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U.S. Citizenship
and Immigration
Services



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FILE: WAC 04 086 50611 Office: CALIFORNIA SERVICE CENTER Date: **AUG 14 2006**

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:



PUBLIC COPY

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: On February 4, 2004, the petitioner filed a Form I-129 seeking to employ the beneficiary as an accountant 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 of the California Service Center denied the petition on April 21, 2004 and the petitioner appealed his decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on August 19, 2005. Subsequently, the petitioner filed a complaint in the U.S. District Court for the Central District of California seeking declaratory relief requiring Citizenship and Immigration Services (CIS) to approve the beneficiary's H-1B petition. *Up Date Fabric II Corp. and Rodelia Gonzales v. U.S. Citizenship and Immigration Services and U.S. Department of Homeland Security*, CV-06-01411 RSWL (filed March 7, 2006). The AAO, on its own motion, reopened the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and issued a request for evidence. The petitioner responded to the AAO's request on August 8, 2006. The AAO's prior decision will be affirmed. The petition will be denied.

The petitioner is an importer and exporter of printed fabrics, with six employees. It seeks to employ the beneficiary as an accountant 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 based on his determination that the record failed to establish the proffered position as a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s January 19, 2004 letter in support of the petition; a March 26, 2004 letter from the petitioner submitted by counsel in response to the director’s request for evidence; and the petitioner’s response to the May 16, 2006 request for evidence issued by the AAO. As initially stated by the petitioner, the duties of the proffered position would require the beneficiary to:

- Prepare cash flow projections, including the amount of cash expenditures and how these expenses will be applied; and prepare budgetary projections, requiring an analysis of income, expenses and capital expenditures and the preparation of sales, costing and administrative budgeting, and the analysis of standard and variable costs;
- Engage in inventory control analysis to allow the petitioner to better ascertain inventoried items presently in stock and to better anticipate future inventories;

- Analyze and prepare financial statements, including an explanation of variances and potential tax consequences and recommendations as to how to rectify discrepancies; prepare profit and loss statements and balance sheets;
- Establish and modify a computerized accounting software system to meet the petitioner's specific needs;
- Research and explain new federal and state tax policies and their consequences, using new tax cuts for the petitioner's benefit;
- Assist in IRS/state tax audits, negotiating and settling any tax liabilities, and documenting and explaining the negotiation and settlement of past/present liability accounts;
- Conduct audits of the petitioner's annual, quarterly and periodic financial statements and determine whether the statements are fairly stated in accordance with generally accepted accounting principles;
- Conduct a compliance audit of the petitioner's loans, adherence to tax law, and contractual agreements to determine whether requirements have been met;
- Conduct an operational audit to determine whether the petitioner's business activities are functioning efficiently, effectively, economically and optimally;
- Establish a system of quality control to ensure that the work being performed by the petitioner meets applicable professional standards, regulatory requirements and general standards of quality; that a particular client or potential client is financially viable; and to ensure that the petitioner's daily operations are free of conflicts of interest and that management does not misrepresent facts or subordinate proper judgment to other employees; and
- Investigate any suspected fraudulent operation within the company and set up a "guideline of prohibitive activities."

In its May 16, 2006 request for evidence, the AAO noted that the above description of the proffered position outlined the typical duties of accountants, rather than the specific tasks to be performed by the beneficiary in relation to the petitioner's import/export business. It further identified the above duties as being virtually identical to those listed for accountant positions in two unrelated H-1B cases, which are also represented by counsel. Accordingly, the AAO asked the petitioner to provide a detailed description of the tasks to be performed by the beneficiary in relation to its business operations. The petitioner responded as follows:

We cannot meet this request because, in this particular position, the job duties will vary from day-to-day depending upon the type of accounting work that is needed at any moment. However, we can summarize the type of overall duties that will be expected of the Accountant who is to be employed at this company as it applies to our particular business. These duties will encompass the following: Instituting internal management reports including such aspects as preparing and developing cash flow projections, budgetary projections, Profit & Loss Statements, Balance Sheets, accounting software, financial statements and their complete analysis (whereby a complete review and comparison of the financial statements to the previously submitted budgetary reports is carried out and, upon completion, recommendations are made as to remedial procedures that will better enable revenues to be closer allied to projected income), as well as implementing internal control

procedures within our warehousing, production, sample room and financial departments. In given instances, the Accountant will additionally be required to [undertake] a comprehensive review of a prospective client's financial, accounting and tax-related records (i.e., P&Ls, tax returns, financial statements, Balance Sheets, budgetary documents, etc.) so as to assess our risks of selling fabric merchandise to the client within a wide range of potential payment plans.

As a further means of clarifying the duties to be performed by the beneficiary, the AAO also requested that the petitioner relate her proposed duties to those of its existing H-1B accountant, [REDACTED] described by counsel on appeal as a junior accountant. The AAO noted that [REDACTED] duties, as identified by counsel and the petitioner's organizational chart, were not those previously outlined by the petitioner in its H-1B filings on her behalf.

In its response to the AAO's request for evidence, the petitioner explains the altered nature of [REDACTED] accounting duties as the result of her decision to leave its employ. It states that at the time the instant petition was filed, [REDACTED] had indicated that she was leaving to be married. In light of her imminent departure, the petitioner asserts, it amended her duties to those described in the materials accompanying the organizational chart provided in its March 26, 2004 response to the director's request for evidence. To deal with [REDACTED] former accounting responsibilities until such time as the beneficiary could assume them, the petitioner states that it hired an outside accounting firm.

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

In his denial, the director found the duties described by the petitioner to reflect many of those performed by accountants, but determined that the petitioner did not have the type of business or the organizational complexity and scale to require the services of a full- or part-time accountant. While, as discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary in a position requiring a degreed accountant, it has reached its conclusions on grounds other than those relied upon by the director.

The AAO finds the director to have erred in concluding that the petitioner does not have the organizational complexity, nor operate the type of business that would require an accountant. The 2006-2007 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that

the “Nation’s firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time.”¹ It does not indicate that the accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems; software developers; government agencies or academic institutions, as stated by the director. Accordingly, a petitioner’s need for an accountant may not be discounted based on its type of business. Neither does the fact that a petitioner does not employ an accounting/bookkeeping staff establish that it would not employ a beneficiary to perform the duties of an accountant. The AAO withdraws the director’s findings in this regard.

The AAO now turns to the petitioner’s description of the proffered position, which, as stated in its request for evidence, reflects the employment of accountants, specifically that of management accountants. As discussed by the 2006-2007 edition of the *Handbook*, management accountants are individuals who:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.²

However, while the petitioner’s description of the duties of the proffered position generally reflects the work performed by management accountants, this similarity does not establish that the position would require the beneficiary to hold at least a baccalaureate degree in accounting or a related field. Not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish the proffered position as a specialty occupation. The question is not whether the position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor’s degree, or its equivalent, in accounting.

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

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.³

Further proof of the range of academic backgrounds that may prepare an individual for accounting

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at page 70.

² *Ibid.*

³ *Ibid.*, at page 72.

employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of “verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.⁴

To determine whether the proffered position would require the beneficiary to hold the minimum of a baccalaureate degree in accounting or a related field, or could be performed without such preparation, the AAO turns to the duties of the position, as described by the petitioner. This analysis, as previously noted, requires information regarding the actual responsibilities of a proffered position. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Without such information, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proffered position’s duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent. In the instant case, the petitioner, at the time of filing, provided a list of duties that the AAO found to describe the typical responsibilities of accountants, rather than the tasks that would be performed by the beneficiary in relation to the petitioner’s business operations. This deficiency in the evidence of record was noted in the AAO’s May 16, 2006 request for evidence, and the petitioner was provided with an opportunity to further describe the beneficiary’s duties. However, the petitioner’s response to the AAO’s request for evidence reiterates the same general list of responsibilities it provided at the time of filing. The record, therefore, fails to provide the detailed job description necessary to determine whether the proffered position of accountant would impose a baccalaureate degree requirement on the beneficiary.

More damaging to the petitioner’s ability to establish that it would employ the beneficiary as a degreed accountant is its description of [REDACTED]’s duties in the materials it submitted in response to the director’s request for evidence. In these materials, [REDACTED] is identified as one of two seemingly parallel accountant positions, with responsibility for maintaining accounting records in the form of preparing all invoices and checks, following up on collections of receivables and assisting in the preparation of tax returns. On appeal, counsel described her position as that of a “junior accountant,” employment that the *Handbook* reports may be performed with less than a baccalaureate degree.

In its response to the AAO’s request for evidence, the petitioner attempts to distinguish the duties it has stated the beneficiary would undertake from those it has described as being performed by [REDACTED]. The petitioner’s explanation is not persuasive.

The petitioner states that, at the time it filed the instant petition, February 4, 2004, it was aware of [REDACTED]’s expected departure and had amended her duties. As noted in the AAO’s request for evidence, however, the H-1B extension request filed for [REDACTED] by the petitioner on June 28, 2004, four months after the instant

⁴ Information provided at <http://www.acatcredentials.org/index.html>. The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

petition was received by CIS, indicated no change in the accounting duties she would be performing. Moreover, neither the record nor a check of relevant CIS data bases indicates that the petitioner, at any time, filed an amended Form I-129 petition in connection with the change in [REDACTED] duties, as required by the regulation at 8 C.F.R. § 214.2(h)(2)(i)(E). A petitioner shall file an amended or new petition, with fee, with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. The AAO also finds the petitioner to have submitted no documentation to support its claim of having changed [REDACTED] job responsibilities, e.g., notices sent to [REDACTED] regarding the change in her duties or the reduction in pay that would logically have resulted. Going on record without supporting documentation is not sufficient to meet 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)).

The petitioner also asserts that, in light of [REDACTED] reduced responsibilities, it has employed the services of an accounting firm to perform the duties to be undertaken by the beneficiary. The petitioner has, however, submitted no documentation to support this claim, e.g., a contract or related business correspondence. Again, going on record without documentation to support the claim is insufficient to meet the burden of proof in these proceedings. *Matter of Soffici*.

Accordingly, the record fails to establish that the junior accounting duties the petitioner has described as being performed by [REDACTED] are the result of its amendment of her previous responsibilities or that the duties, it claims, she previously performed have been assigned to an outside accounting firm. Moreover, the petitioner's claims regarding the differences between the accounting duties of the proffered position and those performed by [REDACTED] are not consistent with its discussion of these positions in its response to the director's request for evidence.⁵

In its March 26, 2004 response to the director's request for evidence, the petitioner stated that it employed [REDACTED] as a part-time accountant but required the services of a second part-time accountant as a result of its rapid growth. The petitioner's letter did not distinguish between the duties performed by [REDACTED] and those that the beneficiary would assume, pointing to its federal tax returns for 2001 and 2002 as proof of its need for additional part-time accountant. The statements made by the petitioner on March 26, 2004 contradict its most recent assertions that at the time of filing it was seeking the beneficiary's services to assume accounting responsibilities that [REDACTED] was no longer performing. It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence. Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The organizational chart submitted by the petitioner in response to the director's request for evidence also fails to distinguish between the two accountant positions shown.

⁵ Although beyond the scope of this proceeding, the petitioner's description of [REDACTED] duties in its response to the director's request for evidence and its most recent response to the AAO indicate that it misstated [REDACTED] duties in the H-1B extension request (WAC 04 194 50837) it filed on her behalf on June 28, 2004.

Therefore, having provided no specific description of the duties to be performed by the beneficiary, the petitioner is unable to overcome the conclusion that the duties of the junior accounting position it has described as being performed by ██████████ would not also be the duties performed by the beneficiary. The record does not distinguish between the petitioner's two accounting positions and the petitioner has offered no evidence in its response to the AAO's request for evidence that indicates otherwise. Although the AAO notes the petitioner's submission of its 2002 tax records indicating gross annual income of \$5 million, it has not demonstrated that this level of income, in and of itself, would require it to employ a degreed accountant. Instead, as just noted, the evidence of record indicates that its accounting needs may be met through the services of a junior accountant. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO notes that, at the time of filing, the petitioner submitted material from the Department of Labor's *Occupational Information Network (O*Net)* published in the *Federal Register*. The material indicates that the occupation of accountant requires a baccalaureate degree. However, the *O*Net* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. Like the *Dictionary of Occupational Titles* that it replaced, the *O*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The education and training codes assigned to occupations by the *O*Net* do not indicate a degree requirement in a specific specialty, as required for classification as a specialty occupation. Moreover, the petitioner has not established that the proffered position is for a degreed accountant. Therefore, the *O*Net* material also fails to satisfy the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, the petitioner has submitted nine Internet job announcements for accountants, each showing a specific degree requirement for the position advertised. Having reviewed the advertisements, the AAO finds none to satisfy the requirements of the criterion's first prong.

The announcements do not describe organizations similar to the petitioner, a business that is involved in the import and export of printed fabrics. Instead, the listings are published by a medical center, a public accounting firm, an insurance/reinsurance business, a utilities conglomerate, a manufacturer and four organizations with unidentified business operations. The announcements also fail to describe employment that might be considered parallel to the proffered position. They either do not provide a meaningful description of the advertised position's duties or describe employment dissimilar to that which has been generally outlined by the petitioner. Accordingly, the Internet listings submitted by the petitioner do not establish that its degree requirement is the norm within its industry, in parallel positions among similar organizations, as required by the second criterion's first prong. Moreover, the petitioner's failure to provide a specific and detailed description of the proffered position's duties also precludes it from establishing the proffered position as parallel to any degreed positions within similar organizations in its industry.

To qualify the proffered position as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must demonstrate that the position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, the record contains two expert opinions submitted by counsel in response to the director's request for evidence – a March 19, 2004 letter from a professor in the Department of Accounting and Information Systems at California State University, Northridge and a March 17, 2004 statement from the head of a California accounting firm – both of which find that the proffered position may only be performed by a degreed accountant.

In its May 16, 2006 request for evidence, the AAO noted that it found neither opinion to establish the proffered position as a specialty occupation and offered the petitioner the opportunity to submit new or revised evaluations in support of the proffered position. The petitioner has, however, declined to offer additional evidence in this regard. As a result, the AAO will again review the two expert opinions in the record.

In her letter, the California State professor states that she has 20 years of experience as a professor in the field of accounting, is a Certified Public Accountant (CPA), has extensive accounting experience, and has worked with “hundreds of company Accountants representing both small and large firms.” While the AAO acknowledges the professor's accounting expertise, it does not find her letter to establish that the proffered position's complexity or unique nature requires the beneficiary to hold the minimum of a baccalaureate degree in a directly-related field.

The professor's opinion regarding the proffered position's degree requirement is based on the generalized outline of accounting duties provided in the petitioner's January 19, 2004 letter of support. However, as previously discussed, the position outlined by the petitioner in its letter describes the occupation of accountant rather than the duties to be performed by the beneficiary for the petitioner's export/import business. The professor did not note the presence of another degreed accountant on the petitioner's staff or comment upon what effect, if any, such a position might have on the duties of the proffered position. She did not indicate that she reviewed company tax records or considered the nature of the petitioner's business operations beyond the statement that it is an importer and exporter of printed fabrics. Neither did she identify any duties that, in relation to the petitioner's business, would require a degreed accountant rather than an associate degreed accountant who performs many of the same kinds of duties. Accordingly, the professor's conclusions regarding the proffered position are based on a list of responsibilities that do not offer a meaningful description of the beneficiary's duties. For this reason, her opinion is insufficient to establish a degree requirement for the proffered position. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept it or may give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The statement submitted by the head of the California accounting firm indicates that he, too, has based his opinion of the position on the petitioner's generalized description of its duties. Therefore, while the AAO again notes the accounting expertise possessed by this individual, it also finds his opinion to be of little evidentiary value in establishing the nature or complexity of the proffered position. *Matter of Caron International*. Where a petitioner has failed to provide a specific and detailed description of the proffered

position's duties, it cannot distinguish the position from similar but nondegreed employment based on its unique nature or complexity.

Moreover, as indicated in its request for evidence, the AAO finds a striking similarity between the writers' opinions in the instant case and those submitted under their signatures by another petitioner seeking a degreed accountant.⁶ In the case of the letter provided by the head of the California accounting firm, [REDACTED], his analysis of the proffered position in the instant case appears virtually identical to that provided in the letter he prepared in support of the other accounting position. The letters' similarities raise concerns regarding the extent to which the duties of the proffered position were reviewed by these writers. For this reason as well, the AAO will discount the expert opinions submitted by the petitioner. *Matter of Caron International*.

In response to the director's request for evidence, the petitioner indicated that it considered the two opinions just discussed to be evidence of an industry-wide degree requirement based on both experts' findings that it is "not unusual for a company such as [the petitioner's] to employ the services of an in-house and degreed Accountant." While the AAO notes that both opinions indicate that both large and small businesses employ accountants, these statements do not satisfy the requirements of the first prong, which requires evidence of a degree requirement in parallel positions among similar organizations. Nothing in the expert opinions states that the writers specifically reviewed the degree requirements for parallel accounting positions in similarly-sized export/import businesses, nor is there any documentation of such a review. Accordingly, the record does not demonstrate that the proffered position may be established as a specialty occupation under either of the prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific 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.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner, in response to the director's request for evidence, submitted copies of two Internet listings advertising the proffered position, both of which were published prior to the filing of the instant petition and one of which specifies a degree in a directly-related field, as required for classification as a specialty occupation. However, the petitioner's desire to employ a degreed accountant in the proffered position does not satisfy the requirements of the third criterion. Neither does its prior employment of [REDACTED], as claimed by counsel.

To meet the criterion's requirements, a petitioner must not only establish that it normally imposes a degree requirement for a proffered position, but also that the duties of the position require the theoretical and

⁶ WAC 04 210 51261. The AAO gave the petitioner an opportunity to respond to this adverse information in accordance with 8 C.F.R. § 103.2(b)(16)(i).

practical application of a body of highly specialized knowledge obtained through a baccalaureate degree or its equivalent. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). Were CIS limited solely to reviewing a petitioner's self-imposed degree requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a **baccalaureate or higher degree**. In the instant case, the petitioner's generalized listing of the proffered position's duties and its description of the lower-level accounting duties performed by [REDACTED] prevent it from demonstrating that the position would require the theoretical and practical application of accounting knowledge provided by a four-year degree in accounting or a related field. Further, the petitioner has been in business since 1990 and does not establish a history of normally requiring a degreed accountant for the position. Accordingly, the petitioner has not established the proffered position as a specialty occupation based on its normal hiring practices under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner is an importer/exporter of printed fabrics with high profit margins and is an industry that is not highly regulated such as insurance or health care. Nothing in the record establishes the complexity of the accounting duties in relation to its business such that a degree in accounting would be required to perform them. Although the expert opinions submitted by the petitioner both indicate that they have reviewed the duties of the proffered position and find them to impose a degree requirement on the beneficiary, they will be discounted. As previously discussed, both opinions are based on the petitioner's generalized description of the proffered position's duties in its January 19, 2004 letter of support, a description that the AAO has found to outline the general employment of accountants rather than the duties that the beneficiary would perform in relation to the petitioner's business operations. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS not required to accept it or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Without a meaningful description of the proffered position's duties, a petitioner cannot establish them as being of sufficient complexity and specialization to satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons previously discussed, the record does not establish the proffered position as a specialty occupation under any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO will affirm its previous decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The decision of the AAO is affirmed. The petition is denied.