

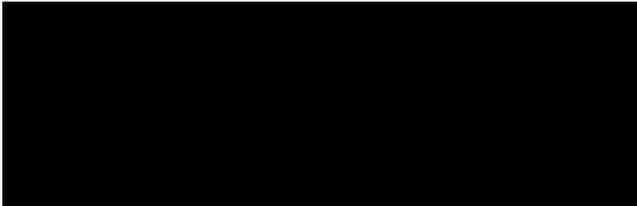
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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 02 223 50185 Office: CALIFORNIA SERVICE CENTER Date: **OCT 17 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, Director  
Administrative Appeals Office

**DISCUSSION:** The director 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 is a travel agency that seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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, finding that the proposed position was not a specialty occupation and that the beneficiary was unqualified to perform the duties of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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:

- (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 proposed position.

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

The petitioner is a travel agency with 400 employees, 47 branch offices, and gross income of \$3,000,000. It proposes to hire the beneficiary as an accountant. In the letter of support that accompanied the initial filing, the president of the petitioning company stated that she needed an accountant "to organize and maintain our financial accounts in the San Jose office."

The petitioner also stated the following:

It is vitally important that we maintain an in-house accountant to provide these accounting services due to the large volume of accounts that we process each day. This individual will prepare the quarterly and yearly tax reports, payroll statements and deductions, monthly profit and loss reports[,] and financial statements. She will direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments[,] and general ledgers. [The beneficiary] will prepare balance sheets reflecting [the] company's assets, liabilities[,] and capital. She will perform audits and prepare reports.

The director issued a request for evidence, asking for additional evidence to support the contention that the petitioner required someone with a bachelor's degree to perform these duties. Specifically, the director asked the petitioner to explain "why the work done requires the services of a person who has a college degree or its equivalent in the occupational field."

In response, counsel offered an expanded list of job duties:

Due to the large volume of accounts that the company maintains (over \$3 million/year), it is vital to maintain the services of an in-house accountant. This individual will prepare, analyze, and verify[y] the quarterly and yearly tax returns, perform audits, prepare payroll statements and deductions, monthly expense reports[,] and financial statements.

Will handle the preparation of the company's general ledger, monthly and yearly financial reports, monitor information systems, compile and analyze financial information to prepare entries into the accounts [sic]. Will detail the company assets, liabilities, and capital and provide tax planning advice [sic]. Will review finances and current taxes and devise a long range tax plan and recommend ways to reduce taxes [sic]. Will advise and recommend to the petitioner regarding tax strategies, advantages and disadvantages of certain business decisions or transactions [sic]. Will also be responsible for devising a financial system that will help the company establish a more systematic and smooth inventory process [sic].

Moreover, will be preparing the company's balance sheets, profit and loss statements, necessary checks, payroll, tax remittances, and other reports to summarize the company's current and projected financial position [sic]. Likewise, she will modify and coordinate implementation of the accounting and accounting control procedures. Will monitor the company's budgeting, performance evaluation, costs and assets management [sic]. Also, she will oversee the preparation of the company's letter correspondence with the existing and prospective customers regarding transactions, financing[,] and billing statements.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation.

The AAO agrees with counsel that, as a general matter, accountant positions normally qualify for classification as specialty occupations. However, the AAO disagrees with counsel's assertion that the proposed position is actually that of an accountant.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proposed position. The *Handbook* sets forth the following description of the duties of a management accountant:

*Management accountants* – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The *Handbook* also states that, increasingly, accountants “not only provide clients with accounting and tax help, but also help them develop personal budgets, manage assets and investments, plan for retirement, and recognize and reduce exposure to risks.”

By comparison, the *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, 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.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable . . . Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures. These workers post transactions in journals and on computer files and update the files when needed . . . .

*Auditing clerks* verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded . . . .

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases . . . . The widespread use of computers . . . has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing.

According to the *Handbook*, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions. The *Handbook* does indicate that many individuals with four-year degrees accept bookkeeping and accounting clerk positions in order to enter the field or a particular company with the goal of being promoted to professional or managerial positions. The *Handbook* also indicates that many graduates of junior colleges and business and correspondence schools can obtain junior accounting positions.

As discussed in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an

associate's degree in business or accounting. According to the website of Skyline College, a community college located in San Mateo, California,<sup>1</sup> an associate's degree in business or accounting would involve learning the fundamentals of financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the generally accepted accounting procedures (GAAP), forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree would provide knowledge about accounting techniques that would serve the needs of management and facilitate decision-making.

The *Handbook* describes the occupation of a tax preparer as follows:

Prepare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant.

The *Handbook* indicates that the normal educational requirement for a tax preparer is "moderate-term on-the-job training."

A petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 (5th Cir. 2000). 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.<sup>2</sup> 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 menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record in this case does not support the assertion that the duties of the proposed position require a bachelor's degree in accounting or a related specialty. While this position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent. The proposed position lacks crucial characteristics of a management accounting position, as described in the *Handbook*. For example, the *Handbook* indicates that management accountants are involved in strategic planning or new-product development, usually as part of an executive team, and prepare financial reports for nonmanagement groups like stockholders, creditors, regulatory agencies, and tax authorities. Such functions are not reflected in the petitioner's description of the proposed position's duties. The scope of the proposed position lacks both the breadth and the depth of a management accounting position.

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<sup>1</sup> See <http://www.skylinecollege.net>.

<sup>2</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

As noted previously, the petitioner is a travel agency with 400 employees, 47 branch offices, and a gross annual income of \$3,000,000. Though the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations certainly have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. In the instant case, the AAO notes that the beneficiary will not be working as an accountant in the petitioner's corporate office in Dallas, Texas. Rather, the beneficiary will serve as an "accountant" in its San Jose, California branch office. When the petition was initially filed, the petitioner stated that it was in need "of an accountant to organize and maintain our financial accounts in the San Jose office." As such, the petitioner made a critical distinction in the proposed role to be played by the beneficiary.

Therefore, when the AAO analyzes the income level and scale of operations, it must analyze not the income level and scale of operations of the petitioner as a whole, but rather those of its branch office in San Jose.

According to the organizational chart submitted with the RFE response, the San Jose office appears to have 13 employees (14 if the beneficiary is included). No financial information regarding the San Jose branch office has been presented -- the tax returns submitted by the petitioner pertain to the company as a whole. Since the beneficiary would be working in the San Jose branch office only, these tax returns are of little probative value.

As such, the AAO concludes that the responsibilities associated with the duties of the proposed position differ considerably from the responsibilities associated with an annual income in the millions, or tens of millions, as well as from the responsibilities of performing accounting work for multiple clients. The record does not support a finding that the petitioner will employ the beneficiary in an accounting position.

Rather, the AAO concludes that the proposed position will actually be that of an experienced bookkeeping, accounting, or auditing clerk. Many of the duties -- including compiling financial information and preparing reports, balance sheets, and monthly profit and loss statements, detailing the company's assets, liabilities, and capital, and preparing the company's payroll -- accord with the *Handbook's* description of bookkeeping, accounting, and auditing clerks. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping, accounting, or auditing clerk positions, though employers often require a two-year associate's degree in business or accounting. Tax preparers may prepare tax returns, and they are not required to possess degrees, either. Considering the nature of the petitioner's business, the scale of its operations, and the duties of the proposed position, the AAO concludes that the position is that of a bookkeeping, accounting, or auditing clerk. Since these positions do not require a baccalaureate degree in accounting or a related specialty, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

On appeal, counsel submits several job postings to bolster his assertion that a bachelor's degree or its equivalent is normally the minimum entry requirement for a career as an accountant. However, as noted previously, the AAO does not accept the contention that the proposed position is actually that of an accountant.

Even if the AAO were to accept counsel's assertion that the proposed position is that of an accountant, these job postings would not satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as counsel has failed to

consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these four postings are from organizations similar in size or scope of operations to the petitioner, a travel agency. Ultra Stores, Inc. is a jewelry store chain. Novartis Medical Nutrition is a nutrition company. Rogerson Kratos is an avionics display manufacturer. The unidentified company advertising through Monster.com is an information technology firm. Rent-A-Center is a rent-to-own business. The unidentified company advertising through Kelly Services is a credit card company. No information regarding Thomson Gale is submitted.

The only job posting that may be considered to be from a similar organization is from Pro Travel, which appears to be a travel agency. However, this job posting actually undermines counsel's contention that a bachelor's degree is required, as no such qualification is listed in the posting.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as the duties of the proposed position are similar to those of bookkeepers, auditing clerks, accounting clerks, or tax preparers, which do not require a four-year degree.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally 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. However, no evidence has been submitted to demonstrate that the proposed position qualifies under this criterion.

In order to establish eligibility under this criterion, the petitioner must demonstrate that it normally hires individuals with a bachelor's degree or its equivalent for the position; evidence to support this assertion must be presented. If the petitioner has never before filled the position, then it cannot qualify under this criterion. In this case, it appears that this is the first time the petitioner has hired anyone for the proposed position in the San Jose office.

While counsel asserts on appeal that the petitioner hires only accountants with degrees at its Dallas headquarters, no evidence to support this assertion is presented. Moreover, there has been no demonstration that the accountants at the petitioner's Dallas headquarters will be performing the same duties as those of the proposed position.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously discussed, the AAO is not persuaded by the evidence of record, including the nature and scale of the petitioner's business operations, that the duties of the position exceed the occupational scope of an experienced bookkeeper, auditing clerk, or accounting clerk, positions which do not require specialized knowledge at a baccalaureate level. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied.

The second issue to be discussed is whether the beneficiary is qualified to perform the duties of a specialty occupation. The AAO finds that she does not. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so she does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Counsel submitted an evaluation of education and experience from e-ValReports, dated September 20, 2001. While the e-ValReports evaluator determined that the combination of the beneficiary's foreign education and experience are equivalent to a bachelor's degree in business administration with a minor in accounting, this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In order to qualify under this criterion, the evaluation must be based solely upon the beneficiary's foreign degree; a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 14.2(h)(4)(iii)(D)(3).

As such, the AAO may only consider the portion of this evaluation that pertains to the beneficiary's foreign education. Based upon its evaluation of the beneficiary's foreign education alone, the e-ValReports evaluator determined that the beneficiary's foreign education is equivalent to a bachelor's degree in business administration from an accredited college in the United States.

In order to qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary's degree must be in the field required by the specialty. The *Handbook* indicates that most accountant positions require at least a bachelor's degree in accounting or a related field. Thus, the beneficiary's bachelor's degree in business administration cannot qualify under this criterion. Further, the beneficiary's degree, without further specialization, does not qualify her to perform the duties of a specialty occupation. In *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988), the Commissioner held that a petitioner must demonstrate that a proposed position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation.<sup>3</sup> As the beneficiary possesses a bachelor's degree in business administration with no further specialization, she cannot qualify under this criterion.

The record does not demonstrate, nor has counsel contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by 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;

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<sup>3</sup> Although the e-ValReport evaluation determined that the beneficiary has the equivalent of a minor in accounting, its basis for making this determination was her work experience. As noted above, a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 14.2(h)(4)(iii)(D)(3).

- (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;
- (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.

The beneficiary's combination of education and previous experience do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Although the e-ValReports evaluation does state that the combination of the beneficiary's education and experience is equivalent to a bachelor's degree in business administration with a minor in accounting, there has been no showing that the e-ValReports evaluator has the authority to grant college-level credit for training and/or experience in this field at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. As noted previously, a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the e-ValReports evaluation of education and work experience cannot be accepted for the purpose of establishing the beneficiary's educational credentials.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because the e-ValReports evaluation was based upon both education and experience. In order to qualify under this criterion, the e-ValReports evaluation would have to have been based upon foreign educational credentials alone. The AAO may accept the portion of the evaluation based upon the beneficiary's foreign education alone, which indicates that it is equivalent to a bachelor's degree in business administration. As discussed previously, this degree is insufficient under the Handbook for accountants, and *Matter of Michael Hertz Associates* precludes the beneficiary from qualifying to perform the duties of a specialty occupation with a bachelor's degree in business administration with no further specialization.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; 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 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
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Counsel's submission traces the beneficiary's work experience from July 1989 onward, for a period of twelve years and six months (the beneficiary entered H-1B status in January 2002). The AAO's next line of inquiry is therefore to determine whether this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in accounting, and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Counsel submits a letter from Philippine Airlines, the beneficiary's employer in the Philippines. This letter states that the beneficiary worked as an office clerk, a secretary, a project analyst, and an administrative assistant for this company. However, this documentation does not establish that the work experience included the theoretical and practical application of specialty knowledge required by accountants, that it was gained while working with peers, supervisors, or subordinates who held a degree in accounting, or that the beneficiary has achieved recognition of expertise.

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

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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).

Therefore, even if the AAO were to accept counsel's assertion that the proposed position is in fact a specialty occupation, the petition would still be denied, as the beneficiary does not qualify to perform services in a specialty occupation.

Counsel asserts the following on appeal:

Finally, it must be noted that [the beneficiary's] prior H-1B petition for the position of accountant was approved. Therefore, USCIS has already found [the beneficiary] sufficiently qualified for the position of accountant. Absent any alterations in the beneficiary's prior education, training, and experience, the USCIS may not reassess the qualifications of the beneficiary for the same position.

However, counsel's assertion fails, as each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, that approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition on behalf of this beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petitioner has not established that the proposed position qualifies for classification as a specialty occupation, nor has the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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.

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