations would generate, or of the particular range of accounting work that such matters would involve, or of the applications and educational level of accounting knowledge that would have to be applied to perform each position within the particular employer's business operations. Thus, the AAO finds, the evidence about the proffered position and the positions advertised do not provide a sufficient evidentiary foundation for a determination that the positions themselves are in any substantial sense "parallel."

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

its equivalent.

As noted earlier, the AAO here incorporates, and adopts into the analysis of this prong, its earlier comments and findings with regard to the evidentiary deficiencies of the descriptions of the proposed duties and the position that they are said to comprise. As noted and reflected in those comments and findings, the petitioner simply has not developed relative complexity or uniqueness as an aspect of the proffered position, let alone an aspect that would require the services of a person who has attained at least a bachelor's degree in accounting or any closely related specialty. Thus, the petitioner failed to demonstrate how the proposed duties as described comprise a position so complex or unique that it can only be performed by a person who has attained a bachelor's or higher degree, or the equivalent, in a specific specialty.

While the above discussed evidentiary deficiencies preclude satisfaction of this criterion, the AAO also finds that the LCA submitted by the petitioner in support of the instant petition is materially inconsistent with a claim that the petitioner has established the relative complexity or uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, the AAO incorporates by reference and reiterates its earlier discussion regarding the fact that the petitioner submitted as the supporting LCA one that had been certified for a Level I (entry level) wage. This wage-level designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of 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; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and his work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

Consequently, as the petitioner has not shown that the proffered position is so complex or unique that its performance would require a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner did not submit evidence relating to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or the equivalent, for the position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

As noted earlier, the AAO here, too, incorporates and adopts into the analysis of this prong, this decision's earlier comments and findings with regard to the evidentiary deficiencies of the descriptions of the proposed duties and the position they are said to comprise. As reflected in those comments and findings, the evidence in this record of proceeding does not establish relative specialization and complexity as dimensions of the nature of the proposed duties. Thus, this criterion has not been satisfied. Also, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

Although the evidentiary deficiencies just discussed are sufficient to preclude satisfaction of this criterion, the AAO will also incorporate into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA - that is, that the proffered position's Level I wage-designation is indicative of a low, entry-level position relative to others within the occupational category 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."

As the evidence in the record of proceeding has not established that the nature of the duties of the position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section

291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here that burden has not been met.

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