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U.S. Citizenship  
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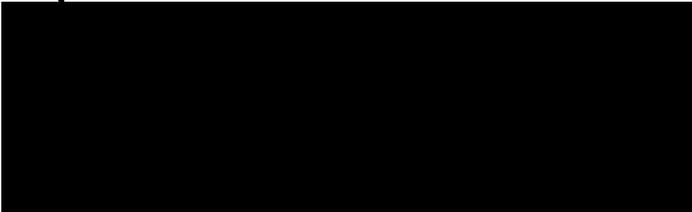
FILE: WAC 01 067 54405 Office: CALIFORNIA SERVICE CENTER Date: **DEC 02 2005**

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:

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner subsequently filed a Complaint for Declaratory Judgment and Injunctive Relief in the U.S. District Court for the Central District of California. A Stipulation of Dismissal without Prejudice and Order Thereon was entered with the understanding that the director would reopen the petition. The director reopened the petition for review in accordance with 8 C.F.R. 103.5(a) and denied the nonimmigrant visa petition. The matter is again before the AAO on appeal. The AAO will withdraw the director's finding that the proffered position is not a specialty occupation, but will affirm the director's denial of the petition on the basis that the petitioner has not established that the beneficiary is qualified to serve in the pertinent specialty occupation. The appeal will be dismissed. The petition will be denied.

The petitioner is an importer and wholesaler of consumer electronics that seeks to employ the beneficiary as an accountant. 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).

The director denied the petition on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

As will be discussed below, the AAO finds that the evidence of record establishes that the proffered position is a specialty occupation, but not that the beneficiary is qualified to perform services in the specialty occupation. Therefore, the part of the director's decision addressing the specialty occupation issue shall be withdrawn, but the appeal shall be dismissed and the petition denied because the director's decision to deny the petition on the beneficiary qualification issue is correct.

The AAO considered the entire record of proceeding, including: (1) the Form I-129 (Petition for Nonimmigrant Worker) and supporting documentation; (2) the director's initial request for additional evidence (RFE); (3) the reply to the initial RFE; (4) the director's initial denial letter, (5) the initial Form I-290B (Notice of Appeal) and supporting documentation; (6) the AAO's decision dismissing the initial appeal; (7) the petitioner's Complaint for Declaratory Judgment and Injunctive Relief; (8) the Stipulation of Dismissal without Prejudice and Order Thereon; (9) the director's motion to reopen; (10) the RFE issued as part of the reopened proceeding; (11) the matters submitted in reply to that second RFE; (12) the denial letter issued by the director with regard to the reopened proceeding; and (13) the Form I-290B and brief filed for the present appeal.

The AAO will first address its determination that the position is a specialty occupation.

The director determined, in part, that the petitioner is proffering a bookkeeping, accounting, and auditing clerk position for which the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that at least a baccalaureate or the equivalent in a specific specialty is not the minimum requirement for entry. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the petitioner has satisfied all of the specialty occupation criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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:

- (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 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.

The corporation seeking to employ the beneficiary as its accountant is engaged in the importation and wholesale of consumer electronics, and it has been doing business since 1993 (Form I-129). The petitioner employs 11 persons and has a gross annual income of \$11,000,000 (petitioner's letter of May 29, 2003, included in Exhibit A of the reply to the RFE). The petitioner's organizational chart (included in Exhibit E of the reply to the RFE) specified the following ten positions: Owner/President; Owner/Administrator; Receptionist; Accountant; Market Research Analyst; Computer Systems Administrator; Salesperson; Buyer; Shipping; and Driver. According to this chart, the accountant "works fulltime" and holds a "Bachelor's degree." The organizational chart was changed to reflect the proposed employment of the beneficiary as the petitioner's accountant (also at Exhibit E of the reply to the RFE), and as amended shows the beneficiary in the accountant slot and the present accountant in a new position, Budget Officer/Auditor. The three tax returns submitted by the petitioner state these amounts for gross receipts or sales: \$13,757,851 (Year 2000); \$15,747,511 (Year 2001); and \$ 17,857,735 (Year 2002). The tax returns state salaries and wages of: \$128,946 (Year 2000); \$206,686 (Year 2001); and \$119,406 (Year 2002). Reported as "Legal and Professional" expenses, which are separate from "Public Relations" and "Educational Expenses" were:

\$6,929 (Year 2000); \$20,946 (Year 2001); and \$15,170 (Year 2002). The signature sections indicate that each tax return was prepared by an outside accountant.

According to the petitioner's May 29, 2003 letter, the beneficiary would perform duties that entail: preparing, analyzing, and verifying the quarterly and yearly tax returns; performing audits; preparing payroll statements and deductions, monthly expense reports, and financial statements; preparing the general ledger, monthly and yearly financial reports; monitoring information systems; compiling and analyzing financial information to prepare entries into the accounts; detailing assets, liabilities, and capital; providing tax information; devising a long-range plan to reduce taxes; recommending tax strategies; devising a financial system that ensures systematic and smooth inventory procedures; preparing balance sheets, profit-and-loss statements, checks, payroll, tax remittances, and other reports; modifying and coordinating the implementation of accounting and accounting control procedures; monitoring the petitioner's budgeting, performance evaluation, and cost and asset management; analyzing transactions; and preparing billing statements.

According to counsel's September 5, 2003 letter of response to the August 6, 2003 RFE, the beneficiary would spend his 40-hour work week as follows:

30% Quarterly and yearly tax reports;

40% Preparing balance sheets, payroll, billing, and accounts payables and receivables;

20% Establishing a general accounting system; and

10% Preparing financial statements, monthly reports and advising the petitioner of its financial status and tax planning.

In this letter, counsel asserts that performance of the accountant position requires a person with a bachelor's degree or its equivalent in accounting or a related field for the following reasons:

The accountant must be fully knowledgeable in the field of accounting and have practical experience. A minimum of a bachelor's degree in accounting or a related field is required for the position of accountant since performance of the job duties requires a knowledge of, and a strong background in accounting principles and practices, tax laws, mathematics, financial analysis and reporting, spread sheets, [and] ledgers, as well as other related knowledge, such as business and management principles, financial markets, banking and clerical procedures. The knowledge and skill required for the job is obtained with the attainment of a bachelor's degree in the field.

Counsel errs in asserting that the petitioner has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). With regard to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel's reliance upon the record's job vacancy announcements from other employers to establish a degree requirement common to parallel positions in the industry is misplaced: the number of announcements is insufficient to establish a common requirement in the industry, and the record contains insufficient details about the advertised jobs to establish those positions as parallel to the one proffered here. As the record does not present the requisite hiring history, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires a degree or its equivalent for the position. 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)).

However, the totality of the evidence of record about the proffered position and its duties, the petitioner's particular business operations, and the business context in which the proposed accounting duties will be performed is sufficient to establish that the proffered position (1) comports with the accountant positions for which the *Handbook* reports a requirement for at least a bachelor's degree or the equivalent in accounting or a related specialty, so as to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(1); and (2) indicates sufficiently complexity and specialization to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Therefore, the petitioner has established that the proffered position is a specialty occupation. As the director's contrary finding on the specialty occupation is incorrect, it will be withdrawn and replaced with this favorable finding on that issue.

The appeal will be dismissed, however, because, as explained below, the petitioner has not established that the beneficiary holds the equivalent of at least a U.S. bachelor's degree in the pertinent specialty. While the AAO here employs its own independent analysis of the record, it finds that the director's analysis of the beneficiary qualification issue in the November 23, 2003 decision is sound, well-reasoned, and supported by the evidence of record. Counsel's arguments against that portion of the decision are without merit.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree,  
and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means a baccalaureate or higher degree in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position. In the context of this proceeding, that degree is in accounting or a related specialty.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The first three of the above criteria are not relevant to this appeal: there is no evidence that the beneficiary possesses a U.S. baccalaureate or higher degree, a foreign degree that is the equivalent of such a U.S. degree, or an unrestricted license, registration, or certification that authorizes the beneficiary to fully practice and immediately engage in a pertinent specialty occupation. However, counsel asserts that the petitioner has satisfied the fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), by establishing that the beneficiary has obtained the equivalent of at least a U.S. baccalaureate degree in accounting by the combination of his formal education and his years of work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;<sup>1</sup>
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

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<sup>1</sup> The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . .

As there is no evidence of college-level equivalency examinations or special credit programs (criterion 2) or certification or registration of professional standing (criterion 4), only criteria 1, 3, and 5 are relevant to this appeal. The petitioner has not satisfied any of them.

To establish that the beneficiary has obtained the equivalent of at least a U.S. baccalaureate degree in accounting by the combination of his formal education and his years of work experience, counsel relies upon evaluations of the beneficiary's education and work experience from these three sources: (1) e-Val Reports; (2) ██████████, an Assistant Professor of Accounting at the State University of New York at Buffalo; and (3) ██████████, an Assistant Professor of Business Administration and Management Information Systems at Mercy College of Dobbs Ferry, New York.

For the reasons discussed below, the AAO finds that, both alone and combined, the evaluations do not establish that the beneficiary is qualified to serve in a position that requires at least a bachelor's degree or the equivalent in accounting or a related specialty.

The AAO's decision to accord no significant weight to the evaluations is grounded in four evidentiary principles. First, in accordance with section 291 of the Act, 8 U.S.C. § 1361, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Second, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Third, CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only, and CIS may discount or give less weight to an evaluation that is not in accord with previous equivalencies or is in any way questionable. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Fourth, likewise CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, CIS is not required to accept an opinion that is not in accord with other information or is in any way questionable, and it may discount or give less weight to such evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The two aspects of the evaluations -education and work experience – will be addressed separately.

#### *Two of Three Evaluations of Formal Education Discounted*

The record's documentary evidence of the beneficiary's formal education consists of: (1) a diploma from El Instituto Commercial (EIC) of Chihuahua, Mexico, dated June 30, 1981, certifying the beneficiary's satisfactory completion of "studies related to Commercial Classes corresponding to the career of Commercial Accountant"; and (2) a 1978-1981 academic transcript related to the EIC diploma, which identifies the following courses: Commercial Math, Accounting, Typing, Speed Writing, Physical Education, Commercial Calculus #1, Recordkeeping, Commercial Calculus #2, Commercial Law/Documentation, Treasury Litigation, Typing, and Human Behavioral Science.

Only one of the three evaluations of the beneficiary's education is rendered by a foreign credentials evaluation service, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As noted by the director (decision at page 5) only e-Val Reports appears to be a foreign credentials evaluation service. The evaluations of [REDACTED] and [REDACTED] were not submitted by a foreign credentials evaluation service, and there is no evidence in their evaluations or elsewhere in the record that these evaluations are the product of a foreign credentials evaluation service. Therefore, the AAO discounts the educational evaluations of [REDACTED] and [REDACTED] they are not cognizable under the regulation governing evaluations of foreign education.

The e-Val Reports evaluation of the beneficiary's education, the only one cognizable under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), opined that the beneficiary's EIC foreign coursework is equivalent only to "graduation from a vocational high school in the United States." The e-Val Reports document does not equate, or provide a basis for equating, that vocational education to U.S.-equivalent college-credits. Consequently, the evidentiary value of the evaluation of the beneficiary's formal education in this proceeding is negligible: it contains no evidence that the beneficiary obtained training or education equivalent to U.S. college courses in accounting or a related specialty.

Aside from the fact that the pertinent regulation, 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), excludes deference to the foreign educational evaluations of [REDACTED] and [REDACTED], the AAO would otherwise discount them because of material discrepancies that render their reliability questionable.

The opinions of [REDACTED] and [REDACTED] are materially inconsistent with the e-Val Reports opinion with regard to the significant issue of the educational level of EIC, the institution where the beneficiary received his formal training or education. The eVal Reports document opines that the EIC coursework is equivalent only to "graduation from a vocational high school in the United States." However, without explanation for the difference in their views, [REDACTED] states that EIC is "an accredited institution of higher learning in Mexico," and, in nearly identical language, [REDACTED] states that EIC is "an accredited institute of higher learning in Mexico." The record contains no evidence corroborating the professors' views of the academic status of EIC or otherwise refuting the e-Val Reports finding that EIC is an institution dispensing a vocational school degree, rather than an "institute" or "institution" of higher learning.

The opinions of [REDACTED] and [REDACTED] are also materially inconsistent with the e-Val Reports opinion with regard to the issue of the U.S. equivalency of the beneficiary's formal training or education at EIC. According to e-Val Reports, the beneficiary's EIC education is equivalent to "graduation from a vocational high school in the United States." However, both [REDACTED] evaluation and [REDACTED] include statements indicative of an opinion that the EIC education was above the vocational high school level determined by e-Val Reports. [REDACTED] (at page 1 of his evaluation) states:

The courses completed and the number of credit hours earned, indicate that [the beneficiary] satisfied requirements substantially similar to those required toward the completion of academic coursework leading towards a Bachelor's degree from an accredited institution of higher education in the United States.

In language almost identical to [REDACTED] (at page 2 of his evaluation) states:

The courses completed and the number of credit hours earned, indicate that [the beneficiary] satisfied requirements substantially similar to those required toward the completion of *one year*

*of academic studies leading towards a Bachelor's degree from an accredited institution of higher education in the United States.* [Italics added to highlight wording that differs from ██████████]<sup>2</sup>

In light of the above facts, if ██████████ and ██████████ evaluations had qualified for consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) along with the e-Val Reports evaluation - and they do not - the evidence of record would not indicate where the truth lies with regard to the U.S. educational equivalency of the beneficiary's foreign education. Because the petitioner has not resolved the evaluations' material differences about the educational equivalency of the beneficiary's formal education, the AAO would discount the conclusions of all three evaluations on this issue, in accordance with the evidentiary principles acknowledged in *Matter of Ho*, 19 I&N Dec. 582, 591-92; *Matter of Sea, Inc.*, 19 I&N Dec. 817; and *Matter of Caron International*, 19 I&N Dec. 791. It is within the AAO's discretion to discount opinions submitted by a petitioner on the same issue if those opinions are materially inconsistent, and the petitioner fails to resolve that inconsistency by independent objective evidence that resolves the inconsistency and points to where the truth lies.

The lack of a definite conclusion is an additional reason for discounting the evaluations of ██████████ and ██████████ about the U.S. equivalency of the beneficiary's EIC courses. The meaning of their conclusions is unclear: from ██████████ "[The beneficiary] satisfied requirements substantially similar to those required toward the completion of academic coursework leading towards a Bachelor's degree"; from ██████████ "[The beneficiary] satisfied requirements substantially similar to those required toward the completion of one year of academic studies leading towards a Bachelor's degree." ██████████ does not define the U.S. college-level value of the "substantially similar requirements" that have been satisfied "leading towards" a U.S.-equivalent bachelor's degree; and ██████████ does not define the U.S. college-level value of the "substantially similar requirements" that have been satisfied "toward the completion of one year of studies leading towards" a bachelor's degree. Neither conclusion quantifies the EIC courses as a certain number of U.S.-equivalent academic credits or in terms of U.S. college academic years. For this reason also, the conclusions of these two professors are not meaningful or significant evidence of the U.S. college-level equivalency of the EIC courses.

The AAO does not accept counsel's testimony (at page 3 of his brief) about the content of the EIC courses and their rigor relative to U.S. high school courses. The AAO also does not accept counsel's explanation of error in the educational analysis of one of its own experts, e-Val Reports. The evidence of record does not establish counsel as an evaluation service specializing in foreign educational credentials, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Furthermore, the record does not contain evidence that substantiates counsel's opinions. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence of record, therefore, does not establish that the beneficiary's foreign education exceeds "the equivalent of graduation from a vocational high school in the United States," and there is no evidence equating that vocational education to U.S. college-level courses.

#### *All Three Evaluations of Work Experience Discounted*

The AAO discounts all three of the evaluations of work experience. They do not qualify for consideration under

<sup>2</sup> Counsel mistakenly asserts (brief, at page 4) that ██████████ states that the beneficiary's EIC education "is equivalent to one year of academic studies." As seen here, ██████████ actually states that the EIC studies "were substantially similar to those required *toward the completion of*" one year of academic studies. [Italics added.]

the pertinent regulation. Therefore, they merit no evidentiary weight.

The criterion on expert evaluation of work experience, 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), requires that the person issuing the evaluation be “an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience.” None of the evaluators meet this threshold.

The e-Val Reports evaluation document does not assert that its credential evaluator, [REDACTED], is an official within the meaning of this criterion. The document indicates that the evaluator was formerly an assistant director of international admissions, but that he does not currently hold any position with a college or university.

Neither [REDACTED] evaluation report nor any other evidence of record establishes that [REDACTED] has the credit-granting authority required by this criterion. [REDACTED] lists current and past academic positions held by him, and he states:

[B]ecause of the positions I have held and hold at the above-mentioned universities, I have the authority to evaluate whether the school is to grant college[-]level credit for training, and/or courses taken at other U.S. or international universities.

Close attention to [REDACTED] language reveals that he is not actually speaking of the type of college-credit addressed by the regulation, which is credit for a person’s “training and/or work experience.” He speaks only about credit granted for university training or coursework (“credit for training, and/or courses taken at other U.S. or international universities”), neither of which is within the scope of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Furthermore, there is no evidence of record, such as a letter of endorsement from a dean or provost of a pertinent institution of higher learning, to substantiate that [REDACTED] is an official within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

With regard to [REDACTED], counsel mischaracterizes the evidence of record by asserting (at page 3 of his brief) that this professor is “an individual with authority to grant college-level credit for training and/or experience in the specialty which has a program for granting such credit based on an individual’s training and/or work experience.” In contrast to counsel’s assertion, [REDACTED] who presents his evaluation on letterhead of the State University of New York at Buffalo, does not assert that he has the college-credit granting authority required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). He asserts that he holds positions at three universities, but he does not specify any authority vested in him by any of those institutions:<sup>3</sup>

I am qualified to comment on the work experience of this candidate because of the positions [I] have held and currently hold at the State University of New York at Buffalo, the University of Oregon, and Florida International University. At the above-mentioned institutions, I have served as an Assistant Professor and an Associate Professor of Accounting.

Furthermore, the letter endorsing [REDACTED], submitted by the Chair of the Department of Accounting, School of Management at the State University of New York at Buffalo, indicates that [REDACTED] authority with regard to work experience does not exceed the “the authority to waive course requirements.” This is not “the authority to grant college-level credit” that 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) requires. Also, regardless of counsel’s assertion, the record contains no evidence that the State University of New York at Buffalo has a program for granting college-level credit in accounting on the basis of work experience. As noted earlier, going on record without supporting documentary evidence is not sufficient for purposes of meeting the

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<sup>3</sup> According to his resume, submitted with the evaluation, [REDACTED] was employed only by one of the three universities, the State University of New York at Buffalo, when he issued his evaluation.

burden of proof in these proceedings, *Matter of Soffici*, 22 I&N Dec. 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190), and assertions of counsel that are not supported by documentation do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506.

In summary, the total effect of the three evaluations of the beneficiary's education and work experience is to establish that the beneficiary has achieved the equivalent of a U.S. vocational high school's degree in accounting. The AAO recognizes only the e-Val Reports evaluation of the beneficiary's EIC coursework as comporting with the 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) requirement that evaluations of foreign education be rendered by "a reliable credentials evaluation service which specializes in evaluating foreign credentials." The AAO discounts all three evaluations of the beneficiary's work experience, because the evidence does not establish the evaluators as officials recognized by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as qualified to evaluate the U.S. educational equivalent of work experience. There is no merit to counsel's argument to the effect that the cumulative weight of the evaluations is persuasive.

The petitioner also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The provisions at this section of the H-1B regulations allow for a CIS determination that the beneficiary is qualified to serve in a proffered specialty occupation position because he or she has accumulated three years of education, specialized training, and/or work experience for each year of college-level training the alien lacks. This provision establishes a multi-faceted burden of proof, which the petitioner has not met:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [3] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;<sup>4</sup>
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

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<sup>4</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As earlier discussed, the only creditable evidence of the academic value of the beneficiary's education or training is the e-Val Reports opinion that the beneficiary's coursework at EIC is the equivalent of graduation from a U.S. vocational high school. As this evaluation does not equate the beneficiary's EIC coursework to any U.S. college credits, the AAO determined not to count them as education or training towards a U.S. college degree under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). This leaves only the beneficiary's training and work experience in previous jobs.

The evidence of the beneficiary's work experience consists of generalized descriptions provided in his resume and two letters from each of these former employers: (1) Ferre Vidrios "San Jose" (FR"SJ"); (2) Impressos y Atriculos de Publiciad (IMAP); (3) C.P. Ruben Ortiz Lemus; and (4) Restaurant Los Canastos.

The beneficiary's resume has little intrinsic value: its evidentiary weight does not exceed the cumulative weight of whatever corroborative information that the listed employers have provided. As evident in the discussion below, the employers' letters are confined to generalized descriptions of the beneficiary's work, and they do not establish that he was at any time engaged in the theoretical and practical application of specialized accounting knowledge that would be attained only by at least a bachelor's degree or its equivalent in accounting or a related field.

The AAO will only address the more recent of the two letters submitted by each employer, since these letters are more detailed than the letters initially submitted.

According to the FR"SJ" letter, the beneficiary worked as an accounting assistant for that firm from April 1986 to December 1988. The letter provides this information about the beneficiary's work:

From April 1986 to December 1986 he worked in the position of cashier. From January 1987 to December 1987 he was in charge of counting and recording daily sales. He also was in charge of investigating any errors and did some filing. From January 1988 to September 1988 he was in charge of preparing all reports such as[:] sales, company expenses, and payroll expenses to be forwarded to the accountant to prepare the financial reports, on a monthly basis.

The letter from the general director of IMAP attests that the beneficiary "worked as an Accountant in a very efficient manner" from November 1988 to May 1991, "maintaining our accounts, handling active and passive accounts, preparing payroll costs and coordinating with other accountants the preparation of financial data." This letter also states that the beneficiary "reported to [REDACTED] who was our licensed accountant, license No. C.P.[.] 285781 and who was in charge of preparing and filing our annual Income Taxes."

[REDACTED] letter contains these comments about the beneficiary's work "in the position of Accountant" from June 1991 to December 1995:

[A]s part of his job he gathered clients' financial data, payroll, advised clients on tax and performed bank reconciliation.

He displayed extensive knowledge in matters related to this profession. Overall, we recognize his extensive knowledge as accountant. Additionally, he showed good client relations. Pointing out the experience he has gained in our profession is very important.

The general manager of Restaurant Los Canastos writes that the beneficiary “worked for this company as an Accountant from January 1996 to March 2000,” that “[h]is work included preparation of monthly financial data, daily office activities, expense budgeting, payroll preparation, taxes and analysis of operations.”

As evident in the above review of the employers’ letters, the documentation about the beneficiary’s experience is skeletal. The letters provide insufficient detail to satisfy any of the multiple requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The employers’ letters have not clearly demonstrated, as the regulation requires in the context of this particular proceeding, that the alien’s training and/or work experience included the theoretical and practical application of specialized accounting knowledge at least equivalent to that attained by a U.S. bachelor’s degree in accounting or a related specialty.

From the limited information provided in the letters it is impossible to determine that the beneficiary at any time was trained at and/or applied a level of accounting knowledge above that required in non-specialty accounting occupations such as bookkeeper, full-charge bookkeeper, accounting clerk, or auditing clerk, for which the *Handbook* indicates no need for a bachelor’s degree level of specialized knowledge.

None of the employers’ letters provides any details about training in accounting that the beneficiary may have received. Therefore, the AAO focuses exclusively upon work experience, that is, what the former employers’ letters establish about the level of accounting knowledge that the beneficiary applied in his previous jobs.

The AAO has determined that the evidence in the previous employers’ letters has not met the first prong of the petitioner’s burden under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), that is, to clearly demonstrate that the beneficiary theoretically and practically applied specialized accounting knowledge required by the specialty occupation.

Not all accounting functions involve the application of a bachelor’s degree level of knowledge in accounting. The 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438) establish that many accounting positions, such as bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accountants, involve the knowledge and application of accounting principles, but not on a level attained by at least a bachelor’s degree in accounting or a related field.<sup>5</sup>

The fact that three of the firms identified the beneficiary as an accountant is not persuasive evidence that he had ever been trained and/or worked at the requisite level of specialized accounting knowledge. To determine the level of specialized knowledge in which a beneficiary was trained and/or applied in the performance of a position, CIS does not simply rely on the position titles assigned by former employers. The decisive factor in an 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) determination of a beneficiary’s level of specialized knowledge attained by training and/or work experience is what the former employers detail in the record about specific training they provided and/or the specific work that the beneficiary performed in the execution of his duties. *Cf.*

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<sup>5</sup> The Internet site for the American Council for Accountancy and Taxation (ACAT), the professional organization that provides the credential Accredited Business Accountant®/Accredited Business Advisor®, referenced at page 74 of the *Handbook*, indicates that a person may advertise and work as an Accredited Business Accountant® without a bachelor’s degree in accounting or a related specialty.

*Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000) (The critical element for a CIS 8 C.F.R. § 214.2(h)(4)(iii)(A) determination of whether a position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree, is not the title of the position or an employer's self-imposed standards, but what the record establishes about the position's specific performance requirements.)

The cashier and accounting assistant work that FR“SJ” describes are those of a financial clerk and clearly do not involve the application of the requisite level of accounting knowledge.

The general director of IMAP attested that the beneficiary “worked as an Accountant in a very efficient manner,” but provided no factual basis for that assessment other than the generalized statement that the beneficiary’s work was “maintaining our accounts, handling active and passive accounts, preparing payroll costs and coordinating with other accountants the preparation of financial data.” Neither the number of accounts, their specific types, the range and volume of transactions upon which the beneficiary worked, nor the operations performed by the beneficiary are described. There are no details about the specific work that the beneficiary performed either in the preparation of payroll costs or in coordinating with other accountants on financial data. The financial data is not described. No concrete information is provided about accounting theories and practices involved in any of the beneficiary’s work. The AAO draws no inferences about the level of the beneficiary’s accounting work from the statements that the beneficiary coordinated with “other accountants” and reported to IMAP’s “licensed accountant” who was “in charge of preparing and filing our annual Income Taxes.” Not only are the descriptions of the work, including coordination duties, too sparse for such inferences, but also there is no evidence of record as to the level of education that the aforementioned “accountants” have achieved.

██████████ likewise provided no concrete information to clearly demonstrate the level of accounting knowledge that the beneficiary applied working “in the position of Accountant.” ██████████ provides no details about the level of accounting services that his firm provides. He states that the beneficiary “gathered clients’ financial data, payroll, advised clients on tax and performed bank reconciliation.” However, ██████████ does not identify the types and number of clients with whom the beneficiary worked. Whether they were low-income individuals or complex corporations is not disclosed. ██████████ does not describe the types of financial data, payroll matters, and income tax matters upon which the beneficiary worked. No details are provided about whatever accounting operations were involved with “bank reconciliation.” In the absence of explanatory details about the accounting knowledge that the beneficiary applied, ██████████ statements that the beneficiary “displayed extensive knowledge in matters related to his profession” and that “[w]e recognize his extensive knowledge of accounting” are inconsequential to the outcome of this proceeding. The AAO draws no inferences about the level of the beneficiary’s accounting work from the fact that ██████████ identifies himself as “C.P.” with a professional license, and that the beneficiary’s resume refers to ██████████ as a Certified Public Accountant. There is no evidence in the record that establishes that ██████████ holds the equivalent of at least a U.S. bachelor’s degree in accounting, or that he has qualifications equivalent to a U.S. Certified Public Accountant. Regardless of ██████████ educational credentials, the skeletal information about the beneficiary’s work does not establish the level of accounting knowledge that the beneficiary applied in his work.

The information provided by the general manager of Restaurant Los Canastos is too generalized to establish the level of accounting knowledge that the beneficiary applied in his work for that firm. There is no information about the size of the restaurant, the number of its employees, its annual income, and its finances.

The generalized statement that the beneficiary worked “as an Accountant” for this restaurant is not evidence of the level of accounting knowledge that the beneficiary applied. The general manager’s statement that the beneficiary’s work “included preparation of monthly financial data, daily office activities, expense budgeting, payroll preparation, taxes and analysis of operations” is noted. However, the statement fails to indicate the level of the accounting knowledge applied by the beneficiary, as the statement includes no information about the types of restaurant financial data that the beneficiary prepared; the accounting operations that the beneficiary applied in the preparation of that data; the particular types of expenses involved in the expense budgeting; the accounting concepts and practices that the beneficiary applied in expense budgeting; the extent of the restaurant’s payroll and the work that the beneficiary performed in payroll preparation; the nature of the taxes that the beneficiary prepared and any specialized accounting knowledge involved in the tax preparation; the aspects of restaurant operations that the beneficiary analyzed; and any specialized accounting or financial knowledge that the beneficiary applied in “analysis of operations.”

The employers who referred to the beneficiary’s former job as accountant did not state that the beneficiary’s work had involved the theoretical and practical application of accounting at the level attained by a U.S. bachelor’s degree or its equivalent in accounting or a related specialty. Those former employers also did not provide evidence to substantiate the proposition that, as required by the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), “the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation.” The former employers did not identify specific accounting concepts and practices that the beneficiary had applied, nor did they articulate any relationship between specific work performed by the beneficiary and particular types of accounting knowledge attained at the bachelor’s degree level in accounting or a related field.

The petitioner is not required to show that all of the petitioner’s jobs offered for evaluation under the three-for-one rule of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) required a bachelor’s degree. However, as that regulation implements 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), it requires that the petitioner establish that the beneficiary’s cumulative work experience is “equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation.” This the petitioner has not done.

Next, the petitioner has not satisfied the second evidentiary prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), because it has not clearly demonstrated that the alien’s experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The record does not establish the degree or degree-equivalency of the people with whom the beneficiary worked. Also, the former employers provide no meaningful information about the extent to which the beneficiary worked with other employees.

Finally, the petitioner has not satisfied the third evidentiary prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), as the record includes no evidence that clearly demonstrated that the beneficiary has achieved recognition of expertise in the specialty evidenced by at least one type of documentation such as outlined in subparagraphs (i), through (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The evidence of record does not establish any of the employers as recognized authorities within the meaning of the H-1B regulations, and their letters do not contain the information that CIS requires from recognized authorities. See footnote 4. Consequently, none of the employers’ statements qualify as recognition of the beneficiary’s expertise in accounting under subparagraph (i). There is no evidence of the beneficiary’s membership in a recognized foreign or United States association or society in the specialty occupation, so as

to satisfy subparagraph (ii). The record contains no “[p]ublished material by or about the alien in professional publications, trade journals, books, or major newspapers” to satisfy subparagraph (iii). The petitioner has not satisfied subparagraph (iv) by the virtue of the beneficiary holding a license or registration to practice the specialty occupation in a foreign country. The record bears no “achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation” to satisfy subparagraph (v).

Because the petitioner has not satisfied the beneficiary criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the appeal will be dismissed and the petition will be denied. However, because the petitioner has established that the proffered position meets the specialty occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), that portion of the director’s November 3, 2003 decision that determined the contrary will be withdrawn.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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