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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2010

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

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

ON BEHALF OF PETITIONER:

[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Perry Rhew*  
Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is an accounting software sales, support and training firm that seeks to employ the beneficiary as an accountant.<sup>1</sup> Thus, 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).

In denying the petition, the director determined that the beneficiary was not qualified to perform the duties of a specialty occupation. Specifically, the director found that the beneficiary did not qualify to perform the duties of the proffered position through a combination of education and experience. On appeal, counsel for the petitioner contends that the director's conclusion was erroneous, and additional evidence in support of the beneficiary's qualifications is submitted.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must also meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

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<sup>1</sup> It should be noted that, according to California state corporate records, the petitioner's corporate status in California has been suspended. Therefore, as the petitioner has lost all rights and powers for failure to meet statutory filing requirements, the company can no longer be considered a legal entity in the United States. Therefore, even if the issues raised on appeal were overcome, given the petitioner's current corporate status in the United States, it appears the petition could not be approved for this additional reason alone.

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and its attachments.

The petitioner is seeking the beneficiary's services as an accountant. In its letter dated October 30, 2002, the petitioner claimed that the beneficiary is qualified for the position based on her education and experience in the field. With regard to the beneficiary's qualifications, the petitioner submitted an evaluation report prepared for the petitioner by [REDACTED] of the Foundation for International Services, Inc. (FISI) dated February 2, 1996. The evaluation opines that, based on the documentation reviewed, the beneficiary had the equivalent of graduation from high school in the United States, as well as one year (35 semester credits) of university-level credits from a community college in the United States. [REDACTED] concluded that, based upon her education and upon review of four letters from past employers discussing her experience in the field of accounting, the beneficiary had the equivalent of a bachelor's degree in accounting from an accredited college or university in the United States.

On November 30, 2002, the director issued an RFE. The director requested additional evidence in support of the beneficiary's qualifications. Noting that the evaluation written by [REDACTED] of FISI attributed college-level course equivalency to the beneficiary's work experience, the director requested additional documentation regarding the standards that FISI applied to granting college credit based on work experience. In addition, the director requested additional evidence to demonstrate that the proffered position is a specialty occupation.

In a response dated January 28, 2003, counsel for the petitioner addressed the RFE. Counsel repeated the beneficiary's credentials, and noted that she had completed an associate's degree in the United States. Counsel contended that the evaluation by [REDACTED] utilized the "three-to-one" rule set forth in 8 C.F.R. 214.2(h)(4)(iii)(D)(5) in calculating the beneficiary's qualifications, noting that this standards allows for the equation of one year of college credit for every year of work experience.<sup>2</sup>

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<sup>2</sup> Counsel misinterpreted the so-called "three-for-one" rule, by failing to recognize that the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) qualitatively limits the nature of work experience that USCIS will recognize as creditable. As will be later discussed in this decision, the petitioner failed to provide evidence sufficient to qualify the beneficiary's work experience as equivalent to any period of college-level work under the strict criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), which includes, *inter alia*, proof that the work experience was gained with or under the supervision of persons with certain credentials in the claimed specialty, and proof that the beneficiary has achieved recognition of expertise in the specialty occupation as a result of the work experience.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training did not qualify him for the claimed specialty occupation. On appeal, the petitioner states that the beneficiary is qualified to perform the duties of the proffered position, and submits a second credentials evaluation and a professional opinion letter in support of this contention.

Upon review of the record of proceeding, the petitioner has failed to establish that the beneficiary is qualified to perform in a position that requires a baccalaureate degree in accounting.

The beneficiary does not possess a baccalaureate degree or higher from an accredited United States college or university, or a foreign degree deemed to be the equivalent of a United States baccalaureate degree. In addition, she does not hold an unrestricted state license, registration or certification which authorizes her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and possesses education, specialized training, and/or progressively responsible experience that is equivalent to a United States baccalaureate degree in a specialty related to the proffered position, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

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

Upon review, the AAO concurs with the director's conclusions. A review of the record demonstrates that the petitioner submitted none of the evidence outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I)-(4).

In support of the petition, the petitioner submitted the evaluation from [REDACTED], which concluded that the beneficiary possessed the equivalent of a bachelor's degree in accounting from an accredited United States college or university. On appeal, the petitioner submits a new Evaluation Report, written for the petitioner by [REDACTED] of FISl, dated February 26, 2003, which also concluded that the beneficiary possessed the equivalent of a United States bachelor's degree in accounting. [REDACTED] also based her evaluation on a combination of work experience and education, noting that the beneficiary was awarded an associate's degree in liberal arts from the East Los Angeles College in May 2000. She further noted that the beneficiary completed a master of science program in acupuncture and Oriental medicine at South Baylo University in the summer of 2002, but noted that South Baylo University did not have regional accreditation in the United States. Finally, [REDACTED] claimed to have reviewed five letters from former employers of the beneficiary, as well as professional opinions from [REDACTED], Professor of Finance at the School of Business and Economics at Seattle Pacific University (SPU), also submitted on appeal, and [REDACTED], identified as Professor and Marketing Program Director at SPU (from whom no documentation has been submitted into the record). It is noted that the professional opinion of [REDACTED] concluded that, based on a combination of work and experience and education, the beneficiary possessed the equivalent of a United States bachelor's degree in accounting.

The AAO will first address the documents submitted on appeal.

The AAO finds that the FISl Evaluation Report by [REDACTED], dated February 26, 2003, references and materially relies upon the opinion stated by [REDACTED] in his letter of February 24, 2003, and a document that does not appear anywhere in the record of proceedings, namely, what is described as a "[c]ertified copy of the "To Whom It May Concern" letter from [REDACTED], Professor and Marketing Program Director at Seattle Pacific University, in Seattle Washington."

As [REDACTED] letter appears nowhere in the record of proceeding, the AAO accords no weight to [REDACTED] characterization of its content. If the petitioner expects that any weight be given to such a document, it should have been submitted into the record for the AAO's review and determination of evidentiary value.

The AAO finds that the ultimate conclusion of [REDACTED] Evaluation Report, and therefore, the evidentiary weight of this document, rests upon the letter submitted by [REDACTED]. As will now be discussed, the AAO finds that [REDACTED] letter is not probative of the proffered position qualifying as a specialty occupation.

First, the record of proceeding does not establish that [REDACTED] is one whom USCIS recognizes as competent to render an opinion on the educational equivalence of work experience and/or training, that is, that he is, in the language of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." In this regard, the AAO finds

no evidentiary value on this issue in the January 2, 2001 "To Whom It May Concern" letter from the then SPU Associate Provost. As the letter predates the [REDACTED] evaluation by two years and is not contemporaneous with whatever circumstances may have prevailed when [REDACTED]'s evaluation was rendered, it is only remotely relevant, that is as an attestation as to circumstances at one time in the past. Further, close scrutiny reveals that the Associate Provost's letter does not establish the multiple criteria for USCIS recognition of competence specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). For instance, the Associate Provost nowhere states that [REDACTED] has the authority to *grant* college-level credit for training and/or experience in the claimed specialty, or that SPU had "a program for granting such credit based on an individual's training and/or work experience."

The AAO also accords no evidentiary value to the [REDACTED] evaluation for each of two additional reasons, namely, the failures of the evaluation to (1) include with it "the significant profile of [the beneficiary's] educational and professional history" upon which [REDACTED] claims to have based his evaluation, and (2) provide a substantive analysis explaining his findings in terms of the specific statutory and regulatory requirements regarding qualification to perform in a specialty occupation position.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Further, USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Returning to the evaluation submitted by [REDACTED] the AAO finds that this evaluation is not acceptable in this matter. Again, in order to evaluate a beneficiary's training and/or experience, an evaluation must be issued from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, this evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817.

It is further noted that the petitioner argues that [REDACTED] evaluation utilizes the "three-for-one" rule and is therefore acceptable. The petitioner is correct in noting that generally, when USCIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. However, the essential component to this criterion is that USCIS, not a credentials evaluation service, is the entity making the evaluation. Therefore, the "three-for-one" rule is only applicable to cases when USCIS is evaluating the beneficiary's credentials. Further, as noted at footnote 2, [REDACTED] failed to provide evidence sufficient to qualify the beneficiary's work experience as equivalent to any period of college-level work under the strict criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), which includes, *inter alia*, proof that the work experience was gained with or under the supervision of persons with certain credentials in the claimed specialty, and proof that the

beneficiary has achieved recognition of expertise in the specialty occupation as a result of the work experience. As evident in this regulation, it must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>3</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the beneficiary's academic transcript, the beneficiary's resume, and letters from four of the beneficiary's past employers. While these employment letters corroborate the claimed employment history outlined on the beneficiary's resume, these letters fail to demonstrate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Moreover, there is no evidence that the beneficiary has recognition of expertise in the industry, or membership in a recognized association in the specialty occupation, and the record contains no documentation such as published material by or about the beneficiary. Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. For this reason, the petition will be denied.

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

Beyond the decision of the director, the AAO questions 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 also 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.

USCIS 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, USCIS 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. USCIS 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 claims to seek the beneficiary's services as an accountant. In an undated document submitted with the petition, the petitioner indicates that the beneficiary's job duties would be as follows:

Analyzes past and present financial operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses, using computer for an accounting software sales, support, and training firm. Prepares financial statements to reflect company's assets, liabilities and capital, using in-house accounting software. Documents revenues and expenditures expected and maintains budgetary systems which provide control of expenditures made to carry out and to project activities directly related to customer services.

Plans studies and collects data to determine costs of business activity and to specific factors affecting profitability of services in short-term and long-term. Audits contracts, orders and invoices, and prepares company payroll. Analyzes financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statement, and other reports to summarize current and projected company financial positions. May Communicate with clients on all matters related to financial transactions.

The petitioner further claimed that the incumbent must have at least a bachelor's degree.

In a request for evidence dated November 30, 2002, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested evidence pertaining to each of the four criteria for a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), and specifically requested evidence of the petitioner's organizational structure as well as the employment of accountants by competitors in the petitioner's industry with a similar number of employees. In a response dated January 28, 2003, counsel responded to the director's requests. Counsel provided information regarding the petitioner's business, claiming that it currently employed five persons:

1. [REDACTED] Chief Financial Officer/President
2. [REDACTED] Chief Technology Officer/Vice President
3. [REDACTED] Software Engineer
4. [REDACTED], Systems Analyst/Programmer
5. [REDACTED] Sales & Administrative Assistant

To make its determination as to whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or

higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the vague and general 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.<sup>4</sup>

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 would more likely than not require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant requiring at least a bachelor's degree in accounting or a related specialty. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The AAO takes particular notice of the *Handbook's* section discussing the occupation of bookkeeping, accounting, and auditing clerks. In relevant part, the *Handbook* states:

*Bookkeeping, accounting, and auditing clerks* are financial recordkeepers. They update and maintain accounting records, including those which calculate expenditures, receipts, accounts payable and receivable, and profit and loss. These workers have a wide range of skills from full-charge bookkeepers, who can maintain an entire company's books, to accounting clerks who handle specific tasks. All these clerks make numerous computations each day and must be comfortable using computers to calculate and record data.

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<sup>4</sup> *Occupational Outlook Handbook*, 2010-2011 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. Additionally, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large companies, *accounting clerks* have more specialized tasks. Their titles, such as *accounts payable clerk* or *accounts receivable clerk*, often reflect the type of accounting they do. In addition, their responsibilities vary by level of experience. Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures.

*Auditing clerks* verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to fix.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software, spreadsheets, and databases. Most clerks now enter information from receipts or bills into computers, and the information is then stored electronically. The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. Many of these functions require these clerks to write letters and make phone calls to customers or clients.

The educational requirements for entry into these positions, according to the *Handbook*, are as follows:

Employers usually require bookkeeping, accounting, and auditing clerks to have at least a high school diploma and some accounting coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.

***Education and training.*** Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

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 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 accountant, as correctly noted by the director. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient 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 commenced business operations as an accounting software sales, support and training firm in 1997, and claimed to employ five employees. It further claimed to have a gross annual income of \$325,000. However, the petitioner has submitted no documentary evidence, such as its most recent income tax return or payroll records, to corroborate its claimed gross income or staffing levels. 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)). The petitioner provides no documentation related to its financial operations or organization that establishes any dimension of the proffered position as requiring the theoretical and practical application of a highly specialized body of accounting knowledge that would require the attainment of at least a bachelor's degree, or the equivalent, in accounting or a related specialty. Accordingly, the petitioner has not satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). In the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

The petitioner submitted no evidence to establish its degree requirement as the norm within its industry under the first prong of the criterion. 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 petitioner's failure to submit information related to its financial operations or its business expansion plans precludes it from establishing that the position's complexity or unique nature distinguish it from accounting-related employment that is performed with less than a four-year degree. As previously stated, simply going on the 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. at 158. Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it 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 the instant matter, neither counsel nor the petitioner asserted that the petitioner had ever employed an accountant on a full-time basis. Therefore, since the petitioner has not established that it previously employed a degreed accountant in the proffered position, it has not satisfied 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 these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or accounting clerk. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant.

In reaching its decision, the AAO has again considered the petitioner's letter dated October 30, 2002 and counsel's response to the request for evidence dated January 28, 2003. Both letters provide a vague and generalized overview of the petitioner's business and the beneficiary's proposed accounting duties. There is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulation. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical bookkeeper or accounting clerk, or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in accounting.

The totality of the record does not establish the proffered position is a specialty occupation based on a claimed complex and unique nature as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

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. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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