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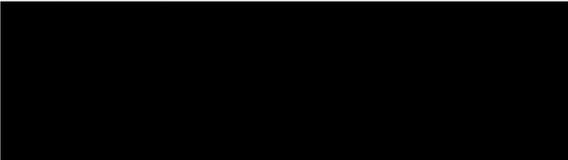
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U.S. Citizenship  
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Services

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FILE: EAC 04 202 51776 Office: VERMONT SERVICE CENTER Date: DEC 27 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner, a company with five employees, owns and operates a liquor store. It seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to extend the beneficiary's nonimmigrant classification as a worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

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

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

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

As noted previously, the petitioner owns and operates a liquor store. It was established in 1996 and has five employees, and stated gross annual income of \$5 million. It proposes to employ the beneficiary as an accountant. According to its June 22, 2004 letter of support, the duties of the proposed position would include examining financial statements for completeness, internal accuracy, and conformance with uniform accounting classifications; documenting daily business transactions; preparing financial information detailing assets, liabilities, balance sheets, profit and loss statements, and similar reports to summarize the company's financial position; conducting audits to ensure the accuracy of financial data; managing inventory; preparing payroll and accounts payable and receivable; and coordinating the implementation of accounting and accounting control procedures. The petitioner noted that the beneficiary is currently in H-1B status, and emphasized that he would be performing "many of the exact same" duties for the petitioner that he had performed for his previous H-1B employer.<sup>1</sup>

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

In his denial, the director stated the following:

Although the duties of the position deal with accounting procedures, they also appear to be [those] of a bookkeeper/administrative secretary. This service is not persuaded that the job duties described are so complex or unique that they would require the attainment of a bachelor's degree in a specific field of study.

On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under the criteria set forth at

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<sup>1</sup> The beneficiary's previous H-1B approval was valid June 4, 2003 through May 12, 2006. His 2004 federal income tax returns list the beneficiary's occupation as "cashier."

8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner noted that in addition to its retail business, it also offers check cashing, bill collection, and money transfer services, and that it needs an accountant to keep abreast of the latest computer technology in order to increase the efficiency of its financial operations.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The AAO agrees with the director's finding that the proposed position does not qualify for classification as a specialty occupation.

The petitioner has stated that its proposed position is that of an accountant. To determine whether the duties of the proposed position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to 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 finds the above discussion somewhat reflective of the petitioner's description of the duties of the proposed position and agrees that the petitioner's employment would require the beneficiary to have an understanding of basic accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proposed position would impose a degree requirement on the beneficiary. Thus, the question is not whether the proposed position requires a knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

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

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

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

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

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.<sup>2</sup>

To determine whether the accounting knowledge required by the proposed position rises above that which may be acquired through experience or an associate’s degree in accounting,<sup>3</sup> the AAO turns to the record for information regarding the nature of the petitioner’s business operations. In cases where a petitioner’s business is relatively small, like that in the instant case, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or 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.

As noted previously, the petitioner is a five-employee company that owns and operates a liquor store. Though the size of the company does not, in and of itself, determine a company’s need for an accountant, its income level and scale of operations have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. The responsibilities associated with a five-employee liquor store differ considerably from the responsibilities associated with larger companies, as well as from the responsibilities of performing accounting work for multiple clients. The record here does not support a finding that the petitioner will 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. The petitioner has not demonstrated that its business, despite its relatively limited size, has the complexity of financial operations to require a degree in accounting.

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<sup>2</sup> 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.

<sup>3</sup>According to the website of Skyline College, a community college located in San Mateo, California (<http://www.skylinecollege.net>), an associate’s degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system. Thus, an associate’s degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

Moreover, the record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as unique accounting systems or financial requirements that would add complexity to the beneficiary's duties. Neither does it indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex financial agreements or other issues that might complicate its financial situation.

Accordingly, the duties of the proposed position are not established as those of a degreed accountant. Moreover, financial clerks such as bookkeeping, accounting, and auditing clerks, who are not normally required to possess four-year degrees, normally perform several of the duties of the proposed position, such as the preparation of payroll, balance sheets, and profit and loss statements. As a result, the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

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

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

There is no information in the record to demonstrate that the companies advertising are similar to the petitioner in size, scope, or scale of operations. Again, simply 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As noted previously, the petitioner is a five-employee company that owns and operates a liquor store. According to its job posting, Blackbaud provides software and related services to nonprofit organizations. The unnamed entity advertising its vacancy through Monster.com directly is a Catholic church. No information was submitted regarding the business operations of either unnamed company advertising their vacancies through Creative Financial Staffing, or the unnamed company advertising its vacancy through Acsys, Inc.

The AAO, therefore, has no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner.

Moreover, these three advertisements provide too little information regarding the duties of the positions to allow the AAO to undertake a meaningful analysis as to whether the positions are in fact "parallel" to the position proposed here. The fact that these positions share the same title as the petitioner's proposed position does not mean that they are in fact parallel positions.

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

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, the nature of the duties of the proposed position as set forth in this petition does not support such a finding.

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

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, the petitioner has stated that this is a newly-created position, which precludes approval under the third criterion. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As noted previously, the petitioner has not demonstrated a unique accounting system, established complex financial obligations or agreements, or otherwise established that the complexity of its financial operations require a person with a four-year degree in accounting. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO notes that the beneficiary is currently in H-1B status. However, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, its approval would constitute error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, 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).

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

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason, as the record does not establish that the beneficiary qualifies to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. According to the evaluation submitted by Morningside Evaluations and Consulting, dated May 21, 2003, the beneficiary's foreign education is not equivalent to a degree. Rather, it is equivalent to the completion of academic studies that would eventually lead to a degree.

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

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

It is this fourth criterion under which the petitioner must classify the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under this criterion is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D). The Morningside evaluation referenced earlier in this decision states that the beneficiary's foreign degree and work experience are equivalent to a bachelor's degree in accounting from an accredited institution of higher education in the United States. However, the Morningside evaluation is defective for two reasons.

First, the Morningside evaluation is defective because a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Further, there has been no showing that the evaluator, Jonatan Jelen, has the authority to grant college-level credit for training and/or experience at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).<sup>4</sup> Therefore, the beneficiary does not qualify under the first criterion.

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<sup>4</sup> Mr. Jelen states that because of the positions he holds, he has the authority to grant college-level credit for training and/or courses taken at other American or foreign institutions. However, the petitioner has submitted no evidence to document this assertion. 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)).

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under the third criterion. As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because the Morningside evaluation did not find the beneficiary's foreign education equivalent to a degree. Rather, it found his education equivalent to completion of academic studies that would eventually lead to a degree.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>5</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

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<sup>5</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner's submission traces the beneficiary's work experience from August 1997 through June 2004 (the petition was filed on June 29, 2004). The AAO's next line of inquiry is therefore to determine whether at least six years<sup>6</sup> of this work experience included the theoretical and practical application of specialized knowledge required by the specialty, whether it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the specialty, and whether the beneficiary achieved recognition of expertise in accounting as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

However, the evidence contained in the record does not establish that the beneficiary's previous work experience included the theoretical and practical application of specialty knowledge required by accountants, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that he achieved recognition of expertise in accounting as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

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

Thus, the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation or that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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

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

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<sup>6</sup> The AAO will recognize two years of university-level study in general coursework taken while the beneficiary earned his degree in India.