

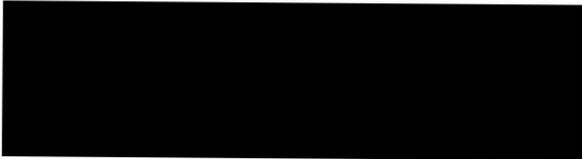
identifying data deleted to  
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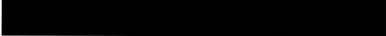
U.S. Citizenship  
and Immigration  
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FILE: EAC 06 138 50589 Office: VERMONT SERVICE CENTER Date: **JAN 11 2007**

IN RE: Petitioner:   
Beneficiary: 

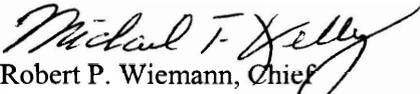
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

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

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a one-person real estate brokerage firm. The petitioner claims on the Form I-129 that it has a gross annual income of \$173,370 and a net annual income of \$70,576. It seeks to employ the beneficiary as an 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 April 7, 2006 Form I-129 and supporting documentation; (2) the director's April 19, 2006 request for additional evidence (RFE); (3) counsel's May 16, 2006 response to the director's RFE; (4) the director's May 30, 2006 denial letter; and (5) the Form I-290B, with counsel's 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.

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 (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 accountant. Evidence of the beneficiary's duties includes counsel's letter appended to the petition, counsel's response to the director's RFE, and the petitioner's May 5, 2006 affidavit in response to the director's RFE.

Counsel noted in his March 31, 2006 letter in support of the petition: that the petitioner was established in 2004; that it had no permanent employees, other than the founder; that over the course of the last two years it developed a need for an accountant to meet the increasing demands of the company's financial organization; and that the company was able to find the beneficiary, a qualified and willing candidate, to work for 25 hours per week over the next three years. Counsel stated: "[i]n this position, the prospective employee will prepare, analyze and verify the company's financial documentation, as well as perform other standard accounting functions such as financial planning, budgeting and cost accounting."

In response to the director's RFE, the petitioner stated the professional accountant would fulfill the following duties while counsel added the percentage of time the beneficiary would spend on the duties:

- Analyze and verify financial information and prepare financial reports to maintain record of assets, liabilities, profit and loss, tax liability, and other financial activities of the company – 50%;
- Perform planning, budgeting and cost accounting – 25%;

- Advise the company about the tax advantages and disadvantages of certain business decisions – 5%;
- Prepare income tax returns for the company – 10%;
- Organize data in special formats employed in financial analyses – 10%;
- Manage company's assets – 10%.

The petitioner further explained: "I want a professional accountant to fulfill this position, not just someone from the street;" "the minimum requirement our company established for this position is a Bachelor of Science Degree in Finance or a related field;" and that "[i]t is absolutely common for any employer to require a degree when hiring an accountant."

In response to the director's RFE, counsel for the petitioner submitted a May 4, 2006 "Professional Position Evaluation Report" authored by Dr. [REDACTED], an adjunct associate professor at Embry-Riddle Aeronautical University in Fort Lauderdale, Florida and consultant for American Evaluation and Translation Service, Inc. Dr. [REDACTED] repeats the petitioner's description of the proffered position's duties and opines, based on the description and his ten years of work experience in the private sector and his position with Embry-Riddle Aeronautical University, that it is his professional opinion that "in order to adequately perform the responsibilities required for the job of Accountant at [the petitioner], an individual would need the knowledge obtained by acquiring a Bachelor's degree in Accounting, Economics or a related subject." Dr. [REDACTED] states further that his conclusion, "based on a thorough analysis of the occupation in question, a detailed list of job responsibilities and my expertise in the field of higher education, that the position of Accountant at [the petitioner] would require a Bachelor's degree in Accounting, Economics or a related subject to adequately perform the complex duties required for the position."

Counsel also submitted a summary report from the *Occupational Information Network O\*NET OnLine (O\*NET)* for accountants that provided a sample of reported job titles including staff accountant, certified public accountant, general accountant, accounting manager, business analyst, cost accountant and a description of duties that included the similarly general statements as the petitioner provided for the description of the proffered position's duties. Counsel also provided copies of four job announcements for positions including: (1) an accountant/bookkeeper for an undisclosed company that contained a brief and general description of duties and indicated a BS or equivalent experience as one of the qualifications for the position; (2) an accountant, general ledger II for an unnamed nonprofit organization that contained a brief description of the position and required a bachelor's degree in business with accounting major preferred; (3) an accountant for a social services agency with a thorough understanding of financial, accounting, costing, strategic planning, and general business principles, and a minimum of five years experience and a four year degree; and (4) an accountant for a real estate development company to serve as the primary accounting control for approximately four to five properties and who would oversee application of GAAP, prepare analysis of partner distributions in addition to other duties, and which required a bachelor's degree with a preference for an accounting or business degree.

Counsel cited *Young China Daily v Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) for the proposition that the size of the petitioner's operation bears no rational relationship to the need for a professional and *Unico*

*American Corp. F. Watson*, Case No. [REDACTED] (C.D. Cal. Mar.19, 1991) for the proposition that Citizenship and Immigration Services (CIS) should give deference to the employer's view.

On May 30, 2006, the director denied the petition determining "the position title when examined in the context of the information provided concerning the nature and composition of your company does not serve to demonstrate that the preponderance of the beneficiary's job duties will be so complex that they could be considered professional in nature. Rather it would appear that the beneficiary would be required to provide non-qualifying duties of bookkeeping and filing in addition to the qualifying duties of [a] true accountant." The director noted that he had considered the petitioner's affidavit, the opinion letter from Dr. [REDACTED], the *O\*Net* excerpt, and the four Internet job postings. The director determined that the petitioner's affidavit was not supported by documentary evidence, that the opinion letter was insufficient to establish an industry standard, that the *O\*Net* recognized that not all accountant's positions required a four-year degree, and that the job postings did not demonstrate that the position of accountant among similarly situated companies required a minimum of a bachelor's degree in a specific field of study.

On appeal, counsel for the petitioner contends that the director did not consider the precedent decisions cited in counsel's response to the RFE, specifically that the size of the petitioner's operation bears no rational relationship to the need for a professional. Counsel asserts that the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) only requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position not that it is always the minimum requirement for entry into a particular position. Counsel takes issue with the director's dismissal of Dr. [REDACTED] opinion in relation to an industry standard. Counsel further claims that although the job postings did not necessarily list a particular field of study for the positions advertised, common sense dictates that if an employer is looking for at least a bachelor's degree for a particular position, the degree must be related to the field of employment. Counsel also points out that one of the job postings requires a bachelor's degree in business with an accounting major preferred. Counsel also notes that the petitioner's job description of the proffered position does not include duties relating to bookkeeping and filing and the director's determination to the contrary is subjective, as it is not supported in the record. Counsel again references a 1991 district court decision that notes CIS should give deference to the employer's view instead of imposing its own perceptions.

Counsel's assertions are not persuasive. While, as discussed below, the AAO does not find the record to demonstrate 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. The director's implication that the beneficiary would primarily be performing non-qualifying duties such as bookkeeping and filing is withdrawn.

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 *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree.

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 described by the petitioner. As stated by the *Handbook*, management accountants:

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

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment may require the beneficiary to have an understanding of accounting principles.<sup>1</sup> However, not all types of employment that require the use and understanding of accounting principles require degreed accountants. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's 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:

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<sup>1</sup> The AAO observes that the petitioner's description of the proffered position's duties tracks language found in the excerpt from the *O\*NET* and portions of the *Handbook*. However, the AAO does not consider the *O\*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. In addition, both the *Handbook* and the *O\*NET* provide only general information regarding the tasks and work activities associated with a particular occupation. When discussing an occupational title such as accountant, the petitioner cannot repeat portions of the generalized descriptions found in the *O\*NET* or the *Handbook* as its description of the duties of the proffered position. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond a generalized outline that repeats portions of the *O\*NET* and the *Handbook*. It has not detailed the actual work to be performed for this position rather than describing the general occupation.

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> As the director noted, the *O\*NET* also recognizes that not all accounting positions require a four-year degree.

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,<sup>3</sup> the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an

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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.

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. At the time of filing, the petitioner stated that it employed one person, the founder of the company, operated a real estate brokerage firm, and indicated: "[it] want[ed] a professional accountant to fulfill this position, not just someone from the street;" "the minimum requirement our company established for this position is a Bachelor of Science Degree in Finance or a related field;" and that "[i]t is absolutely common for any employer to require a degree when hiring an accountant." In addition, the petitioner noted on the Form I-129 its gross annual income as \$173,370 and net annual income of \$70,576. The AAO also notes counsel's reference to *Young China Daily v Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) for the proposition that the size of the petitioner's operation bears no rational relationship to the need for a professional.

The AAO does not find that the size of the petitioner is the determining factor in this matter, but rather that the complexity of the petitioner's overall financial situation is the determining factor. In this matter, the record does not provide evidence that the petitioner employed more than one individual; thus the record does not contain evidence of a necessity to prepare complex payroll reports. Nor does the record contain any other type of documentary evidence to demonstrate that the petitioner is a growing business with complex financial requirements. 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. Nor does the record contain other evidence that would lead to the conclusion that the petitioner must contend with intricate financial transactions. 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 that the individual in the proffered position have a degree in accounting.

The AAO has also considered the May 4, 2006 "Professional Position Evaluation Report" authored by Dr. [REDACTED]. Dr. [REDACTED] report is insufficient to establish that the proffered position is a specialty occupation. Although Dr. [REDACTED] states that it is his opinion: "in order to adequately perform the responsibilities required for the job of Accountant at [the petitioner], an individual would need the knowledge obtained by acquiring a Bachelor's degree in Accounting, Economics or a related subject," Dr. [REDACTED] opinion is not supported by an adequate factual foundation. Dr. [REDACTED] indicates he reviewed the same description of job responsibilities as submitted with the petition. The AAO respectfully disagrees that this general description provides insight into the actual job duties of the proffered position, rather than provides a generic overview of an occupation. Moreover, the record does not indicate Dr. [REDACTED] reviewed the petitioner's business or its financial records, interviewed the petitioner, or visited the petitioner's worksite. While some accounting positions may require a bachelor's degree in accounting or a related field, Dr. [REDACTED] report does not provide sufficient details about the complexity of the petitioner's business or the job duties in relation to the petitioner's real estate business to substantiate his conclusions. The AAO may, in its discretion, use as advisory opinion 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).

Moreover, the record does not establish Dr. [REDACTED] authority to speak to the national hiring practices of U.S. employers. The AAO notes that Dr. [REDACTED] expertise is in evaluating educational requirements to determine if the education or experience of individuals compares with a U.S. degree and his specific area of expertise is business administration and related fields. The AAO acknowledges Dr. [REDACTED] ten-years of experience as an accountant, but this experience and expertise does not demonstrate that he is knowledgeable about national hiring practices. Dr. [REDACTED] does not include the results of formal surveys, research, statistics, or any other objective quantifying information to substantiate his opinion. The *Handbook*, which offers an overview of national hiring practices, draws 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 nation's employment practices. Dr. [REDACTED] opinion is based in part on the petitioner's general description of the job responsibilities, a description that repeats phrases from the *Handbook* and the *O\*NET* and is not specific to the petitioner's business. In addition his opinion is conclusory and does not provide a factual basis to support his opinion that the duties of the position are complex. Dr. [REDACTED] opinion is insufficient to overcome the *Handbook's* finding as well as that of the *O\*NET* and the *ACAT* that not all accounting employment requires a degreed accountant.

The AAO also notes counsel's reference to a district court decision indicating that CIS should give deference to the employer's view on what degree, if any, is required of a particular position. However, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value. In this matter although the AAO acknowledges the district court decision, the petitioner's view of the position is a repeat of a description of information in the *Handbook* and the *O\*NET* and fails to provide the specificity to substantiate that the proffered position requires a degreed accountant.

The AAO reiterates that a petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in general terms. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS requires and must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires. The AAO's reliance on the range of duties in a particular occupation provided by the *Handbook* guides the analysis while the petitioner's

detailed description of the proffered position's duties as it relates to the petitioner's specific needs establishes whether the actual duties of the position require a baccalaureate degree in a specific field.

The petitioner has not established that the proffered position as generally described and when considered with the limited information regarding the petitioner's financial situation is a position that would normally require a baccalaureate or higher degree or its equivalent for entry into the particular 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. In the instant matter, the petitioner has submitted four job announcements for positions labeled accountant/bookkeeper, accountant/general ledger II, and accountant. A close review of the descriptions of the duties for the advertised positions finds that the descriptions are not parallel to the general description provided by the petitioner for the proffered position. Nor do the advertisements provide sufficient information regarding the companies advertising to find that they are similar to the petitioner's business in terms of financial complexity. As the director noted, the job postings also do not clearly indicate that a bachelor's degree in a specific discipline is required, but rather indicate generally that experience or education in the discipline is preferred. General references to a non-specific baccalaureate degree or one in a broad field such as business is insufficient to establish that an employer requires a degree in a specific discipline. Likewise, employer preference is not synonymous with the normally required criteria outlined in the regulations. The record does not contain sufficient evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO acknowledges Dr. [REDACTED] opinion that "based on a thorough analysis of the occupation in question, a detailed list of job responsibilities and my expertise in the field of higher education, that the position of Accountant at [the petitioner] would require a Bachelor's degree in Accounting, Economics or a related subject to adequately perform the complex duties required for the position." However, again, Dr. [REDACTED] opinion is conclusory and other than reviewing the job duties, job duties provided generally for any position that requires some knowledge of accounting principles, Dr. [REDACTED] does not relate the duties to the petitioner's particular financial situation. 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 conclusory opinion does not establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. Further, 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 any junior accountant who is not required to have a four-year degree. The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

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. However, in the instant matter, the petitioner has indicated that the proffered position is newly created. Accordingly, the petitioner has no employment history with regard to the proffered position and cannot establish it as a specialty occupation on the basis of its normal hiring practices pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Moreover, the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The AAO finds that the petitioner has not provided evidence substantiating that the proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge; thus, the position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform 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. As noted above, while some accounting positions may require a bachelor's degree in accounting or business administration with an emphasis on accounting or financial management, the record does not establish that the petitioner is one of them. Dr. ██████████ report fails to provide sufficient details about the complexity of the duties in relation to the petitioner's actual real estate business to substantiate his conclusion that the position would require a bachelor's degree in a specific discipline to adequately perform the position. Again, there is an inadequate factual foundation to support the opinion. The AAO finds that the opinion is not in accord with other information and does not accept the opinion as evidence. *Matter of Caron International*, 19 I&N Dec. at 791. 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 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.