



U.S. Citizenship
and Immigration
Services

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DEC 02 2009

FILE: EAC 08 135 50937 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

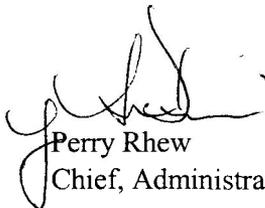
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 a “C-STORE and gas station investment & operations;” that it was established in 2005; that it employs 5 persons; and that its gross annual income is \$2,153,000 and its net annual income is \$42,370. 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 June 17, 2008, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation or that the beneficiary was qualified to perform services in a specialty occupation. Counsel submits a brief on appeal.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 8, 2008; (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 in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted a March 18, 2008 letter appended to the petition and stated that it was filing a petition requesting the extension of the beneficiary’s H-1B classification for the same position with the same company under the same terms of the prior approval of the beneficiary’s H-1B classification. The petitioner stated:

As Accountant, [the beneficiary] has been a major asset to us. His responsibilities include applying principles of accounting to analyze financial information and to prepare financial reports. He will continue to apply principles of accounting to analyze the past and present operations and to estimate future revenues. He will continue to examine the accounts and records and compute taxes owed. He will also continue to interpret the budget and advise the management on the most effective use of the resources. He will be conducting studies, which provide detailed cost information not supplied by general accounting systems.

The petitioner added that the beneficiary “qualifies to perform the job duties required for the position in view of the fact that he possesses the equivalent of a Bachelor’s degree in business administration from a regionally accredited college in the United States” and “he has also over 10 years of extensive experience working in the same field.” The petitioner included a copy of an evaluation of the beneficiary’s foreign education and his work experience prepared by an evaluation service.

In response to the director's RFE, the petitioner referenced a USCIS memorandum¹ on the significance of a prior approval on the extension of petition validity. The petitioner re-stated the initially provided description of duties and added that the beneficiary would "analyz[e] financial information by detailing the assets liabilities, and capital and accordingly prepare financial balance sheet, profit and loss statement and other reports to place before management to the current and projected financial position" and "analyze the data obtained and determine actual import/purchase costs and prepare periodic reports comparing standard costs to actual import/purchase costs and provide the management with reports specifying comparing [sic] factors affecting prices and profitability."

The petitioner provided several Internet job advertisements including advertisements: (1) from a company employing a number of individuals; (2) from the Girl Scouts of Northeast Texas; and (3) from a company whose business was unidentified in the advertisement. The petitioner also submitted an excerpt from the Department of Labor's *O*NET Online*, (*O*NET*) regarding the positions of staff accountant, certified public accountant, general accountant, accounting manager, business analyst, and cost accountant. The petitioner also submitted a June 5, 2008 letter from a company called [REDACTED]. The letter-writer of the June 5, 2008 letter indicated that the petitioner and [REDACTED] were both "dedicated to the development and management of grocery stores and gas stations in and around Texas" and that the company hires accountants and "only hire[s] individuals with university degrees or the equivalent to fill the position."

On June 17, 2008, the director denied the petition. As observed above, the director concluded that the evidence of record did not establish that the proffered position qualifies as a specialty occupation and that the petitioner had not established that the beneficiary is eligible to perform the duties of a specialty occupation

On appeal, counsel for the petitioner states that the petition in this matter is an extension request for the same position with the same company under the same terms as the previously approved H-1B petition. Counsel asserts that as the petition is an extension request and the director has not demonstrated that the previous approval is erroneous or that there is new material information or a substantial change in circumstances, the adjudicator should follow the previously referenced USCIS memorandum.

Preliminarily, the AAO will address the only issue presented by counsel on appeal, that is that the director's current determination is erroneous based on the referenced USCIS memorandum. First, the AAO finds that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99

¹ The memorandum was issued by William R. Yates, Associate Director for Operations and is titled *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3(April 23, 2004).

Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Second, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). This record of proceeding does not contain all of the supporting evidence submitted to the Vermont Service Center in the prior matters and in the absence of all of the corroborating evidence contained in the records of proceedings, the AAO is unable to determine whether the petitions included sufficient evidence to establish eligibility. However, if the other nonimmigrant petitions were approved based on the same facts that are contained in the current record, those approvals would have been in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Counsel's argument on appeal is without merit and consequently the appeal must be dismissed.

However, for purposes of clarity and thoroughness, the AAO will address the issues of specialty occupation and the beneficiary's qualifications to perform the duties of a specialty occupation position in the accounting field to demonstrate that the previous approvals, if based on the same information as contained in this record constituted gross error.

Regarding the issue of specialty occupation, *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.

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.”

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.

The AAO finds that the petitioner provided a general description of duties that does not specifically detail duties that directly relate to the petitioner; rather the description provides an overview of generic accounting duties. Moreover, the stated duties are the same or 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. 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 the generic description of duties provided 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 encompass the petitioner's vaguely described duties and either 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 that the proffered position is that of a degreed 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.²

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 5 personnel and had a gross annual income of \$2,153,000 and a net annual income of \$42,370. However, the record does not include any documentation that substantiates these figures, nor does the record include 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 other companies or 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 stores and gas stations. 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 equipment or space that might complicate its financial situation. 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 has not demonstrated that its business has the complexity of financial operations to support the necessity for specialized accounting work.

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

² 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.

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 similar occupations, as well as the education, training, and experience required to perform the duties of those similar occupations. 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 petitioner has not provided sufficient documentary evidence to establish that the proffered position is the position of a degreed accountant. The petitioner has provided a generalized and vague description of duties that does not provide sufficient information to demonstrate that the position includes more accounting responsibilities than those 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)).

The petitioner submitted three job announcements from disparate organizations with generic descriptions of duties. Upon review of the job announcements submitted, the AAO finds that the job announcements do not provide information demonstrating that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business or that the generically described duties of the proffered position are sufficiently similar to the generally described positions listed in the advertisements. Going on the 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 190 (Reg. Comm. 1972)). Likewise, the letter submitted from BGS Group, Inc. does not provide substantiating information regarding its accounting position or the duties of its accounting position sufficient to enable the AAO to determine that there is an industry standard in the petitioner's specific industry. Moreover, the BGS Group, Inc. letter-writer indicates that it hires individuals with university degrees and does not indicate that the degree must be in a specific discipline as is required to establish a position as a specialty occupation.

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. Further, without a meaningful job description, the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. 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 as determined above, 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 also observed 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 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 totality of the record does not establish that the nature of the duties outlined by the petitioner 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).

Regarding the beneficiary's eligibility to perform the duties of a specialty occupation, the AAO finds, based on the beneficiary's foreign education and the evaluation prepared by Worldwide Education Evaluators, Inc., that the beneficiary has a degree equivalent to that of bachelor's degree in business administration, social sciences, and law. Upon review of the beneficiary's transcripts, the AAO finds no accounting classes that would indicate that the beneficiary, based upon his foreign education, is qualified to perform the duties of a degreed accountant.

The AAO acknowledges that the credentials evaluation service also reviewed the beneficiary's work experience and determined that this experience contributed to the beneficiary's knowledge of accounting duties. However, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Any authority to grant college-level credit for work experience claimed by an evaluator must be substantiated by independent evidence of the evaluator's authority to grant college-level credit, such as a letter from a dean or provost verifying the evaluator's authority. In addition, the record must include substantiating evidence that the universities that employ the evaluators have programs for granting college-level credit based on an individual's training or work experience in the specialty. The petitioner has not provided this required evidence and thus has not established the beneficiary's eligibility to perform the duties of a degreed accountant.

As determined above, the record in this matter does not establish that the proffered position is a specialty occupation or that the beneficiary is eligible to perform the duties of a position that requires a degreed accountant. If the previous approvals of the beneficiary's H-1B classification were based on the same or similar information as contained in this record, such approvals would have constituted gross error.

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