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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



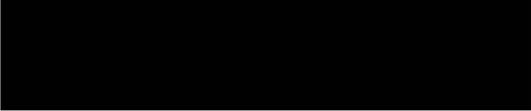
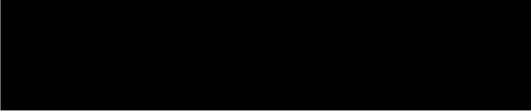
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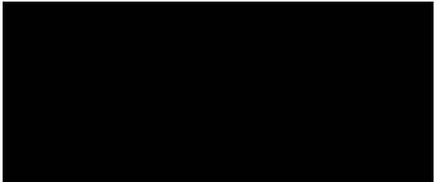


FILE: EAC 07 252 51530 Office: VERMONT SERVICE CENTER Date: **OCT 19 2009**

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)

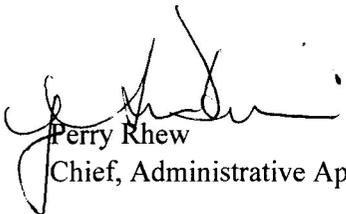
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

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

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states: that it is the management, owner, and developer of a chain of restaurant bakeries;¹ that it was established in 2004; that it employ 16 persons; and that its gross annual income is \$1,248,000. The petitioner seeks to extend the employment of the beneficiary as an accountant. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On April 12, 2008, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. Counsel submits a brief and documentation on appeal.

The record of proceeding before the AAO contains: (1) the Form I-129 filed September 4, 2007 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, and counsel's brief and documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. In that regard, the AAO will examine the descriptions of the proffered employment in an effort to ascertain the beneficiary's duties for the actual user of the beneficiary's services and whether those duties comprise the duties of a specialty occupation

When filing the Form I-129 petition, the petitioner submitted an August 7, 2007 letter signed by a certified public accountant indicating that the petitioner had the financial position and ability to pay the proffered wage. The petitioner also provided an August 2, 2007 letter issued to the beneficiary offering her the position of accountant with the following duties: "[a]nalyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profit and loss, tax liability or other financial activities within an organization." The petitioner noted in the offer of employment that the beneficiary would be assigned to the petitioner's location on Mountain Avenue in Springfield, New Jersey. The record also included the petitioner's Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, for: (1) 2004 showing gross receipts of \$1,191,415, salaries and wages of \$82,880, and net taxable income of \$64,770; and (2) 2005 showing gross receipts of \$1,248,634, salaries and wages of \$68,597, and net taxable income of

¹ The record shows that the petitioner is a stand alone retail shop. The petitioner claims that its parent company, Mascia Enterprises Group, owns it and 26 other companies. The gross annual income listed by the petitioner is the gross annual income shown on its Internal Revenue Service Form 1120, U.S. Corporation Income Tax Return, for 2005 and does not appear to include any income earned by the petitioner's parent company.

\$44,968. The record further included several of the beneficiary's pay stubs issued by the petitioner for weeks in February through May of 2007.

In a December 28, 2007 RFE, the director, among other things, requested evidence that the proffered position requires the holder of the position to have at least a baccalaureate degree; asked that the petitioner provide a detailed statement setting forth the beneficiary's proposed duties and responsibilities; noted that the petitioner employed a certified public accountant and used an outside firm to prepare its taxes, thus asked for clarification of the beneficiary's actual duties for the company; and requested clarification regarding the beneficiary's wage and evidence that the petitioner had complied with the regulations in paying the beneficiary the prevailing wage.

In an undated letter attached to counsel's January 31, 2008 response, the petitioner provided the following description of the beneficiary's duties and responsibilities:

1. Develop, analyze and interpret accounting information in order to appraise operating results in terms of profitability, bearing on the fiscal soundness and operating effectiveness of the company;
2. Responsible for tax planning and compliance with federal, state and local corporate payroll and other applicable taxes;
3. Maintain the company's system of accounts and keeps books and records on all company transactions;
4. Present financial statements and related disclosures in accordance with generally accepted accounting principles;
5. Ensure that a cash management process is in place and functioning in order to monitor and control cash requirements;
6. Administer the corporate payroll;
7. Prepare and analyze financial information to provide accurate and useful information to management for review and decision making;
8. Audit contracts, orders, vouchers, and prepare reports to substantiate individual transactions prior to settlement;
9. Provide management with reports specifying and comparing factors affecting prices and profitability of service and operation.

The petitioner also noted that its certified public accountant was contracted to prepare the company's annual tax returns and thus the certified public accountant's work was not permanent. The petitioner also indicated that it had complied with the proffered wage and that the beneficiary's pay stubs contained an error made by the payroll clerk.

On April 12, 2008, the director denied the petition. The director noted the description of the beneficiary's duties that had been provided but found that it did not appear that the petitioner was of the size and scope that would require the beneficiary to perform complex duties associated with the attainment of a baccalaureate degree. The director again noted that the petitioner employed a certified public accountant and engaged an outside firm to prepare its corporate tax returns. The

director determined that the proffered position resembled that of a bookkeeper, not an accountant. The director also observed that the error regarding the beneficiary's wage made by a "payroll clerk" appeared to be an error made by the beneficiary as one of her described functions was to "[a]dminister the corporate payroll." The director concluded that the evidence of record did not establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel for the petitioner observes that the petitioner conceded that it had erroneously reported the wages of the beneficiary and notes that through the assistance of the petitioner's certified public accountant, appropriate measures had been taken to correct the error and that the certified public accountant had instituted accounting systems intended to prevent any errors in the future. Counsel also contends that the petitioner has described the professional nature of the duties of an accountant. Counsel submits, among other items: a May 14, 2008 statement from the petitioner; a statement of [REDACTED] the petitioner's certified public accountant; an opinion issued by [REDACTED], evaluating the position of an accountant; and excerpts from the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the Department of Labor's *O*NET Online (O*NET)* regarding the position of accountant.

In the petitioner's May 14, 2008 letter, the petitioner notes that it is one of 27 companies owned by the Mascia Enterprises Group, a company established in 1980 that is a management firm that operates a chain of bakery/restaurant outlets based in New Jersey. The petitioner notes that Mascia Enterprises Group employs over 462 people and realized a gross income of more than \$31 million the last fiscal year. The petitioner submits a number of IRS Forms 1120 for entities, other than the petitioner, to demonstrate that the petitioner is part of a large group of companies. The 2006 IRS Form 1120 for the petitioner shows the petitioner's gross receipts for the 2006 year as \$1,259,774, salaries paid as \$86,415, and total taxable income as \$70,771. The petitioner also provides a broader description of an "accountant's" duties, than that provided initially or in response to the director's RFE. The petitioner indicates that the duties of an accountant:

[I]nvolve the analysis of accounting records, financial statements [of] company and affiliates, or other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards; compute taxes owed and prepare preliminary tax returns, ensuring compliance with payment, reporting or other tax requirements; analyze business operations, trends, costs, revenues, financial commitments, and obligations, to project future revenues and expenses or to provide advice; report to holding company management regarding financial operations; maintain and establish tables of accounts and assign entries to proper accounts; develop, maintain, and analyze budgets, preparing periodic reports that compare budgeted costs to actual costs; develop, implement, modify, and document record keeping and accounting systems, making use of current computer technology; prepare forms and manuals for accounting and bookkeeping personnel, and direct their work activities; survey operations to ascertain accounting needs and to recommend, develop, or maintain solutions to business and financial problems; advise

management about issues such as resource utilization, tax strategies, and the assumptions underlying budget forecasts.

In the May 14, 2008 statement, signed by [REDACTED] Mr. [REDACTED] indicates that he is the certified public accountant (CPA) for Mascia Enterprises Group of companies and its wholly-owned company, the petitioner. The CPA notes that he was requested to “conduct an audit of the payroll records of the company and its employee, [the beneficiary]” and that his firm has instituted accounting controls in the accounting operations of its client to ensure wages are properly reported.

The position evaluation prepared by [REDACTED] observes that the petitioner is one of 35 companies owned by the Mascia Enterprises Group, which has over 350 employees and a gross income of more than \$30 million.² [REDACTED] notes his positions as a faculty member and chair at the University of Phoenix, Visiting Assistant Professor at the New School for Design, and as Adjunct Assistant Professor at Baruch College and the City College of New York, among other universities and colleges. [REDACTED] asserts: “[c]ompanies seeking to employ an Accountant require prospective candidates to possess at least a Bachelor’s degree in the area of Accounting, or a related field from an accredited institution of higher learning.” [REDACTED] opines:

The skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor’s degree or its equivalent, with a concentration in Accounting, or a related field is considered necessary by people in the industry seeking to hire an Accountant in the field of Accounting, and thus the degree is considered an industry standard requirement for the position.

[REDACTED] sets out the duties of the proffered position as provided to U.S. Citizenship and Immigration Services (USCIS) in response to the director’s RFE and concludes: “the position of Accountant requires the theoretical and practical application of an advanced highly specialized body of knowledge in the field of Accounting, which requires the attainment of a least a Bachelor’s degree or its equivalent as the minimum requirement for entry into the occupation” and “[t]he skills required for the position are developed in the junior and senior years of an undergraduate program in Accounting or a related field.” [REDACTED] also selects portions of the petitioner’s description of an accountant’s duties set forth on appeal and contends:

The skills required to analyze accounting records, assess the accuracy and conformity of accounting record[s], compute taxes, analyze business operations, maintain accounting tables, maintain budgets, prepare reports, modify accounting systems and prepare forms and manual[s], are often taught in courses of Accounting, including Analysis and Design of Accounting Databases, Accounting Information Systems, Auditing of Advanced Accounting Systems, Contemporary Developments in

² [REDACTED] does not explain the source of his information regarding the petitioner’s parent company or indicate why his information differs from the information provided by the petitioner.

Taxation, State [sic] and Interstate Taxation, Advanced Cost Management and other related areas.

concludes that it is his opinion that the position of Accountant is clearly a specialty occupation.

Preliminarily, the AAO finds that the description of duties provided by the petitioner on appeal does not appear to directly relate to the petitioner, but rather is an overview of possible accounting duties and includes a statement that relates more closely to the petitioner's parent company, Mascia Enterprises Group. For example, the petitioner's description on appeal indicates the accountant will be involved "in the analysis of accounting records, financial statements [of] company and affiliates." In addition, the description on appeal includes broadly stated duties, such as: "survey operations to ascertain accounting needs and to recommend, develop, or maintain solutions to business and financial problems;" and "advise management about issues such as resource utilization, tax strategies, and the assumptions underlying budget forecasts." These duties are not only vaguely stated but also appear to incorporate some of the duties the petitioner or its parent company's certified public accountant, [REDACTED] and his firm have taken on. As [REDACTED] states in his May 14, 2008 letter, his accounting firm was requested to "conduct an audit of the payroll records of the company and its employee, [the beneficiary]" and that his firm has instituted accounting controls in the accounting operations of its client to ensure wages are properly reported. Moreover, a portion of these duties are similar to the generalized description of a management accountant as found in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The AAO observes that such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but may not be relied upon by a petitioner when discussing the duties attached to specific employment. When attempting to establish a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

Further, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO is reluctant to accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). However, even if considering the description of duties submitted on appeal, as noted above, the AAO does not find the description sufficiently detailed to establish that the beneficiary's actual position is a specialty occupation. The description of the proposed duties of the occupation submitted on appeal is not a simple elaboration on the previously described duties, but rather a more encompassing general statement of the duties of a generic accountant, similar to that found in the *Handbook*. There is nothing in the description of duties on appeal that relates specifically to the operations of the petitioner's 16-employee retail donut shop.

For purposes of the H-1B adjudication, the issue of *bona fide* employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined to be a specialty occupation. The AAO observes that the issue is whether the petitioner has established that

the beneficiary's actual duties for the ultimate user of the beneficiary's services comprise the duties of a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its

particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category. To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, to determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.” Moreover, contrary to counsel’s assertion, the regulation at 8 C.F.R. § 214.2(h)(4)(iv)(A)(1) specifically lists

contracts as one of the types of evidence that may be required to establish that the services to be performed by the beneficiary will be in a specialty occupation.

To make its determination as to whether the employment described by the petitioner qualifies as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree.

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

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

The AAO has also reviewed the *Handbook's* discussion of bookkeepers and accounting clerks. As stated by the *Handbook*:

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

* * *

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

receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The AAO finds the discussion of management accountants and of bookkeeping clerks both reflect a portion of the petitioner's description of the duties of the proffered position. For example, maintaining the company's system of accounts and keeping the books and records, ensuring a cash management process is in place to monitor and control cash requirements, administering the payroll, ensuring compliance with federal, state and local corporate payroll and other applicable taxes, auditing contracts, orders, vouchers and preparing reports to substantiate transactions, all appear to be the duties of a bookkeeper or accounting clerk. The remaining job responsibilities are too generic to ascertain whether these duties relate more specifically to a bookkeeping position or to an accounting position. Nevertheless, the AAO acknowledges that either a bookkeeper's or an accountant's position would require the beneficiary to have an understanding of accounting principles. The AAO observes, however, that degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

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

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.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some college is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

Bookkeeping, accounting, and auditing clerks usually advance by taking on more duties for higher pay or by transferring to a closely related occupation. Most companies fill office and administrative support supervisory and managerial positions by promoting individuals from within their organizations, so clerks who acquire additional skills, experience, and training improve their advancement opportunities. With appropriate experience and education, some bookkeeping, accounting, and auditing clerks may become accountants or auditors.

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

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

At the time of filing, the petitioner stated that it employed 16 employees and had a gross annual income of \$1,248,000. On appeal, the petitioner provided its 2006 IRS Form 1120 showing that the petitioner’s gross receipts increased by approximately \$11,000 from the previous year. This small increase in revenue does not establish that the petitioner is rapidly growing, thus necessitating more and more complex accounting work. Similarly the record does not contain any documentation related to the petitioner’s financial operations or organization that would shed light on the

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

complexity of the accounting work to be performed by the beneficiary, e.g., financial documents indicating that the petitioner's operation is inextricably entwined with that of its parent company. The record does not contain evidence that the petitioner's finances are highly regulated or that the petitioner operates from multiple work sites. The record does not contain documented evidence of the petitioner's intentions for continued expansion such as tax returns showing complex debt repayment schedules, loan applications, correspondence, or a business plan related to the petitioner's acquisition of additional retail outlets. Accordingly, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's operations are sufficiently complex to require the services of a degreed accountant. 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)).

The petitioner's information submitted on appeal indicating that it is a part of a group does not establish that the petitioner's organization, the organization to which the beneficiary would provide her skills, presents unique financial requirements that would add complexity to the beneficiary's accounting duties. Neither does the record indicate that the petitioner is involved in outstanding business loans or other debt or is required to deal with complex rental/lease agreements for restaurant equipment or space that might complicate its financial situation. The petitioner has not demonstrated that its business has the complexity of financial operations to support the necessity for specialized accounting work. Of further note, the record demonstrates that when more complicated situations arise, such as errors in wage reporting, the petitioner employs an outside firm to provide the necessary accounting services.

The AAO acknowledges counsel's reference to the *O*NET*. However, the AAO does not consider the *O*NET* to be 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. *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. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Moreover, a petitioner may not establish a position as a specialty occupation by repeating a general description of employment of a particular occupation rather than providing specifics substantiated by the requirements of the petitioner.

The AAO has also reviewed the position evaluation of [REDACTED]. The AAO observes that although [REDACTED] claims to be qualified to speak to the industry standard for employers seeking to hire individuals in accounting positions, [REDACTED] provides conclusory statements without any supporting evidence. [REDACTED] does not include the results of formal surveys, research, statistics, or any other objective quantifying information to substantiate his opinion. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165. The AAO may, in its discretion, use advisory opinion 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 or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The *Handbook* reaches its conclusions regarding the nation's employment practices by drawing on personal interviews with individuals employed in the occupation or from websites, published training materials, and interviews with the organizations granting degrees, certification, or licenses in the field. ██████'s conclusory opinion is insufficient to overcome the *Handbook's* finding that not all accounting employment requires a degreed accountant.

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

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). In the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

The petitioner has not submitted any job announcements, industry letters, or other evidence that would establish a degree requirement is common to the industry for parallel position among similar organization. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner's failure to submit financial information regarding its current business operations or any evidence establishing that it requires the individual in the beneficiary's position to perform complex or unusual financial services precludes it from distinguishing the proffered position from accounting employment that is performed with less than a four-year degree. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The AAO

acknowledges that the beneficiary previously held this position in H-1B status, but if the record for that approval contained the same evidence as submitted with this petition, USCIS would have erred in approving the previously filed petition. As noted above, the record does not include evidence that the nature of the petitioner's operations requires a degreed accountant to perform the duties of the position. Moreover, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. Again, the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results. If USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or a junior accountant. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant. Again, the petitioner has not provided evidence that its business operations involve intricate and complex financial transactions, specialized tasks related to tax records, or any other substantiating evidence that would elevate the general duties of the position to one that requires a degreed accountant.

The AAO has again reviewed the opinion of [REDACTED] for any evidence to demonstrate that the duties of the petitioner's specific position are specialized or complex. As noted above, while some accounting positions may require a bachelor's degree **in accounting or business administration with an emphasis on accounting or financial management**, [REDACTED] fails to provide sufficient details about the complexity of the duties in relation to the petitioner's actual retail operation to substantiate his conclusions. There is thus an inadequate factual foundation established to support the opinion. The AAO finds that the opinion is not in accord with other information and does not accept the opinion as evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

The totality of the record does not establish that the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The burden of proof in this proceeding 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