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U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 225 52749 Office: CALIFORNIA SERVICE CENTER Date: **DEC 20 2007**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 avers that it sells cosmetics and skincare products and also operates a day spa. The petitioner indicated on the Form I-129 that it employed eight personnel and had an approximate \$1.25 million in gross annual income when the petition was filed. It seeks to employ the beneficiary in the position of accountant. 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 determining that the position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed July 12, 2006 and supporting documentation; (2) the director's September 25, 2006 request for further evidence (RFE); (3) the petitioner's December 14, 2006 response to the director's RFE and supporting documentation; (4) the director's January 30, 2007 denial letter; and (5) counsel's Form I-290B and brief. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. 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.

The petitioner seeks the beneficiary's services as an accountant. In a July 5, 2006 letter appended to the petition, the petitioner stated:

The position of accountant for our business requires the analysis of financial information pertaining to revenues from sales of products and services, costs, and expenses to project future revenues and expenses in order to advise me and other managing members. In his analyses, the accountant will establish a code of accounts, properly assign entries, and improve, implement and modify our current accounting system as needed, employing our existing accounting software, and introducing upgrades for the development and maintenance of our system and resolution of business accounting issues. The accountant must prepare financial reports to address compliance issues and necessary financial reporting respecting the operations of [the petitioner], including financial commitments to our banks and other working capital lenders, prepare budgets, and draft reports for tax obligations and other governmental compliance reporting.

Lastly the accountant analyzes financial information and prepares financial reports from customer accounts, budgets [as] well as other special projects as requested by the managing members specifying factors affecting coordination of collection of accounts and improved profitability.

In a December 14, 2006 response to the director's RFE, the petitioner claimed that it had paid over \$177,963 in salaries and wages for its fifteen employees and that it was a multifaceted organization involved in manufacturing, retail, wholesale sales, and vocational training and services. The petitioner asserted that its normal accounting requirements required closely tracking and reporting costs of each operation in order for management to control the costs; closely tracking the inventory of products; and accurately and timely

reporting sales of each part of its organization. The petitioner also indicated that it planned to sell stock in the business in two years and become a public corporation. The petitioner noted that there are extensive and regulatory requirements involved in a public offering including two years of financial statements audited by a Securities and Exchange Commission (SEC) certified public accountant. The petitioner indicated that it had initiated implementation of the internal controls and financial systems necessary to prepare for and meet SEC requirements. The petitioner asserted that as its goal is to list the business as a publicly traded company immediately after its year-end December 31, 2008, and the information necessary to accomplish this goal would include information beginning January 1, 2007, its accountant position is unique and the duties involved quite complex. The petitioner averred that it needed an accountant "with upper level Bachelor's degree course mastery to draft these financial reports prepared in accordance with generally accepted principles of accounting." The petitioner also provided copies of licenses issued by government agencies, including:

An annual resale certificate issued to the petitioner by the State of Florida; an occupational tax license issued to the petitioner by Broward County, Florida for manufacturing (3 units); an occupational license issued to the petitioner by the City of Pompano Beach, Florida as a wholesale merchant over \$100,000; a sales and use tax certificate issued to [REDACTED] by the State of Florida; a license issued to [REDACTED] Day Spa by the State of Florida, Department of Health, Division of Medical Quality Assurance as an electrolysis facility; an occupational license tax issued to [REDACTED] Spa by Broward County, Florida to sell cosmetics retail (at two locations); and an occupational license to operate a massage and nails salon issued to [REDACTED] by the City of Plantation, Florida.

The petitioner provided copies of its Internal Revenue Service (IRS) Forms 941, Employer's Quarterly Tax Return for the first, second, and third quarters of 2006. The petitioner submitted Florida Department of Revenue UCT-6, Employer's Quarterly Return (UCT-6) for [REDACTED] for the same three quarters in 2006 showing that the petitioner employed seven personnel in January, six personnel in February, six personnel in March, seven personnel in April and May, eight personnel in June, three personnel in July,¹ four personnel in August, and six personnel in September. The Florida Form UCT-6 for [REDACTED] showed the employment of two personnel in January and February, three personnel in March, four personnel in April and May, five personnel in June, two personnel in July, and three personnel in August and September.² The petitioner's organizational chart as of November 30, 2006 showed a president and two vice-presidents and listed an accountant (the proffered position) under the vice-president of finance. The proffered position is identified in the organizational structure as over an external accountant, a bookkeeper, and two administrative assistants. The organizational chart also breaks down the business – between [REDACTED] the petitioner, with seven factory workers and a supervisor in the manufacturing department and five independent sales representatives in the sales department and Divine Waxing System Inc. d/b/a [REDACTED]

¹ The petition was filed July 12, 2006; thus the most pertinent evidence of personnel is the 2006 third quarter Form UCT-6.

² [REDACTED], the petitioner's president as indicated on the organizational chart, is listed as an employee on Forms UCT-6 for both [REDACTED]

with one hair stylist employee and two rental hair stylist chairs and nine independent contractors providing spa services and one chair rental. The record also includes IRS Forms 1099, Miscellaneous Income, for 21 independent contractors issued in 2005 by [REDACTED] showing the majority of non-employees receiving less than \$6,000 in compensation for the year. The petitioner's IRS Form 1065 for 2005 shows gross receipts or sales as \$624,710 and ordinary business income of \$38,282. The IRS Form 1120S, U.S. Income Tax Return for an S Corporation, of Divine Waxing System, Inc. shows \$387,749 in gross receipts or sales and \$16,832 as ordinary business income for the 2004 tax year. Both returns show the reporting entities use the calendar tax year.

On January 30, 2007, the director denied the petition determining: that many of the described duties reflected duties performed by accountants as reported in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, but that sole reliance on a list of duties taken from the *Handbook* is insufficient to establish that the position is a specialty occupation; that performing "specialty occupation" duties that are incidental to the primary function is insufficient to establish that the duties to be performed qualify as a specialty occupation; and that obtaining a degree in a related area does not guarantee that the proffered position is a specialty occupation. The director noted that the petitioner had not substantiated the employment of the bookkeeping and accounting clerks listed on its organizational chart and determined that the duties normally performed by bookkeeping, accounting, or auditing clerks would be part of the duties of the proffered position. The director also determined based on the evidence of record: that the petitioner did not have the organizational complexity to certify a position as an accountant; that the petitioner was not a company engaged in the type of business for which an accountant would typically be required, such as a public accounting firm, a payroll services firm, a tax preparation firm, a computer accounting systems or software developer, a government agency, or an academic institution; that the petitioner was not engaged in the type of business that would typically require a regular full or part-time accountant; and that there was no reasonable expectation that the petitioner would utilize the beneficiary solely in the capacity of an accountant or an auditor.

On appeal, counsel for the petitioner asserts that as an "accountant" is a position expressly stated in the regulations as an example of a specialty occupation and that a bachelor's degree is listed as the minimum qualification for an accountant in the *Handbook*, than an accountant position is a specialty occupation. Counsel contends that the petitioner submitted sufficient evidence to meet its burden of proof. Counsel asserts that CIS wrongly concluded that the beneficiary would be performing non-qualifying duties based on the size of the company and that the petitioner has determined that it requires an accountant to prepare for a public offering at the end of 2008.

The petitioner, on appeal, claims that [REDACTED] the petitioner in this matter and [REDACTED] [REDACTED] Ofra European Day Spa are in effect a single organization and have been structured as separate entities for insurance, workers compensation, and legal liability reasons. The petitioner indicates that daily transaction processing such as invoicing, accounts payable, collections, receiving, inventory and disbursements are entered by administrative assistants or employees tasked with the specific function; and that higher level bookkeeping functions such as reconciliations, fixed asset computations, payroll, inventory adjustments, process costing and preparing of trial balance and provisional financial statements are processed by an external service. The petitioner asserts that the accountant in the proffered position will exercise managerial control over recording the financial information, will audit the financial systems and records in

order to identify, investigate and correct any exceptions due to errors or omissions, and will set controls in place to prevent such occurrences, and additionally will prepare monthly and quarterly payroll and sales tax returns for submission to regulatory authorities. The petitioner indicates that the primary function of the accountant in the proffered position will be "to ensure that accurate information regarding costs, forecasts, cash flow projections and capital expenditure are provided to management, analyzed and interpreted in a manner to allow decisions to be made regarding the acquisition of fixed assets, development and marketing of new products, workflow efficiency and strategic planning."

The petitioner explains that its operations are complex as its product line is extensive and require components from all over the United States as well as from foreign countries. The petitioner asserts that it has experienced substantial growth and is negotiating for larger premises and emphasizes its plans to become a publicly traded company in the near future. The petitioner restates the duties of the position as including the following components:

Auditing and analysis of sales, overhead expenditures, accounts receivable, inventory and purchasing, accounts payable, banking, general ledger and payroll and staff costs – 46 hours on a monthly basis;

Forecasting sales, cost of sales, capital expenditure, selling, general and administrative expenses, cash flow, inventory requirement, annual budget – 39 hours on a monthly basis;

Statutory returns on sales tax, unemployment compensation, IRS Forms 940 and 941, workers compensation reports, IRS Forms 1120 and Forms W-2 and 1099 - 10.5 hours on a monthly basis;

Payroll, correction of exceptions and implementation of internal controls, preparation and analysis of financial reports for owners, preparation of reports for banks, leasing companies, and other external capital sources, analysis of costs for decisions to increase efficiency of purchasing and freight costs, analysis of costs for decisions to increase efficiency of labor, feasibility studies of viability of new equipment, analysis and estimation of costs for new or revised products, and implementation of new EDP systems – 72 hours on a monthly basis.

The petitioner provided a list of its monthly sales tax for 2006; copies of eight IRS Forms W-2 issued in 2005 [REDACTED] commercial invoices; and [REDACTED] Spa's IRS Form 1120S showing gross receipts or sales of \$342,718 and ordinary business income at a negative \$10,767 for 2005. The petitioner also provided copies of its brochures of various cosmetics products.

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. One of the factors considered by the AAO when determining this criterion includes whether the Department of Labor's *Handbook* reports that the industry requires a degree.

While, as discussed below, the AAO does not find that the record demonstrates that the petitioner would employ the beneficiary as an accountant, it has reached its conclusions on grounds other than those relied upon by the director. Upon review of the record the AAO finds that the director erred when concluding that the petitioner does not have the organizational complexity, nor operates 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 "[n]ation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." It does not indicate that accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems, software developers, government agencies, or academic institutions, as stated by the director. Accordingly, the petitioner's need for an accountant may not be discounted based on its type of business. The AAO withdraws the director's finding in this regard.

The petitioner has stated that the proffered position is that of an accountant. 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 management accountants, the category of accounting most closely aligned to the duties of the proffered position. 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 *Handbook's* broadly stated definition of management accountants corresponds generally to the petitioner's description of the duties of the proffered position. The AAO finds, however, that not all types of employment that require the use and understanding of accounting principles require degreed accountants. The performance of duties requiring accounting knowledge does not establish the proffered position is that of an accountant. The question is not whether the position requires knowledge of accounting principles, which it may, 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.

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.³

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.

Preliminarily, the AAO observes that the record contains several material inconsistencies regarding the petitioner's number of personnel and its level of income. In addition, the record is deficient in establishing that the petitioner – [REDACTED] operated as one entity. The petitioner is a limited liability company and [REDACTED] is an "S" corporation. The AAO notes a corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). The record in this matter does not provide evidence of the ownership of both entities and does not provide documentary evidence that the entities are a single organization as the petitioner's vice-president has asserted. 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)).

³ Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several "Sources of Additional Information" at the end of its discussion of the occupation of accountants.

In addition, the petitioner states on the Form I-129 that it employs eight personnel and had approximately \$1.25 million in gross annual income. The petitioner reported to the IRS that in July 2006, when the petition was filed that it employed three personnel and that [REDACTED] employed two personnel. Even if the petitioner considered the employees of Divine Waxing Systems, Inc. its personnel, the petitioner reported employment of only four⁴ personnel to the IRS. The AAO notes that [REDACTED] also compensated independent contractors in 2005, but the record does not show when these individuals worked or how long these individuals worked, or that the petitioner employed those individuals. The AAO is unable to equate the petitioner's claimed employees and [REDACTED] contractors to the positions identified on the organizational chart submitted as of November 30, 2006. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the petitioner reported its gross annual receipts in 2005 as a little less than \$625,000 and the IRS Form 1120S of [REDACTED] shows gross receipts as a little less than \$343,000 for the 2005 year. Even if the two figures are combined, the gross annual receipts total less than one million dollars. A review of the nature of the petitioner's business operations does not result in consistent documentary evidence that allows unambiguous conclusions regarding the petitioner's daily operations. Without additional detail regarding the relationship between the petitioner and [REDACTED] the personnel the petitioner employed, as well as substantiated evidence of the petitioner's gross receipts, the record lacks conclusive evidence of the size of the petitioner, its number of employees, and its level of income.

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. 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 position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. It is reasonable to assume that the size of an employer's business has an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006).

In this matter although the petitioner claims that it is preparing for a public offering at the end of 2008, the record does not contain evidence of the specific financial requirements associated with the petitioner's cosmetic business and a potential public offering. The record does not contain verifiable evidence regarding the petitioner's potential public offering and whether the public offering would include the operations of [REDACTED]. Moreover, as observed above, the record does not provide substantive evidence of the relationship of the two entities. The petitioner does not provide evidence it is currently required to manage outstanding business loans or other debt, or to deal with complex rental/lease agreements for its business that might complicate its financial situation. Although the petitioner claims that its accounting situation is unique, the petitioner has not submitted documentary evidence that establishes it is a growing business with complex

⁴ As footnoted above, one individual is reported as employed by both the petitioner and [REDACTED]

financial requirements. The record does not contain evidence such as audits, sales projections, loan agreements or business plans that document a pattern of growth in the petitioner's revenues or business operations. Again, 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. at 165. 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 in the proffered position.

The petitioner's initial description of the duties of the proffered position is too general to conclude that the position will require more than a general understanding of accounting principles such as that attained through an associate's degree.⁵ The petitioner's indication in response to the director's RFE that the beneficiary in the proffered position would draft financial reports, exercise managerial control over recording financial information, audit the financial systems to correct errors and omissions, prepare monthly and quarterly payroll and sales tax returns are duties within the purview of a junior accountant. In addition, stating that the beneficiary in the proffered position will ensure that accurate information is provided to management and is analyzed and interpreted for management review without providing detailed examples of what this generally stated duty entails, does not elevate the position to an accounting position that requires a four-year degree.

The duties of the proffered position are not established as those of a degreed accountant. Instead, they appear to be more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement in a specific discipline on those seeking entry-level employment. As a result, the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 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. The petitioner has not submitted evidence of other businesses in the industry that are similar to the petitioner in size, number of employees, or level of revenue. The petitioner has not submitted evidence of other accounting positions that are parallel to the proffered position. The petitioner has not submitted evidence that similar organizations require a specific degree for duties parallel to the duties of the proffered position.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The record establishes that the

⁵According to the website for Skyline College, a community college located in San Mateo, CA (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.

proposed duties do not exceed the scope of a junior accountant. As observed above, 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 who is not required to have a four-year degree. The record does not contain sufficient consistent information regarding the petitioner's business operations or a comprehensive description substantiated by documentary evidence of the proffered position to establish that the proffered position is so complex or unique that it requires a degreed individual to perform the work associated with the position. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of 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 has not submitted evidence that it employed only degreed accountants to perform the petitioner's financial tasks prior to the beneficiary's employment. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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 junior accountants. 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. The petitioner has not provided consistent documentary evidence of the nature of its business and has not submitted evidence that the beneficiary would be required to perform intricate and sophisticated analysis of financial transactions. 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).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed.

The petition will be denied and the appeal dismissed for the above stated reason. 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.