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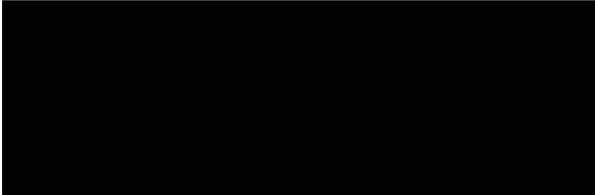
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

D2



FILE: EAC 07 136 50496 Office: VERMONT SERVICE CENTER Date: **FEB 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)

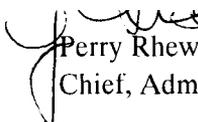
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and affirmed his decision in a subsequent decision on the petitioner's motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states: that it is a wholesaler and manufacturer of jewelry; that it was established in 1995; that it employs 4 persons; and that its gross annual income for 2005 was \$7,400,000. The petitioner seeks to employ the beneficiary as an accountant. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On July 24, 2007, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. The petitioner filed a motion to reopen and upon review of the motion, the director re-opened the matter but ultimately denied the petition on June 2, 2008, again determining that the proffered position is not a specialty occupation. Counsel submits a brief and documentation on appeal.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 2, 2007 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reopen the matter and supporting documentation; (6) the director's denial decision affirming the previous decision; and (7) the Form I-290B, and counsel's brief and documentation in support of the appeal. 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. In that regard, the AAO will examine the descriptions of the proffered employment in an effort to ascertain the beneficiary's duties for the actual user of the beneficiary's services and whether those duties comprise the duties of a specialty occupation

When filing the Form I-129 petition, the petitioner submitted a March 30, 2007 letter in support of the petition. The petitioner provided the following description of the beneficiary's duties in the position of accountant:

[H]e will manage all accounting functions, including general ledger, trial balance, inventory, accounts receivables, and accounts payables. [The beneficiary] will analyze business trends, costs, revenue, and financial reports and records to project future revenues. He will also review and verify financial documentation ensuring conformance to reporting and procedural standards. [The beneficiary] will prepare payroll records and reconcile bank accounts on a monthly basis. He will compute taxes owed and coordinate the preparation of tax returns with outside CPA to provide and verify all necessary information and documentation. Moreover, [the beneficiary] will develop and analyze budgets and prepare periodic reports comparing budgeted costs to actual costs.

Furthermore, [the beneficiary] will analyze our financial software computer programs in order to identify and update our programs with the most up-to-date technology available. He will test programming and coding needs and direct systems testing. He will also direct modifications to adapt programs to new requirements and increase efficiency. [The beneficiary] will implement and modify the accounting systems making use of this technology.

In a July 12, 2007 response to the director's RFE for a more detailed description of the beneficiary's duties and responsibilities, counsel for the petitioner added duties and responsibilities under the heading "direct accounting duties" such as:

- Implement standardized accounting and accounting control procedures;
- Develop, maintain and analyze periodic reports comparing sale price and the actual price;
- Prepare records of sales and purchase invoices and feed them into the existing accounting system;
- Manage and monitor multiple bank balances;
- Review and approve all cash disbursements, make wire transfers.

Counsel also added, under the heading "analysis of financial data and reporting data" that the beneficiary would:

- Compile and analyze appropriate company financial documentation, including information on assets, liabilities, capital, expenses and revenues;
- Analyze financial information and prepare financial reports such as trial balance, profit and loss statements, balance sheet and cash flow.

Counsel further added that the beneficiary would coordinate with the outside certified public accountant (CPA) by auditing, analyzing, and verifying fiscal records and reports, preparing financial and statistical reports, and providing information to the CPA. Counsel also noted that the beneficiary would operate, customize, adapt, and tailor the petitioner's new accounting software to the petitioner's needs, as well as performing data migration of the petitioner's records to the new system.

Counsel also provided excerpts from the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the *Dictionary of Occupational Titles (DOT)* regarding the occupation of accountant. Counsel further provided several Internet job postings from various jewelry companies seeking the services of "accountants" which listed the requirement of a bachelor's degree in accounting, finance or a related field. Counsel also submitted a June 19, 2007 letter from a gem and jewelry importer and manufacturer who indicated that it employed 31 people, had revenue of \$55 million, and employed an individual in the position of in-house accountant who held a bachelor's of commerce degree from the University of Bombay in India. The record includes the individual's transcript and an evaluation of the individual's education as equivalent to a bachelor of commerce degree in financial accounting and auditing from an accredited United States university. The AAO,

however, takes issue with the evaluation of the individual's foreign commerce degree and finds that such a degree is not equivalent to a four-year university-level course of study at a United States university. The American Association of Collegiate Registrars and Admissions Officers' (AACRAO) Electronic Database for Global Education (EDGE); a web-based resource for educational evaluations, indicates that a *Bachelor of Commerce* degree from India is awarded upon the completion of two to three years tertiary study beyond the higher secondary (high school) certificate, not the completion of a four-year course of study at the university level in the United States. Counsel further submitted a June 21, 2007 letter from an import and wholesale distributor of diamonds and finished jewelry with four employees and revenue of \$4.9 million in 2006. The president of the company claims that it employs the services of an accountant, provides an overview of its "accountant's" duties, and states that its accountant earned a master's degree in accounting from the University of Madras in India as well as a master's of business administration from a U.S. university. The letter-writer noted that a bachelor's degree in business administration or accounting or finance is necessary for its position of accountant and opined that this is an industry standard. The record does not include evidence of the company's accountant's credentials.

As referenced above, on July 24, 2007, the director denied the petition, determining that the record was insufficient to demonstrate that the proffered position is a specialty occupation. On June 2, 2008, the director affirmed his July 24, 2007 decision.

On appeal, counsel for the petitioner asserts that the *Handbook* and the *DOT* report that most accounting jobs require a bachelor's degree. Counsel references previously submitted documentation contending that the petitioner has shown that a degree requirement is common in the petitioner's industry for the position of accountant. Counsel provides an additional 25 Internet job postings for the position of accountant from a wide array of companies of varying sizes and specialties but all of which require a bachelor's degree in a business related field such as accounting, finance, or business administration. Counsel also submits two letters dated December 18, 2001 from two different wholesale distributors of diamonds wherein both letter-writers state that it is customary in the wholesale diamond industry to retain an in-house accountant and to require the accountant to possess a minimum of a bachelor's degree in accounting or a related field. Counsel submits a third letter dated December 17, 2001 also from a wholesale distributor of diamonds who provides a similar opinion. Counsel further submits an August 21, 2007 letter from a partner in an accounting firm who opines: "an accountant is a professional occupation requiring the attainment of at least a Bachelor's Degree in a related field of study, such as accounting, finance, or business administration" and "it is common practice in the Diamond and Jewelry industry to employ an in-house accountant" because of the large revenues and inventory associated with this particular industry.

Counsel also submits on appeal, an August 20, 2007 position evaluation prepared by [REDACTED] Frank G. Zarb School of Business, Hofstra University. [REDACTED] notes that he reviewed the job duties of the proffered position and opines: "[a]s opposed to many accounting positions held in the jewelry industry, which entail mere bookkeeping, the description provided for [sic] the instant position of accountant involves the performance of job duties which clearly require the ability to apply principles and concepts of

accounting, finance and related quantitative fields.” ██████████ paraphrases the petitioner’s job descriptions and concludes: “[t]he analytical and technical aspects of these duties clearly differentiate the position from that of a bookkeeper, which is concerned primarily with the maintenance of entries and ledgers, management of deposits and execution of more basic financial calculations.” ██████████ notes: “bachelor’s level training in accounting or a related field enables the accountant to apply bachelor’s-level concepts of financial analysis and financial accounting toward the optimal preparation of key financial documents, design and implementation of accounting systems and overall optimization of the organization’s substantial financial operations. ██████████ also finds that the job duties for the proffered position require that an individual be familiar with theoretical and academic concepts in accounting, finance, mathematics, and related disciplines,” concepts typically taught in bachelor’s-level classes in a number of different fields.

Counsel asserts that the proffered position is different from that of a bookkeeper and lists the duties along with the *Handbook*’s description of an accountant and of a bookkeeper. Counsel contends that the director improperly used the small size of the petitioner’s workforce when determining that the petitioner did not need the services of an accountant, while ignoring the petitioner’s growth in gross annual sales from approximately \$500,000 in 1995 to approximately \$8 million in 2007. Counsel asserts that it is the growth of the petitioner combined with the larger number of transactions and accounting functions and larger inventories and cash flow that has necessitated the petitioner’s hiring of an in-house accountant.

For purposes of the H-1B adjudication, the issue of *bona fide* employment is viewed within the context of whether the petitioner has offered the beneficiary a position that is determined to be a specialty occupation. The AAO observes that the issue is whether the petitioner has established that the beneficiary’s actual duties for the user of the beneficiary’s services comprise the duties of a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R.

§ 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category. To determine whether a particular job qualifies as a specialty occupation, 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, to determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that “[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation.”

To make its determination as to whether the employment described by the petitioner qualifies as a specialty occupation, the AAO turns first to the criterion 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 *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree in a specific discipline.

To determine whether the duties of the proffered position support the petitioner’s characterization of its employment, the AAO has reviewed the 2010-2011 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to a portion of the duties described by the petitioner. As stated by the *Handbook*, management accountants:

record 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. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. They analyze and interpret the financial information that corporate executives need 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.

* * *

Accountants also are beginning to perform more technical duties, such as implementing, controlling, and auditing computer systems and networks and developing technology plans.

The AAO has also reviewed the *Handbook's* discussion of bookkeepers and accounting clerks. As stated by the *Handbook*:

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 of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all of 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 also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The AAO finds the discussion of management accountants and of bookkeeping clerks both reflect a portion of the petitioner's description of the duties of the proffered position. For example, managing the general ledger, trial balance, inventory, accounts receivables and accounts payables, preparing payroll records, reconciling bank accounts, reviewing and verifying financial documentation ensuring conformance to reporting and procedural standards, preparing periodic reports comparing budgeted costs to actual costs, and preparing records of sales, invoices and inputting them into the accounting system, appear to be the duties of a bookkeeper, clerk, or junior accountant.

Many of the remaining job responsibilities are too generic to ascertain whether the duties relate more specifically to a bookkeeping position, to an accounting position, or to an executive position. For example, the petitioner indicates generally that the beneficiary: will analyze business trends, costs, revenue, and financial reports and records to project future revenues; will review and approve all cash disbursements; will implement standardized accounting and accounting control procedures; will compile and analyze appropriate company financial documentation, including information on assets, liabilities, capital, expenses and revenues; and will analyze financial information and prepare

financial reports such as trial balance, profit and loss statements, balance sheet and cash flow. The record does not include sufficient supporting information to determine whether these generally described duties require quantitative analysis or gathering information and generating computer reports. The record does not detail the analysis, if any, that would be involved. The AAO also observes that the broadly-stated duties paraphrase elements outlined in the *Handbook's* discussion of accountants. The AAO finds that such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but may not be relied upon by a petitioner when discussing the duties attached to specific employment. When attempting to establish 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 this matter, the petitioner has not provided examples of reports, transactions, tax or other government requirements, or any documentation that demonstrate the actual duties in relation to the petitioner's business that are associated with these general statements.

Similarly, the petitioner's indication that the beneficiary will assist in the operation, customization, adapting, and tailoring of accounting software and will migrate records to a new system is technical work that does not involve accounting or financial expertise attained through study at a bachelor's level but rather technical skill and general knowledge regarding accounting functions. Nevertheless, the AAO acknowledges that either a bookkeeper's or an accountant's position would require the beneficiary to have an understanding of accounting principles. The AAO observes, however, that 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. 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 *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. The *Handbook* reports:

Some 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 accountant positions 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:

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.

* * *

Bookkeeping, accounting, and auditing clerks usually advance by taking on more duties for higher pay or by transferring to a closely related occupation. Most companies fill office and administrative support supervisory and managerial positions by promoting individuals from within their organizations, so clerks who acquire additional skills, experience, and training improve their advancement opportunities. With appropriate experience and education, some bookkeeping, accounting, and auditing clerks may become accountants or auditors.

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.¹

To further assist in determining 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. Contrary to counsel’s general assertion, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. 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 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 employed 4 persons and had a gross annual income of approximately \$7,400,000 in 2005. On appeal, the petitioner provided its 2007 Internal Revenue Service (IRS) Form 1120, U.S. Corporation Income Tax Return, showing the petitioner’s gross receipts as \$7,354,224, similar to the petitioner’s approximation of its 2005 gross annual income.

¹ 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.

Thus, the record does not show that the petitioner is rapidly growing, thus necessitating more and more complex accounting work. Similarly the record does not contain any documentation related to the petitioner's financial operations or organization that would shed light on the complexity of the accounting work to be performed by the beneficiary. The record does not contain evidence that the petitioner's finances are highly regulated or that the petitioner operates from multiple work sites. The record does not contain documented evidence of continued expansion such as tax returns showing complex debt repayment schedules, loan applications, correspondence, or a business plan related to the petitioner's additional acquisitions or additional complicated purchases or sales. Accordingly, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's operations are sufficiently complex to require the services of a degreed accountant. 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 AAO observes that high volume of transactions of an expensive product, although requiring skill and focus, do not involve any analytical methodology elevating the position to a specialty occupation. The petitioner has not demonstrated that its business has the complexity of financial operations to support the necessity for specialized accounting work.

The AAO acknowledges counsel's reference to the *DOT*. However, the AAO does not consider the *DOT* 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. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Moreover, a petitioner may not establish a position as a specialty occupation by repeating a general description of employment of a particular occupation rather than providing specifics substantiated by the requirements of the petitioner.

The AAO has also reviewed the position evaluation of [REDACTED]. The AAO notes that when [REDACTED] attempts to distinguish the proffered position from that of a bookkeeping position, [REDACTED] acknowledges that many accounting positions held in the jewelry industry entail mere bookkeeping. Such an acknowledgement confirms the *Handbook's* observation that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience. The AAO also observes that [REDACTED] does not provide any supporting evidence to demonstrate that a position such as the proffered position requires a bachelor's degree in a specific discipline. [REDACTED] conclusions, based on a review of a general job description, without evidence that he interviewed the petitioner, visited the petitioner's worksite, or reviewed the petitioner's financial reports and tax documentation, is insufficient to establish that the proffered position includes actual duties that comprise the duties of a specialty occupation. The AAO may, in its discretion, use 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).

The petitioner has not provided sufficient documentary evidence to establish that the proffered position is the position of a degreed accountant. Instead, the position appears more closely aligned to accounting responsibilities that may be performed by skilled bookkeepers or junior accountants, employment that does not impose a baccalaureate degree requirement 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).

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 that the particular position is so complex or unique that it can be performed only by an individual with a degree in a specific discipline. 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)).

The AAO has reviewed the numerous job announcements and the several industry letters submitted by the petitioner to establish that a degree requirement is common to the industry for parallel positions among similar organizations. The AAO first observes that the job listings provided offer only a generalized description of the duties of the advertised position, similar to the less than meaningful description offered by the petitioner, or rely on duties unlike the duties listed by the petitioner. Moreover, the job listings are from a variety of businesses and thus do not show that the businesses advertising are similar to the petitioner in size, number of employees, or level of business. Again, 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 165.

The AAO has also reviewed the June 19, 2007 letter from a gem and jewelry importer and manufacturer who indicated that it employed 31 people and had revenue of \$55 million. Not only is the company not similar to the petitioner in terms of number of personnel and level of revenue, factors that may influence the complexity of the business, but also the company's documentation fails to establish that it employed an individual with the equivalent of a U.S. bachelor's degree in a specific discipline. The June 21, 2007 letter from a company that appears similar to the petitioner in terms of number of employees and level of revenue, although claiming that it employs an individual in the position of "accountant" who has a master's degree in business administration, fails to provide the supporting documentation substantiating the degree and the detailed nature of the duties. The AAO has also reviewed the "industry letters" submitted on appeal. The AAO questions the accuracy of letters dated in 2001 to establish industry standards in 2007, when the petition was filed. The AAO has also reviewed the August 21, 2007 letter from a partner in an accounting firm and observes that the opinion of this individual does not comport with the observations in the *Handbook* and the opinion is not based on any formal surveys, research, statistics, or any other objective quantifying information to substantiate the opinion. Moreover, as noted above, large revenues and inventory alone do not require analysis or the theoretical and practical application of knowledge attained through a university-level education resulting in a bachelor's degree in a specific discipline. The record does not contain substantive evidence demonstrating that jewelry

distributors “routinely employ and recruit only degreed individuals,” in a specific discipline. Therefore, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

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 financial information regarding its current business operations or any evidence establishing that it requires the individual in the beneficiary’s position to perform complex or unusual financial services precludes it from distinguishing the proffered position from accounting employment that is performed with less than a four-year degree. Again, 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. at 165. The petitioner has failed to establish 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 this matter, although the petitioner has been in existence since 1995, the petitioner does not present any evidence that it previously employed an individual in an accounting position and required that the individual possess a bachelor’s or higher degree in a specific discipline. Moreover, the AAO observes that the petitioner’s desire to employ an individual with a bachelor’s degree does not establish that the position is a specialty occupation. Again, 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. To interpret the regulations any other way would lead to absurd results. If USCIS 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. Accordingly, the AAO finds that the petitioner has not established that the proffered position is 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 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 a junior accountant. 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. Again, the petitioner has not provided evidence that its business operations involve intricate and complex financial transactions,

specialized tasks related to tax records, or any other substantiating evidence that would elevate the general duties of the position to one that requires a degreed accountant.

The AAO has again reviewed the opinion of [REDACTED] for any evidence to demonstrate that the duties of the petitioner's specific position are specialized or complex. 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, [REDACTED] fails to provide sufficient details about the complexity of the duties in relation to the petitioner's actual jewelry distribution operation to substantiate his conclusions. There is thus an inadequate factual foundation established to support the opinion. The AAO finds that the opinion is not in accord with other information in the record and does not accept the opinion as probative evidence. *Matter of Caron International*, 19 I&N Dec. at 791.

The totality of the record does not establish that 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. The petitioner has not established the criterion 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 AAO shall not disturb the director's denial of the petition.

The burden of proof in this proceeding 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