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FILE: WAC 07 055 52716 Office: CALIFORNIA SERVICE CENTER Date: **OCT 15 2008**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

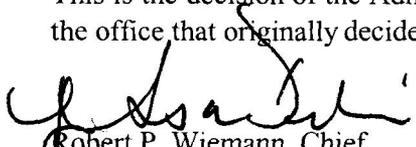
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a beauty salon established in 2006. On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner claims to employ ten personnel and to have \$480,000 in gross annual income.<sup>1</sup> It seeks to employ the beneficiary as a financial manager. Accordingly, the petitioner endeavors to classify the beneficiary 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).

On May 24, 2007, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director's decision is in error and submits a brief. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the December 20, 2006 Form I-129 and supporting documentation; (2) the director's March 6, 2007 request for further evidence (RFE); (3) counsel's May 4, 2007 response to the director's RFE and supporting documentation; (4) the director's May 24, 2007 denial decision; and (5) the Form I-290B, counsel's brief, and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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, the position must meet one of the following criteria:

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<sup>1</sup> The petitioner claims in response to the director's request for further evidence that it employs 30 personnel and expects gross annual sales to be in excess of \$850,000. On appeal, counsel for the petitioner clarifies that the petitioner employs ten personnel and uses the services of 20 independent contractors.

- (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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In a December 4, 2007 letter appended to the petition, the petitioner listed the duties of the position as including:

[P]reparing financial analyses [sic] of operations; participating in the establishment of economic objectives and policies; preparing reports outlining the company's financial position in areas of income, expenses, and earnings based on past, present and future operations; participating in the preparation of budgets and financial forecasts and in the preparation of governmental reports; construction charges and graphs regarding finances; performing research and analyses [sic] relative to losses and adverse financial trends and suggesting remedial measures; and advising management on desirable operational adjustments due to tax and other financial reasons.

The petitioner stated that the duties of the proffered position required the services of an individual who held at least a bachelor's degree in finance, accounting, business management, or a closely related discipline.

On March 6, 2007, the director requested, among other things: a detailed description of the work done, including specific job duties, the percentage of time allocated to each duty, level of responsibility, hours per week of work, and the minimum education, training, and experience necessary to do the job, as well as an explanation of or why the work done required the services of a person who has a college degree or its equivalent in the occupational field. The director also requested a copy of the petitioner's organizational chart, quarterly wage reports for the last two quarters, a company profile, the beneficiary's last three pay stubs, and the beneficiary's passport.

In a May 4, 2007 response to the director's RFE, the petitioner stated: "[a]s Financial Manager, his professional job duties will include responsibility for managing and coordinating all of the accounting

activities of [the petitioner]. The petitioner listed the beneficiary's duties in the position and percentage of time allocated to each duty as follows:

- Examining and analyzing accounting records in order to prepare reports concerning financial status and operating procedures – 10 percent of his time;
- Devising and implementing systems for general accounting and for recording disbursements, expenses, and tax payments – 10 percent of his time;
- Preparing month end entries for tax and depreciation – 10 percent of his time;
- Verifying and preparing journal and ledger entries – 7.5 percent of his time;
- Preparing individual, division and consolidated balance sheets to reflect assets, liabilities, capital, profit and loss during accounting periods – 7.5 percent of his time;
- Reviewing general ledger accounts and documenting business transactions – 5 percent of his time;
- Evaluating and examining the company's internal controls so that corporate records are accurate and controls are adequate to protect against fraud and waste, assisting the company on compensation and other employee benefits issues – 7.5 percent of this time;
- Performing budgeting tasks – 7.5 percent of his time;
- Evaluating the company's compliance with financial laws and government regulations – 5 percent of his time;
- Analyzing cost and asset management – 10 percent of his time;
- Analyzing financial information detailing assets, liabilities and capital and preparing balance sheets, profit and loss statements and other reports to summarize current and projected company financial portion – 10 percent of his time;
- Auditing contracts orders and vouchers and preparing reports to substantiate individual transactions prior to settlement – 5 percent of his time;
- Establishing, modifying, documenting, and coordinating the implementation of accounting and accounting control procedures – 2.5 percent of his time;
- Devising and implementing manual and computer-based systems for general accounting – 2.5 percent of his time.

The petitioner indicated that the beneficiary would also be: "responsible for reviewing data regarding material assets, net worth, liabilities, capital stock, surplus, income, and expenditures; counting cash on hand, inspecting notes receivable and payable, negotiable securities, and canceled checks; and reporting to management concerning the scope of audits, financial conditions found, and the source and application of funds." The petitioner noted that it had been using an outside accountant to perform the financial manager tasks, but had decided it would be better to employ an in-house financial manager.

Counsel for the petitioner submitted an excerpt from the Department of Labor's *Occupational Outlook Handbook's (Handbook)* report on the occupation of "financial manager"; a copy of the petitioner's organizational chart depicting a managing member, the beneficiary in the position of financial manager, two receptionists, and individuals in the positions of colorists, stylists, and nail techs, and assistants; copies of the beneficiary's last three pay stubs; copies of the petitioner's quarterly wage reports for 2006 and the first quarter of 2007; and a copy of the beneficiary's passport.

On May 24, 2007, the director denied the petition. The director found that the duties of the position resembled the duties of an accountant as described in the *Handbook* under the title Accountants and Auditors. The director determined, however, that the petitioner had not described the actual duties the beneficiary would perform but had recited and relied on the *Handbook's* outline of an accountant's duties. The director also found that the petitioner had failed to establish that its business would use the services of an accountant full- or part-time. The director determined that the petitioner had not established that its business operations are of a scale or complexity to require complex or advanced accounting. The director further determined: that the petitioner had not demonstrated an industry standard for positions similar to the proffered position; had not established that the petitioner had unique and specific needs for the services of an accountant; and had not established that it had an accounting division, thus the beneficiary would be performing the duties of a bookkeeper or accounting or auditing clerk. The director concluded that the petitioner had not met its burden in establishing the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the *Handbook* confirms that every type and sized company in the United States could use a financial manager and that the position requires an individual to possess at least a bachelor's degree in finance, accounting, economics, or business administration for an entry-level position. Counsel contends that the petitioner has provided evidence of the duties the beneficiary will perform in the proffered position and has not relied on the Department of Labor's publications to describe those duties. Counsel repeats the descriptions of duties, previously provided, and claims: "[t]hese job duties, as they relate to the petitioner, center on applying accounting principals to past and present financial operations and estimations of future revenues and expenditures essential to the preparation of present time analysis of accounting status and budgets." Counsel notes that the beneficiary has been working for the petitioner, thus there is clearly a credible offer of employment.<sup>2</sup> Counsel further notes that the beneficiary will be performing the tasks that were previously handled by a professional accountant. Counsel avers that the petitioner, which employs 30 individuals and has gross sales close to \$1 million, clearly qualifies as a petitioning entity with operations of sufficient scale and complexity to require the services of a full- or part-time financial manager or accountant.

Counsel's assertions are not persuasive. The AAO has reviewed the duties of the position in an effort to determine whether the proffered position is that of an accountant or a financial manager or a combination of both occupations. The AAO routinely consults the *Handbook* to assist in determining the nature of particular occupations as well as the educational requirements of particular occupations. In that regard, the 2008-2009 *Handbook* reports:

Almost every firm, government agency, and other type of organization has one or more financial managers. Financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Managers also develop strategies and implement the long-term goals of their organization.

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<sup>2</sup> The AAO observes that the beneficiary had previously been employed in an H-1B classification for a different petitioner. The beneficiary's classification was from February 9, 2004 through January 26, 2007. As the AAO has determined beyond the decision of the director, this record does not reflect that the beneficiary is qualified to perform the duties of a specialty occupation. The director may wish to review the record of SRC 04 085 51949 for possible revocation.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. *Controllers* direct the preparation of financial reports, such as income statements, balance sheets, and analyses of future earnings or expenses, that summarize and forecast the organization's financial position. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers* and *finance officers* direct the organization's budgets to meet its financial goals. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions. *Credit managers* oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts.

*Cash managers* monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm. For example, cash flow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash should be invested in interest-bearing instruments. *Risk and insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations. They also manage the organization's insurance budget. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations.

The record in this matter does not demonstrate that the proffered position is that of a financial manager. The petitioner's initial description of the duties of the position is a broad statement of generalized duties. The AAO is unable to discern the actual daily duties the beneficiary would perform from the petitioner's initial overview of the proffered position. The initial description is insufficient to establish the proffered position is that of a financial manager. The petitioner's description of the beneficiary's duties in response to the director's RFE focused on the beneficiary's performance of certain duties. The petitioner did not include duties that included oversight of the preparation of reports; rather the duties described are indicative of the beneficiary preparing various reports. Likewise, the petitioner did not provide substantive information showing that the beneficiary would direct investment activities or would implement cash management strategies. Moreover, the petitioner did not further identify the proffered position as a controller, a treasurer or finance officer, a credit manager, a cash manager, or a risk and insurance manager and detail duties that would be commensurate with such positions. The petitioner instead indicated that the beneficiary in the proffered position would be performing duties that had been performed by an outside accountant and listed duties corresponding to an accounting position. The AAO finds, based on the petitioner's description of duties and the totality of the information in the record, that the proffered position is not a financial manager position.

To determine whether a particular job qualifies as a specialty occupation, CIS 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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). In this matter, the petitioner has described a position that is related to an accounting occupation. The AAO reviews whether the petitioner has established that the proffered position is

an accounting position that 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.

To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2008-2009 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO finds the above discussion to be generally reflected in a portion of the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Some graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

The *Handbook* also provides a description of the work performed by bookkeeping, accounting and auditing clerks:

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all of the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank

deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* reports:

Demand for full-charge bookkeepers is expected to increase, for example, because they do much of the work of accountants and perform a wider variety of financial transactions, from payroll to billing.

The AAO finds that a portion of the petitioner's list of duties corresponds more closely to that of a bookkeeper or junior accountant. Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of "verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.<sup>3</sup>

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. It is reasonable to assume that the size of an employer's business has an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). In matters where a petitioner's business is relatively small in number of employees or income, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

At the time of filing, the petitioner stated that it employed ten personnel and had a gross annual income of \$480,000. The AAO notes the petitioner's claim that it also uses the services of independent contractors and that its gross annual income has increased. However, the petitioner has not substantiated its employment of contractors or its increase in income with documentary evidence. 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*,

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<sup>3</sup> Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several "Sources of Additional Information" at the end of its discussion of the occupation of accountants.

14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not provided copies of its Internal Revenue Service (IRS) tax returns, or IRS Forms 1099, Miscellaneous Income, financial statements, balance sheets, income statements, or bank reconciliations, to verify its increase in business or its use of independent contractors. Moreover, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). In addition, as stated in *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998), "[t]he AAO cannot consider facts that come into being only subsequently to the filing of the petition."

The AAO has reviewed the record for evidence that the petitioner's business is growing, as well as evidence of its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose a degree requirement on the beneficiary. The AAO finds that the record does not contain information relating to the petitioner's financial operations or organization that would shed light on the complexity of the accounting work to be performed by the beneficiary, e.g., documentation that demonstrates that the beneficiary is structuring complex debt repayment schedules, is responsible for complicated profit and loss statements, bank reconciliations, and payroll schedules. The petitioner has not provided a description and substantiating evidence of the spectrum of costs the beneficiary would be required to manage, the extent of the petitioner's financial dealings, the range of the petitioner's financial records, the specific types of data which the beneficiary would analyze, the size of the petitioner's budget, or the number of the petitioner's budget elements, or the nature of the budget/expenses variance issues and trends. The AAO acknowledges the petitioner's claim of a number of independent contractors; but preparing a payroll schedule for ten personnel and 20 independent contractors, even if substantiated does not demonstrate the need for the services of a degreed accountant. As observed above, graduates of junior colleges or business or correspondence schools or individuals trained as bookkeepers may handle payroll and general ledgers. The petitioner has not provided information that demonstrates the complexity of the petitioner's organization or the necessity for specialized accounting work to comply with state and federal payroll requirements. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Although the petitioner may require the services of an individual who understands accounting concepts, the petitioner has not demonstrated that the proffered position requires the services of a degreed accountant.

The petitioner has not provided sufficient documentary evidence to establish that the proffered position is the position of a degreed accountant. Instead, the position appears more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. As a result the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include 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)). In the instant matter, the petitioner has not submitted evidence to comply with either prong of the criterion.

The petitioner has not submitted evidence of an industry standard that demonstrates that organizational similar to the petitioner require a bachelor's degree in accounting or a related field for a position that is parallel to the proffered position. The petitioner has not submitted documentation to distinguish the proffered position from similar but non-degreed accounting employment. The evidence of record fails to convey that the beneficiary's specific performance of the record's list of generalized duties would require the theoretical and practical application of highly specialized knowledge attained by at least a bachelor's degree or the equivalent in accounting or any other specific specialty. The record does not relate specific work associated with the generalized duties described by the petitioner to the petitioner's business operations and the record does not contain any documents that exemplify the nature of the proposed accounting work. Consequently, there is no evidence of complexity or uniqueness to satisfy the instant criterion, and the petitioner has not established that the proffered position can only be performed by a person with at least a bachelor's degree in accounting or a related specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The AAO acknowledges the petitioner's claim that it previously used the services of an outside accountant. The petitioner, however, has not presented evidence of the outside accountant's degree or a list of duties that are more specialized than the list of duties described above, that were performed by the outside accountant. The petitioner has not provided evidence that the nature of its operations requires a degreed accountant to perform the duties of the position. The AAO finds that the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. Again, the critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or a junior accountant. Further, the position, as described, does not appear to represent a combination of jobs

that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant. Again, the petitioner has not provided evidence that its business operations involve intricate and complex financial transactions, specialized tasks related to tax records, or any other substantiating evidence that would elevate the duties of the position to one that requires a degreed accountant. The totality of the record does not 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. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. The record does not contain any evidence of the beneficiary's education. The record includes only an evaluation of the beneficiary's work experience prepared by an Adjunct Associate Professor at Embry-Riddle Aeronautical University in Fort Lauderdale, Florida, William Ph.D. The record does not include independent evidence establishing that Dr. has authority to grant college-level credit for work experience, such as a letter from a dean or provost verifying the evaluator's authority. Neither does the record contain substantiating evidence that the university that employs Dr. has a program for granting college-level credit based on an individual's training or work experience. When attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the record fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position. For this additional reason, the petition will be denied.

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 *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the director's decision will be affirmed.

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