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FILE: WAC 04 252 50150 Office: CALIFORNIA SERVICE CENTER Date: **OCT 06 2006**

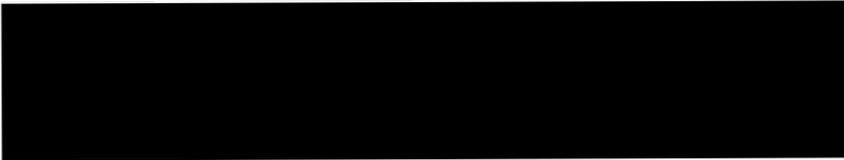
IN RE: Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



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 California 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 is a law office and real estate management company, with six employees and \$122,751 in gross annual income. It seeks to employ the beneficiary as an accountant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition based on his determination that the record failed to establish the proffered position as a specialty occupation.

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

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

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

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

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

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

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

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

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

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

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

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

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s September 13, 2004 letter in support of the petition; and its December 14, 2004 response to the director’s request for evidence. As stated by the petitioner at the time of filing, the duties of the proffered position would require the beneficiary to:

- Prepare cash flow projections, including the amount of cash expenditures and how these expenses will be applied; and prepare budgetary projections, requiring an analysis of income, expenses and capital expenditures and the preparation of sales, costing and administrative budgeting, and the analysis of standard and variable costs related to the petitioner’s industry;
- Prepare Property, Plant and Equipment (PP&E) analysis to better ascertain current real estate properties presently under lease, as well as better anticipating future PP&E that should be depreciated or expensed;
- Analyze and prepare financial statements, comparing them with cash flow and budgetary control analysis; determine and explain any variances, their potential tax consequences, alternative remedial procedures to rectify the situation and other measures that will enable the petitioner to operate more efficiently; and prepare profit and loss statements, balance sheets, and internal audit measures;
- Establish, develop and modify a computerized accounting software system to meet the petitioner’s specific needs;
- Advise the petitioner regarding tax policies that may benefit it in carrying out its real estate management services;

- Assist in tax audits, presenting relevant documentation for review and, if necessary, negotiating and settling any tax liabilities;
- Conduct audits of the petitioner's annual, quarterly and periodic financial statements and determine whether the statements are fairly stated in accordance with generally accepted accounting principles, including the assessment of loan covenants, applying specific provisions of federal/state tax codes to day-to-day business activities; and review financial procedures to identify problem areas within the petitioner's business; and
Devise a system of quality control, compiling a summary of each financially-related transaction and implement policies and procedures to ensure that all applicable professional standards and regulatory requirements have been met; and audit financial records and documents to advise the petitioner regarding the development of policies and procedures that should be used within a wide range of business customers.

In response to the director's request for evidence, which asked for a more detailed description of the accounting work to be performed by the beneficiary, the petitioner stated the following:

The accounting duties will primarily entail the preparation of cash flow projections as a means of predicting cash expenditures and expense application vis a vis each property to be assigned to him. Furthermore, other responsibilities found within the position will include budgetary projection preparation and analysis on a consistent basis, financial statement preparation and analysis that will entail a comprehensive review of a property's budgeted income and expenditures and, upon reviewing this data, will further involve a detailed explanation as to why investment goals were or were not met. To [ensure] such, I will be requesting that [the beneficiary] develop particular accounting software that will take into account accounting nuances inherent in the overall investment property scenario.

Attestation services . . . will consist of an annual, quarterly and 8K (periodic) audit of the financial statements for each of the properties to be placed under [the beneficiary's] purview. Moreover . . . [the beneficiary] will also spend . . . time . . . researching the law so that each of the properties assigned to him will be in compliance with all federal and state tax regulations

The petitioner indicates that the performance of the above duties requires a baccalaureate degree in a field requiring the study of accounting, business mathematics, finance, management and business law.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular

occupations, reports the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

The AAO finds the director to have erred in concluding that the petitioner does not have the organizational complexity, nor operate the type of business that would require an accountant. The 2006-2007 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." [*Handbook* at page 70]. It does not indicate that the accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems, software developers, or government agencies, as stated by the director. Accordingly, the petitioner's need for an accountant may not be discounted based on its type of business. Neither does the fact that the petitioner does not employ a significant number of accounting/bookkeeping staff establish that it would not employ the beneficiary to perform the duties of an accountant.¹ Therefore, the AAO withdraws the director's findings in this regard.

The petitioner has stated that the proffered position is that of an accountant and has offered a description of the position that lists duties typically performed by accountants. As discussed by the 2006-2007 edition of the *Handbook*, management accountants, the category of accounting most closely aligned to the duties described by the petitioner, are individuals who:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting. [*Handbook* at 70].

However, the similarity between the petitioner's description of the duties of the proffered position and those performed by management accountants does not establish the proffered position as a specialty occupation. All but one of the duties outlined by the petitioner describe the generic type of work performed by

¹ The AAO notes that the petitioner's organizational chart indicates that it employs a single individual to perform the duties of bookkeeper and accounting clerk.

accountants rather than the specific tasks that would be performed by the beneficiary in connection with the petitioner's real estate business. The single duty that appears related to the petitioner's real estate operations is the preparation of PP&E analyses to determine real estate values.²

A petitioner cannot establish a proffered position as a specialty occupation by listing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title. While this type of generalized description is necessary when defining the range of duties that may be performed within an occupation, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties or tasks to be performed by a beneficiary in relation to its particular business interests.

In responding to the director's request for a detailed description of the beneficiary's duties, the petitioner restated the same general duties it had previously described in its letter of support, indicating only that the beneficiary and its existing accountant would perform these general duties in relation to 15 residential and commercial development properties. The petitioner stated that it needed two accountants to oversee these 15 properties because "the amount of the accounting components to be performed will mandate that two individuals be hired in order to carry out the types of duties set forth [above]."

Although the petitioner has failed to describe the day-to-day duties to be performed by the beneficiary in relation to its particular business, the AAO acknowledges that the petitioner's real estate management activities have the potential to create a complex financial environment. It has, therefore, reviewed the record for evidence of the financial operations that support the petitioner's real estate business and the impact of these operations on the proffered position. It notes that the petitioner, in response to the director's request for evidence, submitted an organizational chart, documentary evidence of its interest in four businesses, and copies of photographs of three properties. On appeal, the petitioner offers a chart outlining the companies with which it is affiliated; a list of businesses entitled "LIST OF ENTITIES IN WHICH THE PETITIONER HAS INTEREST &/OR UNDER [THE PETITIONER'S] MANAGEMENT," specifying the percentage of each business owned by the petitioner or its relationship to the business; and certification of the incorporation of its business interests in California and Nevada. While the AAO takes note of the petitioner's claimed real estate interests, it finds the submitted documentation to be of little evidentiary value for the purposes of these proceedings.

The petitioner has provided evidence that it operates or has holdings in Corporate Service Center, Inc., High Performance Management, Inc., Windmill Realty Advisors, Inc., and Windmill Capital Inc.³ and photographs

² The *Handbook*, page 75, reports that individuals who work as assessors and appraisers of real estate must meet the licensing and/or certification requirements of the states in which they are employed. The educational requirements for licensing as a real estate assessor/appraiser in California and Nevada, the two states in which the petitioner indicates its properties are located, do not include a baccalaureate degree in a directly related field of study. See <http://red.nv.us/aliceq.htm> and http://www.orea.ca.gov/html/lic_reqmts.shtml.

³ Based on the information provided by the petitioner, only two of these businesses – Windmill Realty Advisors, Inc. and High Performance Management, Inc. – are involved in real estate activities. On appeal, the petitioner's list of affiliated entities identifies Windmill Capital, Inc. as being in the business of leasing equipment. It fails to include the Corporate Service Center, Inc. as one of the business entities in which it holds an interest.

of one Nevada and two California properties. While this documentation indicates that the petitioner has some involvement in real estate activities, it does not establish the nature or extent of this involvement, or the financial structure or operations that support it. The record contains no documentation – e.g., federal tax returns, financial statements, audits, etc. – that would demonstrate the financial relationship between the petitioner and these four entities, or the financial relationship between the petitioner and the 15 residential and commercial development properties that it has indicated require the beneficiary’s services. Neither has the petitioner identified these 15 properties.

On appeal, counsel asserts that the petitioner would act as the “central executive manager” for the business entities with which it claims affiliation. This claim is echoed in the petitioner’s February 18, 2005 letter, in which it states that the businesses in which it holds an interest, are staffed by bookkeepers, controllers, and site managers each of whom is responsible for gathering, processing and entering financial figures, and that their financial reports are to be “verified, audited, analyzed and summarized by the accountant.” The AAO will not, however, accept these claims regarding the petitioner’s management role among its business partners or the more expansive interpretation of the beneficiary’s duties, as the record offers no evidence in support of these assertions.

The company chart submitted by the petitioner shows the petitioner as one of 14 entities involved in real estate. It does not distinguish the petitioner from any of the other businesses shown. The petitioner’s listing of its various business affiliations, which includes a description of its own business activities, states only that the petitioner is “[a] law firm that specializes in investment management and related services.” Accordingly, the petitioner has not demonstrated that it performs any type of management function in relation to the businesses in which it claims to hold an interest. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record also fails to support the petitioner’s contention that the beneficiary would be involved with the financial operations of all of its businesses partners/interests. As previously noted, the petitioner’s response to the director’s request for evidence indicated that the beneficiary and a second accountant performing the same duties would focus on the financial issues related to its real estate activities, specifically its investment portfolio related to 15 residential commercial development properties. It contended that the extent of the accounting activities connected to these properties required the services of two accountants. The petitioner now asserts that the beneficiary’s duties would include the review of financial reports from businesses outside the real estate industry. On appeal, however, a petitioner cannot offer a new position to a beneficiary, or materially change a position’s title, its level of authority within the organizational hierarchy, or the associated job responsibilities. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Accordingly, the expansion of the beneficiary’s duties will not be considered. The duties of the proffered position remain those described by the petitioner at the time of filing and in response to the director’s request for evidence.

Neither does the record document the petitioner’s investment in or relationship to all of the business entities listed on its company chart. The evidence of record establishes only that the petitioner is invested in or otherwise connected to Windmill Capital, High Performance Management, the Corporate Service Center, Windmill Realty and three entities managed by Windmill Realty – Harmon Crossings, Simmons Associates, LLC and Pecos Partners, LLC. While the AAO notes that the petitioner’s president is listed as the “agent for

service of process” on the California certifications of corporate records related to two other businesses, this designation is not evidence of the petitioner’s affiliation with the corporation.⁴ Accordingly, the record does not support the petitioner’s claims regarding the extent of its business interests. *Matter of Soffici*.

The AAO also notes that the information provided by the petitioner’s chart, its list of affiliated business entities, and the documentation submitted to establish that these businesses are incorporated in California or Nevada provide inconsistent information. The company chart submitted by the petitioner indicates 20 affiliated businesses; the accompanying list of businesses that the petitioner states it manages or in which it has an interest totals 17. Neither the chart nor business list includes the Corporate Service Center, Inc., although in response to the director’s request for evidence, the petitioner submitted documentation establishing that its president was also the president of Corporate Service Center, Inc. The business chart also indicates that the petitioner is affiliated with the Sloan Biotech Fund and the Sloan Biotech Fund II, treating them as separate entities. The business list, however, notes only the Sloan Biotech Fund II. The chart identifies Windmill Capital, Inc. as a real estate venture while the petitioner’s list indicates that its business is the leasing of equipment. The documentation submitted to establish the incorporation of the petitioner’s various business affiliates includes a certificate for PacWest Realty Advisors, an organization included neither on the petitioner’s chart nor its list of businesses. Accordingly, the AAO does not find the record to provide a consistent account of the petitioner’s business affiliations. It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Moreover, the documentation submitted by the petitioner on appeal, like the evidence submitted in response to the director’s request for evidence, fails to include any information relating to its financial structure or that of the referenced organizations, or how their affiliation with the petitioner affects the petitioner’s financial operations and translates into work that would require a degreed accountant to apply at least a bachelor’s degree level of specialized knowledge in accounting. As the record offers no evidence regarding the nature or scope of the petitioner’s financial operations in relation to its real estate management activities, it provides no further definition of the duties to be performed by the beneficiary.

The AAO, as previously discussed, requires information regarding the actual responsibilities of a proffered position to make its determination regarding the nature of that position and its degree requirements, if any. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Without such information, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proffered position’s duties are of sufficient complexity or specialization to require the minimum of a baccalaureate degree or its equivalent in accounting or a related specialty. In the instant case, the record does not offer a meaningful description of the proffered position’s responsibilities. Neither does it provide any evidence regarding the nature or scope of the petitioner’s financial operations that might serve to better define the beneficiary’s duties. As a result, the petitioner is unable to establish that the duties of the position are accounting duties that would require a level of accounting knowledge that is signified by at least a bachelor’s

⁴ “An agent is an individual (director, officer or any other person, whether or not affiliated with the corporation) who resides in California or another corporation designated by the corporation to accept service of process if the corporation is sued. *See* www.ss.ca.gov/business/corp/copr-faq.htm.

degree or its equivalent in accounting. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In reaching this conclusion, the AAO has considered the two expert opinions submitted by the petitioner in response to the director's request for evidence – a November 8, 2004 letter from the head of a California accounting firm and a November 10, 2004 letter from an accounting professor at California State University, Fullerton. Both letters indicate that the writers have reviewed the duties of the proffered position, as described in the petitioner's September 13, 2004 letter of support, and find them to be those of a degreed accountant.

However, the submitted opinions are based on the generalized outline of accounting duties provided in the petitioner's letter of support, a description of the occupation of accountants rather than the day-to-day tasks to be performed by the beneficiary, which determine the specific matters that the beneficiary would have to address, and the types and level of specialized knowledge that the beneficiary would have to apply. Accordingly, their conclusions regarding the proffered position are based on a list of generalized responsibilities that do not offer a meaningful description of the beneficiary's duties. Also, the opinions are conclusory. They fail to provide the analysis upon which they are based, and therefore do not provide sufficient information to establish them as accurate, reliable and worthy of evidentiary weight. For instance, the head of the accounting firm does not explain the factual basis for his statement that the proposed duties "must be performed by a degreed professional whose area of emphasis has been in Accounting, Business Administration, or Finance." Likewise, the head of the accounting firm states, without explanation and supporting analysis, that for the proffered position a "four-year bachelor's level of theoretical knowledge" is "requisite" because the position requires the application of "complex business and accounting principles." A further example is the professor's failure to explain the factual analysis used to arrive at the conclusion that the generalized duties he cites require at least a bachelor's degree in accounting or a related specialty. For these reasons, their opinions are insufficient to establish a degree requirement for the proffered position. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept it or may give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Further, while both writers share the opinion that accounting employment generally imposes a degree requirement in accounting, business administration or finance, the AAO notes that the 2006-2007 edition of the *Handbook* reports that not all accounting employment is performed by degreed accountants. The *Handbook's* discussion of the occupation of accountants 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. [*Handbook* at 72].

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.⁵

While the AAO acknowledges the experience of both the Fullerton professor and head of the California accounting firm in their respective professions, their opinions are not supported by industry surveys, trade publications, or other industry data. Accordingly, they do not carry the authority of the *Handbook*, which offers an overview of national hiring practices, 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, to reach its conclusions regarding the U.S. employers’ practices when hiring accountants. Simply going on the record is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO notes that the petitioner has submitted a listing of the Department of Labor’s *Occupational Information Network (O*Net)* education and training codes, published in the *Federal Register* of May 8, 2002. The document has little evidentiary weight. It is a proposed rule published more than four years ago. The current O*Net places the accountant occupation in Job Zone Four and assigns it a Specific Vocational Preparation code of 7.0 < 8.0. This designation does not indicate that a degree in a specific specialty is required to work as an accountant.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, the petitioner has submitted 24 Internet job announcements for various types of accountants, almost all of which indicate a degree requirement in accounting or a related field for the position advertised. Having reviewed the advertisements, the AAO finds none to satisfy the requirements of the criterion’s first prong.

The announcements do not describe organizations similar to the petitioner, a law firm and real estate management company. Although some of the listings are published by property management firms and others by real estate businesses, none offer sufficient descriptions to establish these employers as

⁵ Information provided at <http://www.acatcredentials.org/index.html>. The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

organizations similar to the petitioner. Neither do the announcements describe employment that might be considered parallel to the proffered position. They either fail to provide a specific description of the advertised position's duties or list duties that are unlike those that have been generally outlined by the petitioner. Accordingly, the Internet listings submitted by the petitioner do not establish that its degree requirement is the norm within its industry, in parallel positions among similar organizations, as required by the first prong. Moreover, the petitioner's failure to provide a specific and detailed description of the proffered position's duties precludes it from establishing the proffered position as parallel to any positions within similar organizations in its industry.

To qualify the proffered position as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must demonstrate that the position is so complex or unique that it can be performed only by an individual with a degree. The AAO again notes that the expert opinions submitted by the petitioner in response to the director's request for evidence indicate that the authors have reviewed the proffered position's accounting duties and find them to require a baccalaureate degree in accounting, business administration or finance. However, as previously discussed, these opinions are based on the petitioner's generalized description of the proffered position in its September 13, 2004 letter in support of the instant Form I-129, a description that does not offer a meaningful description of the position's duties. Neither do the writers indicate that they have reviewed any documentation related to the petitioner's business or financial operations that would provide a factual basis for their conclusions, e.g., tax records, or financial statements or records. Accordingly, the submitted opinions are insufficient proof that the proffered position is more complex or unique than similar but nondegreed accounting employment. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner's response to the director's request for evidence stated that it currently employs a degreed accountant whose duties "mirror" those of the proffered position and asserted that its employment of this individual is proof of its normal hiring practices.⁶ The petitioner's assertions are not, however, supported by the record.

⁶ The AAO notes that the petitioner's assertion that the duties of its existing accountant mirror those to be assigned to the beneficiary appears to contradict certain of its statements regarding the proffered position's duties. At the time of filing, the petitioner indicated that the beneficiary would be responsible for establishing its computerized accounting software and quality control systems. If such duties are already performed by the petitioner's existing accountant, the petitioner has failed to explain the circumstances that would require these same services to be provided by the beneficiary.

Although the petitioner's second accountant position is shown on the organizational chart it has submitted and the chart identifies, by name, the individual the petitioner has stated it employs as an accountant, the record does not indicate the field in which this individual holds a degree or document his degree by providing a copy of his diploma or academic transcripts. Neither has the petitioner provided a job description for its second accountant or submitted evidence that would establish his performance of duties identical to those of the proffered position, e.g., financial statements or audits prepared by the incumbent. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the record does not establish that the petitioner has previously employed a degreed accountant, as required to satisfy the requirements of the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As proof that the proffered position's duties satisfy the criterion's specialized and complex threshold, counsel, on appeal, again references the expert opinions of the Fullerton accounting professor and the head of the California accounting firm. However, as previously discussed, these expert opinions are based on the generalized description of the proffered position in the petitioner's letter of support, which fails to develop the specific work and tasks the proffered duties would involve in their actual performance. Accordingly, the AAO will discount both opinions. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept it or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Without a meaningful description of the proffered position's duties, a petitioner cannot establish them as being of sufficient complexity and specialization to satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO notes that the basis for its decision differs from that relied upon by the director. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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 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.