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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **MAR 06 2012**

Office: VERMONT SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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.

The petitioner claims to be engaged in the bakery business,¹ and seeks to employ 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).

The director denied the petition, finding that the proffered position is not a specialty occupation. Counsel submits a brief and documentation on appeal, and contends that the director's findings were erroneous.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B accompanied by counsel's brief and supporting 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.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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 [(2)] 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.

¹ The record shows that the petitioner is a stand alone retail shop. The petitioner claims that its parent company, [REDACTED] owns and operates approximately 25 bakery and restaurant outlets throughout New Jersey.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed 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 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), U.S. Citizenship and Immigration Services (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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In a letter of support dated August 20, 2009, the petitioner claimed that it is a donut shop that employs approximately 25 people with a gross annual income in excess of \$1.9 million. It claimed that, due to its expansion program and increased business revenues, it requires the services of an accountant. Regarding the specific duties of the position, the petitioner stated that they include the following:

1. Develop and implement a financial and business accounting record keeping system which is cost efficient and conforms to industry information, tax and audit standards;
2. Ensure the proper periodic documentation of corporate financial transactions and operations;
3. Develop business/financial/accounting system controls which ensure the integrity and efficiency of record keeping of receivables, payables, revenues [and] expenses;
4. Develop accounting records which control corporate assets, liabilities and equity by designing procedures which provide management with accurate data for verifying their valuation and utilization;
5. Prepare and maintain records for journal and ledger entries;
6. Prepare periodic accounting reports which summarizes the company's cash position, balance sheet, profit and loss statement and perform analyses of financial status;
7. Prepare tax, regulatory and accounting records required for year-end audit;
8. Provide all other financial information needed by management to assist in various decision making functions.

The petitioner further claimed that it required the candidate for the proffered position of accountant to possess at least a bachelor's degree or equivalent in accounting, business administration, or other related field.

In an RFE dated December 11, 2009, the director requested additional evidence. Specifically, the director requested additional documentation pertaining to the petitioner's business operations, organizational structure, and claimed expansion efforts, as well as additional evidence regarding the proffered position.

In response, both counsel and the petitioner addressed the director's queries. Regarding the petitioner's organizational composition, an organizational chart was submitted which demonstrated that the petitioner employed a store manager, two general managers, an accountant, and 16 counter employees. The petitioner also submitted photographs of its business, which indicated that it occupied a Dunkin Donuts/Baskin Robbins store.

Regarding the proffered position, the petitioner resubmitted the previously-submitted list of duties, but added the amount of time the beneficiary would devote to each duty as well as two new duties not previously claimed, which are set forth at numbers 5 and 6 below. Specifically, the petitioner provided the following list:

1. Develop and implement a financial and business accounting record keeping system which is cost efficient and conforms to industry information, tax and audit standards (6 hours/week).
2. Ensure the proper periodic documentation of corporate financial transactions and operations (3 hours/week).
3. Develop business/financial/accounting system controls which ensure the integrity and efficiency of record keeping of receivables, payables, revenues and expenses (3 hours/week).
4. Develop accounting records which control corporate assets, liabilities and equity by designing procedures which provide management with accurate data for verifying their valuation and utilization (6 hours/week).
5. **Design accounting and control systems for efficient and timely recording and reporting (3 hours/week).**
6. **Design a unified database for accounting data recording and retrieval (3 hours/week).**
7. Prepare and maintain records for journal and ledger entries (4 hours/week).
8. Prepare periodic accounting reports which summarizes the company's cash position, balance sheet, profit and loss statement and perform analyses of financial status (5 hours/week).
9. Prepare tax, regulatory and accounting records and reports (2 hours/week).
10. Provide all other financial information needed by management to assist in various decision making functions (5 hours/week).

Finally, the petitioner submitted a letter prepared by [REDACTED] in support of the contention that the proffered position is a specialty occupation.

On March 16, 2010, the director denied the petition. The director noted the description of the beneficiary's duties provided in response to the RFE expanded the claimed duties set forth at the time of filing, noting that such additions constituted a material change to the job description. Additionally, the director noted that the proffered position resembled that of a bookkeeper, not an accountant, and concluded that the evidence of record did not establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel for the petitioner emphasizes the description of duties of the position along with the expert opinion of [REDACTED] claiming that this evidence demonstrates that the proffered position is in fact a specialty occupation. In addition, counsel for the first time introduces evidence in support of the contention that the petitioner routinely hires degreed individuals for the position of accountant. Finally, counsel includes excerpts from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and (DOL's) *O*NET Online (O*NET)* regarding the position of accountant.

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.

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "accounting, business administration, or other related field" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered 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 correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will

not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).²

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

While this admission renders as unnecessary a full analysis of the specialty occupation issue, the AAO will nevertheless continue its standard, full analysis. To make its determination as to whether the employment described by the petitioner qualifies as a specialty occupation, the AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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 *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 2010-2011 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,

² Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Accountants and Auditors," <http://www.bls.gov/oco/ocos001.htm> (accessed February 28, 2012). 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.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/oco/ocos144.htm> (accessed February 28, 2012). 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, preparing and maintaining records for journal and ledger entries, preparing tax, regulatory and accounting records and reports, and preparing periodic accounting reports 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.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Accountants and Auditors," <http://www.bls.gov/oco/ocos001.htm> (accessed February 28, 2012). 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.

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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.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/oco/ocos144.htm> (accessed February 28, 2012). 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 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 or higher degree in accounting or its equivalent.

At the time of filing, the petitioner stated that it employed 25 employees and had a gross annual income of \$1.9 million. The petitioner also submitted copies of its IRS Form 1120 for the years 2004 through 2008, and it is noted that the gross receipts for the most recent return were \$2,057,170. This small increase in revenue from the time of filing 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 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 specialty-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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The petitioner's contention on appeal that it is a part of a group does not establish that the petitioner, the entity to which the beneficiary would provide his skills, presents unique financial requirements

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.

that would add complexity to the beneficiary's accounting duties.⁴ 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 the petitioner's tax returns were prepared by [REDACTED] an independent accounting firm, thereby suggesting that when complicated situations arise, 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 record also includes a position evaluation prepared by Bala Balachandran. [REDACTED] observes that the petitioner is one of 25 companies owned by the [REDACTED] which has over 300 employees and a gross income of more than \$30 million. [REDACTED] notes that he is qualified to render his expert opinion in this matter based on his twenty years of experience in the field, as well as his various positions as professor of accounting and his current position as [REDACTED]. [REDACTED] asserts: "[c]ompanies seeking to employ an Accountant require prospective candidates to have a strong foundation in the field of Accounting which can only be obtained through a Bachelor's degree or progressively responsible experience in the field of Accounting." [REDACTED] opines:

The skills, knowledge, and analytical thinking acquired through the acquisition of a Bachelor's degree or its equivalent, 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 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

⁴ It is noted that the beneficiary is being petitioned for by the petitioner, and not the petitioner's parent company. As a separate legal entity, evidence pertaining to the petitioner's claimed parent company is irrelevant to these proceedings.

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

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. [REDACTED] conclusory, unsupported opinion is therefore insufficient to overcome the *Handbook's* statistics-based finding that not all accounting employment requires a specialty degreed accountant.

The petitioner has not provided sufficient documentary evidence to establish that the proffered position is the position of a specialty 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).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, the petitioner has not submitted any job announcements or other evidence that would establish a degree requirement is common to the industry for parallel positions among similar organizations.

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. On appeal, it is noted that counsel submits a list of degreed accountants it claims are currently employed by the petitioner. The petitioner, however, was put on notice of this required evidence in the RFE dated December 11, 2009 and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it for the first time on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.⁵

⁵ It should be noted that, even if the AAO were to consider this evidence, the submissions on appeal would not be sufficient to establish eligibility under this criterion. The petitioner submits a list of four persons which it claims hold accountant positions for Dunkin Donuts. Although copies of the educational credentials are submitted, there is no evidence, such as payroll records or W-2 forms, to establish that these individuals are actually employed by the petitioner. Moreover, since the petitioner's organizational chart indicates that it only has one accountant position, it appears that these individuals are employed by other member organizations of the petitioner's parent company. Finally, two of the four individuals have not been established as possessing the equivalent of a bachelor's or higher degree in a specific specialty, as their evaluations only equate their degrees to a general bachelor's degree in business administration. A general degree in business administration alone is insufficient to qualify a beneficiary to perform the services of a specialty occupation, unless

Regardless, 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 so specialized and 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 convincing evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that a beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* As such, this evidence would not support the petitioner's claim that it normally requires a degree in a specific specialty or its equivalent for the proffered position.

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