

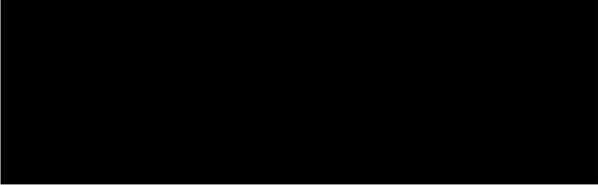


U.S. Citizenship  
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Services

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FILE: SRC 05 162 52416 Office: TEXAS SERVICE CENTER Date: AUG 14 2007

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:



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.

*Robert P. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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, and the petition will be denied.

The petitioner owns and manages two souvenir, gift, and novelty item retail stores. On the Form I-129, the petitioner indicates that it has four employees, a gross annual income of approximately \$600,000, and a net annual income of \$30,000. It seeks to employ the beneficiary in the position of internal auditor. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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<sup>1</sup> determining that the position was not a specialty occupation as well as determining that the petitioner had not established that the beneficiary qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) the May 18, 2005 Form I-129 and supporting documentation; (2) the director's June 1, 2005 request for further evidence (RFE); (3) counsel's July 20, 2005 response to the director's RFE; (4) the director's August 1, 2005 denial letter; (5) the director's November 22, 2005 service motion to reopen and decision; and (6) counsel's Form I-290B and brief. The AAO reviewed the record in its entirety before issuing its decision.

The first 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,

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<sup>1</sup> The director denied the petition on August 1, 2005. The Form I-290B, Notice of Appeal was received September 22, 2005, and thus was untimely filed. However, in a subsequent service motion to reopen, (November 22, 2005) the director noted counsel's September 20, 2005 letter indicating that counsel's New Orleans office had been required to evacuate August 28, 2005 due to Hurricane Katrina and had not been able to return to retrieve files until September 17, 2005. The director reopened the matter, affirmed her August 1, 2005 decision, and forwarded the matter to the AAO for review. The AAO will consider the merits of the appeal.

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) has consistently interpreted 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. Applying this standard, CIS 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 as defined at 8 C.F.R. § 214.2(h)(4)(ii). 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, 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 (5<sup>th</sup> 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 internal auditor. In a May 6, 2005 letter appended to the petition, the petitioner stated that the beneficiary:

Will examine and analyze accounting records to determine financial status of company and prepare financial reports concerning operating procedures. Will review data regarding material assets, net worth, liabilities, capital stock, surplus, income, and expenditures. Will count cash on hand, inspect notes receivable and payable, negotiable securities, and cancelled checks. Will verify journal and ledger entries of cash and check payments, purchases, expenses, and trial balances by examining authenticating inventory items.

On June 1, 2005, the director indicated that based on the evidence submitted the proffered position did not qualify as a specialty occupation. The director requested evidence showing that it is the industry standard among similar organizations to require a baccalaureate degree for similar positions and evidence that the petitioner had hired individuals in the past to perform the proffered position and that a baccalaureate degree had been required in those matters.

In a July 20, 2005 response to the director's RFE, counsel provided a number of documents. Counsel provided: an excerpt from the Department of Labor's *Occupational Outlook Handbook (Handbook)* pertaining to the occupation of accountants and auditors; an excerpt from the *Occupational Information Network O\*NET Online (O\*NET)* for the occupation of accountants indicating a Specific Vocational Preference (SVP) of 7; and an excerpt from the Department of Labor's *Dictionary of Occupational Titles (DOT)* pertaining to the occupation of internal auditor with a SVP rating of 7.

Counsel also submitted a copy of an H-1B approval notice for [REDACTED] a prior employee whose foreign education had been evaluated to be the equivalent of a bachelor of arts in economics from a regionally accredited university in the United States. Counsel also submitted the petitioner's March 11, 2003 letter on behalf of [REDACTED] requesting H-1B approval for the position of internal auditor. Counsel further provided copies of four Internet job announcements for various positions including: (1) an internal auditor with experience in the insurance business (no other job description is provided) at a salary of \$60,000 to \$85,000 who has a bachelor of science degree; (2) an internal auditor for a trucking company with close to one billion in revenue with an abbreviated description of job duties that required an undergraduate degree in accounting and two years of experience; (3) an "IT Auditor" for a bank with more than \$21 billion in assets with a brief description of duties requiring a bachelor's degree in accounting or finance and experience in several computer systems; and (4) an "IT Audit" senior associate for a major accounting firm with a general description regarding "IT control audits" and requiring a degree in accounting with a minor in MIS or computer science.

Counsel also submitted a copy of the Louisiana Department of Labor Prevailing Wage Report showing the prevailing wage, the occupational code corresponding to the *O\*NET* classification, and indicating a bachelor's degree in business administration as the minimum educational requirement. Counsel further submitted a copy of Louisiana State University's Center for Internal Auditing Program Brochure showing that specialization in the field of internal auditing was available for study.

On August 1, 2005, the director denied the petition determining that the petitioner had not established that the proffered position as it related to the petitioner's organization qualified as a specialty occupation. The director referenced the job advertisements submitted but determined that the companies advertising were not similar to

the petitioner's company. The director also noted that the petitioner must demonstrate that the proffered position requires a precise and specific course of study, which relates directly and closely to the position in question. The director concluded that the evidence submitted failed to establish the proffered position as a specialty occupation.

On appeal, counsel for the petitioner repeats the previous job description provided and asserts that the petitioner's retail stores are capital intensive and that the position requires the services of a professional internal auditor. Counsel contends that the *Handbook* indicates that at least a bachelor's degree in accounting or related field is required for the occupation of internal auditor; that the petitioner has consistently required a bachelor's degree in business for the proffered position as indicated by its employment in the past of an internal auditor with a bachelor's degree in business; and that the position requires formal education and training as demonstrated by the job advertisements submitted.

In this matter, the petitioner has limited its information about the proffered position and its duties to a description of general functions. Such a generic description does not describe the actual daily duties of the position. For example, the petitioner does not disclose the substantive accounting/auditing issues the beneficiary would confront, the educational level of accounting applications that the beneficiary would employ, the accounting records that the beneficiary would "examine and analyze," the "financial reports" the beneficiary would prepare, and the data the beneficiary would review. Further, the record does not provide copies of the types of financial reports the beneficiary would generate, or documents that have been prepared in past internal audits of the petitioner, or other business records to illustrate the specific matters upon which the beneficiary would work in the context of the petitioner's operations. Thus, counsel fails to persuade that the proffered position requires the educational level of specialized knowledge in accounting or a related specialty necessary to establish that the proffered position comprises a specialty occupation. This lack of concrete information about specific work that the beneficiary would perform in the particular context of the petitioner's business operations is in itself a material evidentiary deficiency that precludes this record's satisfying any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the comments of this paragraph should be deemed incorporated in the following discussions of each criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations.

The petitioner has stated that the proffered position is that of an internal auditor. To confirm that the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of internal auditors/management accountants, the category of auditing/accounting most closely aligned to the duties of the proffered position. As stated by the *Handbook*, internal auditors:

[V]erify the accuracy of their organization's internal records and check for mismanagement, waste, or fraud. . . . Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations.

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 petitioner's broad description of the duties of the proffered position contains elements that may be associated with a general understanding of accounting and auditing principles; however, the record does not contain evidence that the proffered position will incorporate duties requiring the theoretical and practical application of at least a baccalaureate level of accounting knowledge. The AAO finds that not all types of employment that require the use and understanding of accounting and auditing principles require degreed accountants or auditors. The question is not whether the position requires knowledge of accounting or auditing principles, which it may, but rather whether it is one that normally requires the level of accounting and auditing 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 and internal auditors indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting knowledge 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.

The *Handbook* 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 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 description of the beneficiary's duties and the nature of the petitioner's business operations. The petitioner's descriptions of the duties of the proffered position are too general to conclude that the position will require more than a general understanding of accounting and auditing principles such as that attained through an associate's degree.<sup>3</sup> 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 or auditor. In matters where a petitioner's business is relatively small, like that in the instant matter, 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/auditing position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

Turning to the description of the duties of the proffered position the AAO notes that the petitioner indicated generally that the beneficiary would prepare financial reports concerning operating procedures; review data regarding material assets, net worth, liabilities, capital stock, surplus, income, and expenditures; count cash on hand; inspect notes receivable and payable, negotiable securities, and cancelled checks; and verify journal and ledger entries of cash and check payments, purchases, expenses, and trial balances by examining authenticating inventory items. The description provided is general and does not include sufficient detail to establish that the duties require the attainment of a four-year university degree. The AAO also observes that

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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 for Skyline College, a community college located in San Mateo, CA ([www.skylinecollege.net](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.

counting cash, inspecting notes receivable and payable, negotiable securities, and cancelled checks as well as verifying journal entries and authenticating inventory items suggest duties that fall generally within the purview of junior accountants/bookkeepers with less than a four-year degree.

The record does not contain documentary evidence establishing that the petitioner is a business with complex financial requirements from which the AAO might reasonably extrapolate the need for at least a bachelor's degree in accounting or a related specialty. The petitioner stated on the Form I-129 that it employed four individuals. The AAO notes counsel's assertion on appeal that the petitioner's retail stores are capital intensive and require the services of an internal auditor; however, 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). The petitioner has not provided documentary evidence substantiating its claim of a gross annual income of \$600,000 or any evidence that its two retail stores are capital intensive and involve intricate and complex financial transactions. The record does not contain evidence, such as tax records, audits, sales projections, loan agreements or business plans that document a pattern of growth in the petitioner's revenues or business operations or are otherwise descriptive of the complexity of the petitioner's business operations. 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)). The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business, despite its relatively limited income and small size, has the complexity of financial operations to require a degree in accounting/auditing in the proffered position.

The duties of the proffered position are not established as those of a degreed accountant or auditor. Instead, they appear to be more closely aligned to accounting responsibilities that may be performed by junior accountants/auditors or bookkeepers, employment that does not impose a baccalaureate degree requirement in a specific discipline on those seeking entry-level employment.

The AAO acknowledges counsel's reference to *DOT* and *O\*NET* and the SVP level of 7 for an accountant. However, the AAO does not consider either the *DOT* or *O\*NET* to be persuasive sources of information as to whether a particular job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. These reports provide only general information regarding the tasks and work activities associated with a particular occupation, and the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the particular junior accountant/auditor position here proffered would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO also acknowledges the submission of the Louisiana State University's Center for Internal Auditing Program Brochure showing that specialization in the field of internal auditing is available for study. The

AAO further acknowledges that individuals may study internal auditing; however simply noting that a specialized field of study is available is insufficient to advance the petitioner's described position to one that requires a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the position.

For the reasons discussed above, 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).

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove either (a) that a specific degree requirement is common to its industry in parallel positions among similar organizations, or (b) that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner has not satisfied the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner has submitted four Internet job announcements for positions as an internal auditor. However, the petitioner has not presented evidence that the advertising employers are similar to the petitioner in size, number of employees, level of revenue, or type of business. The job announcements provide general and abbreviated descriptions of the advertised positions and do not contain information sufficient to establish that the advertised positions are parallel to the proffered position. Moreover, the organizations advertising for the positions of internal auditor are for firms unrelated to the retail industry. An insurance company, a trucking company, a bank with billions of dollars in revenue, and an accounting firm are not similar to the petitioner's retail organization.

Nor has the petitioner satisfied the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). As earlier observed, the petitioner has not provided evidence that the proffered position incorporates duties that require a sophisticated analysis of complex and intricate principles, but rather has described the routine tasks of a junior accountant/auditor who is not required to have a four-year degree. As reflected in this decision's earlier comments about the lack of concrete information about the specific work that the proffered position would involve, the record does not develop the position to an extent that demonstrates that it is so complex or unique that only an individual with a degree can perform its duties.

As the petitioner has not established that the proffered position is a specialty occupation based on an industry-wide degree requirement or its complexity or uniqueness, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be qualified as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether 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 names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In this matter, the petitioner submitted evidence that it had previously employed an individual with a foreign degree in economics in the position of internal auditor and that individual had received an H-1B

classification. However, the record does not contain documentary evidence of the underlying foreign education of this individual for review. Moreover, this record of proceeding does not contain all of the supporting evidence submitted to the Texas Service Center in the prior matter. In the absence of all of the corroborating evidence contained in the record of that proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the prior petition was for a position parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the other nonimmigrant petition was approved based on identical facts that are contained in the current record, that approval would have been erroneous. 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).

Further, as will be discussed below, the petitioner's previous employee's foreign degree was evaluated as the equivalent of a bachelor's of arts degree in economics - a degree dissimilar to the beneficiary's education and experience evaluated as a degree in business administration with a major in marketing. When a job, like that of the proffered position can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Also, the number of employees about whom the petitioner presents evidence is not sufficient to establish that the petitioner has an established practice of recruiting and hiring for the position only persons with at least a bachelor's degree in a specific specialty.

The petitioner has failed to meet the 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 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. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a junior accountant/auditor or bookkeeper. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant/auditor. As reflected in this decision's earlier comments about the lack of concrete details about the work that the petitioner would perform, the record does not develop the proposed duties with sufficient specificity to establish that their performance requires knowledge usually associated with at least a bachelor's degree in a specific specialty. As a result, the record also 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).

The next issue in this matter is whether the beneficiary's education and experience are sufficient to establish eligibility to perform the duties of an employee in an accountant or internal auditor position that requires a four-year degree in this particular field of study. The petitioner initially submitted an evaluation from J.B.

Ringer Credential Evaluation dated September 30, 2002. The author of the evaluation indicates that the beneficiary's work experience had been reviewed by a professor at a regionally accredited university in the United States who is qualified to evaluate employment responsibilities and that the beneficiary's eleven years of work experience as an area sales manager, sales officer, and marketing executive that supplemented the beneficiary's formal education was the equivalent of a bachelor's degree in business administration with a major in marketing. The beneficiary's resume notes that the beneficiary had obtained a three-year degree in commerce from a foreign university and confirms the beneficiary's employment in the marketing field from 1992 to "present." The record also contains the beneficiary's certification of passing a marketing and sales management course, a statement of marks regarding the beneficiary's post-graduate diploma examination in 1998, and an indecipherable certificate of training relating to small industries service institutes.

In response to the director's RFE, the petitioner provided a revised evaluation from J.B. Ringer Credential Evaluation indicating that the initial date of the evaluation as "August 27, 2004 revised: July 12, 2005." The author of the evaluation indicated that the beneficiary had presented a "Bachelor of Commerce, University of Delhi, 1988-1991," a post graduate diploma in marketing and sales management 1997-1998, a detailed resume, and signed dated letters of employment.

Although the petitioner has submitted an evaluation of the beneficiary's education and work experience, the record does not contain adequate documentary evidence establishing that the evaluator is 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)(I). Moreover, the AAO once again observes that the evaluator has not indicated that the beneficiary's foreign education and previous experience is in the field of accounting or auditing. Again, the petitioner has not established that the beneficiary is eligible to perform the duties of a specialty occupation including an occupation that requires a four-year course of study in the specialized field of accounting or auditing. For this additional reason the petition may not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.