



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **APR 29 2013**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on September 29, 2011. In the Form I-129 visa petition, the petitioner describes itself as a whole sale trading company established in 2005. In order to employ the beneficiary in what it designates as an accountant position, the petitioner seeks to classify her 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 on August 10, 2012, finding that the petitioner failed to establish that the beneficiary is qualified to perform the duties of the proffered position in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as an accountant to work on a full-time basis. With the Form I-129 petition, the petitioner submitted a letter dated September 23, 2011, which included the following description of the duties of the proffered position:

1. Analyzes financial information and prepares financial reports;
2. Compiles and analyzes financial information to general ledger accounts, documenting business transactions;
3. 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 position, using computer;
4. Audits contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement;
5. Establishes, modifies, documents, and coordinates implementation of accounting and accounting control procedures; and

(b)(6)

6. Devises and implements manual or computer-based system for general accounting.

The AAO notes that the petitioner has described the duties of the beneficiary's employment in the same general terms as those used by the Dictionary of Occupational Titles (DOT) for the occupation "Accountant." That is, the wording of the above duties as provided by the petitioner for the proffered position is largely copied (virtually verbatim) from DOT.

Specifically DOT states, in pertinent part, the following regarding the occupational category "Accountant" – Code 160.162-018:

Applies principles of accounting to analyze financial information and prepare financial reports: Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions. 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 position, using calculator or computer. Audits contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement. May establish, modify, document, and coordinate implementation of accounting and accounting control procedures. May devise and implement manual or computer-based system for general accounting. May direct and coordinate activities of other accountants and clerical workers performing accounting and bookkeeping tasks.

Dictionary of Occupational Titles, Accountant – Code 160.162-018, on the Internet at <http://www.occupationalinfo.org/16/160162018.html> (last visited April 24, 2013).

In the letter of support, the petitioner stated the minimum educational requirement for the proffered position as "at least a Baccalaureate degree in Accounting." Notably, the petitioner did not submit any further documentation regarding its business operations or the proffered position to establish that its accountant position qualifies as a specialty occupation.

The petitioner indicated that the beneficiary is qualified for the proffered position by virtue of her academic background and professional experience. More specifically, the petitioner stated that the beneficiary holds a Bachelor of Science in Industrial Engineering from the Philippines, and has been employed in the field of accounting for over several years. With the initial petition, the petitioner submitted documentation regarding the beneficiary's credentials, including (1) an evaluation (dated September 15, 2011) of the beneficiary's credentials by [REDACTED] of the [REDACTED] (2) a diploma and transcript in the name of the beneficiary from [REDACTED] and (3) the beneficiary's resume.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Accountants and Auditors" – SOC (ONET/OES Code) 13-2011, at a

Level I wage.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on February 1, 2012. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary and that the beneficiary is qualified to perform services in the specialty occupation. The director outlined the specific evidence to be submitted. Notably, the director provided detailed information regarding the evidence needed to establish that the beneficiary has obtained the equivalent of a U.S. bachelor's degree in a specific specialty.¹

¹ The AAO notes that the RFE stated, in part, the following information regarding evidence pertaining to the beneficiary's qualifications:

NOTE: College or university professors writing evaluations as consultants on behalf of private educational credentials evaluations firms will not satisfy this requirement as regulations limit the scope of their evaluation to only foreign education.

The evaluation by an official, preferably the Registrar, of a college or university must be on behalf (on the letterhead) of the college or university where they are employed and have the authority to grant college credit for training and/or work experience. A private educational credentials evaluation service may not evaluate an alien's work experience or training[,] because regulations limit the scope of educational evaluators to evaluating only foreign education.

Professors writing evaluations as consultants, may, in the alternative, be considered as recognized authorities if they can clearly establish their qualifications as experts[,] provide specific instances where past opinions have been accepted as authoritative and by whom[,] clearly show how conclusions were reached[,] and show the basis for the conclusions with copies or citations of any research material used.

The evaluation should describe the material evaluated and establish that the areas of experience are related to the specialty. Resumes or Curriculum Vitae alone are usually insufficient to satisfy this requirement.

Also, provide a letter from the **Registrar** of the institution (on the institution's letterhead) to establish that the particular evaluating official is authorized to grant college-level credit on behalf of their institution, and that the evaluator holds a bachelor's degree in the field of study he or she is evaluating. Further, provide written verification or other documents or records to clearly substantiate that the evaluator is actually employed by the claimed college or university. Additionally, include evidence that the institution is accredited.

Provide copies of pertinent pages from the college or university catalog to show that it has a program for granting college-level credit based on training and/or experience. Merely stating in a letter that the school has such a program is insufficient. The program must be clearly substantiated. Further, CLEP and PONSİ equivalency exams or special credit programs do not satisfy this requirement because the regulation requires that the beneficiary produce the results of such exams or programs in order for them to qualify. Also, training or experience derived from internship programs may not satisfy this requirement unless the petitioner can

(b)(6)

The director also requested that the petitioner submit evidence to establish the existence of a specialty occupation position, including a more detailed description of the work to be performed by the beneficiary for the entire requested period of validity. The director indicated that the description should include the specific job duties, the percentage of the time to be spent on each duty, level of responsibility, hours per week of work, and the minimum education, training and experience necessary to do the job, etc.

On April 25, 2012, the petitioner and its counsel responded to the RFE by submitting a brief and additional evidence. Specifically, the petitioner and counsel submitted the following: (1) an undated letter and a declaration from the petitioner; (2) an organizational chart; (3) several job postings; (4) additional declarations; (5) a letter from [REDACTED] (6) documents described by counsel as samples of the beneficiary's work product; and (7) pay statements issued to the beneficiary by the petitioner.²

In addition, the petitioner resubmitted (1) the evaluation (dated September 15, 2011) of the beneficiary's academic credentials and work experience written by [REDACTED] of the [REDACTED] (2) a copy of a diploma and transcript in the name of the beneficiary; and (3) the beneficiary's resume.

In an undated letter submitted in response to the RFE, the petitioner provided the following revised job description:

1. Analyzes financial information and prepares financial reports (15% of the time)

- Compiles and sends weekly purchases/sales summary to [the owner] and sales manager

establish that the experience or training program claimed was gained through enrollment in the particular college or university's internship program.

Moreover, provide evidence to show the total amount of college credit the Registrar or other evaluator may grant for training or experience as part of the program. The evaluator may provide copies of the evaluation made by a school official, preferably the Registrar, which clearly shows how the alien met the college or university's program requirements and how much possible college credit the alien may be granted for his or her training and experience.

² On the Form I-129 petition and supporting documents, the petitioner stated that the beneficiary was currently in the United States and that her nonimmigrant status was E-2, dependent of a treaty investor. In the RFE, the director requested documentation establishing the beneficiary's spouse was in valid nonimmigrant status at the time the petition was submitted on September 29, 2011. In response to the RFE, counsel stated that the employer of the beneficiary's spouse "had gone out of business." No evidence was provided to demonstrate that the beneficiary's spouse (as well as the beneficiary) continued to qualify for E-2 nonimmigrant classification. The petitioner submitted a copy of an employment authorization card issued to the beneficiary under the category (a)(17) – spouse of a treaty trader or investor, along with documentation described by counsel as a "Sampling of [the beneficiary's] Work Product." Notably, the work product documents are dated from October 2011 to April 2012.

- Sends updated Miami inventory to [the owner], sales manager, and Miami accountants each morning and before end of the day
 - Creates internal sales summaries
2. Compiles and analyzes financial information to general ledger accounts, documenting business transactions (25% of the time)
 - Creates invoices and purchase orders sent to [the petitioner] by customers and vendors.
 - Tracks purchase order shipments and receives it in the system
 - Verifies customer payments and credit limits
 - Completes monthly ledger reconciliation of large client accounts
 3. 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 position, using computer (20% of time)
 - Analyzes Miami's performance on Profit & Loss Statements as well as Balance Sheets, making recommendation on any significant change
 - Updates sales order for each item released in Miami, references the quantity released, date, invoice number and customer name to update inventory in Miami, and records transaction
 - Monitors vendor accounts and pays vendors
 4. Establishes, modifies, documents, and coordinates implementation of accounting and accounting control procedures (25% of the time)
 - Monthly reconciles bank statement with Quickbooks register and sends financial reports to [the owner] and sales manager[;] [h]ighlights significant increases in expenses and recommends improvements to sales manager
 - Initiates quarterly inventory checks by sending Inventory Worksheet for physical inventory and matches it with the actual count submitted; reconciles any differences
 - For international shipments, checks invoice amount and splits if necessary and gets best quote. Split shipments to benefit from weight break discount.
 - Implements inventory tracking for Miami and Los Angeles branches
 5. Controls and implements manual or computer-based system for general accounting (15% of time)
 - Backs up and locks QuickBooks daily
 - Receive[s] customers' payments in QuickBooks and verifies against invoices done by sales manager and Miami accountants

- Checks wire payments received to match invoices done by sales manager and Miami accountants. Monitors Accounts receivables aging and follow up with sales manager to collect from customers.
- Updates [REDACTED] register with daily bank transactions of bill payments, debit memo and customer's deposits and wire payments
- Update[s] Excel file daily for the inbound and outbound movement of inventory in Miami for [the owner's] approval

The director denied the petition on August 10, 2012, finding that the petitioner had failed to establish that the beneficiary is qualified to serve in a specialty occupation position in accordance with the applicable statutory and regulatory provisions. Counsel submitted an appeal of the denial of the H-1B petition. In support of the Form I-290B, counsel submitted a brief.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that the beneficiary is qualified to serve in a specialty occupation position. Upon review of the record, the AAO finds that the petitioner has failed to establish eligibility on this issue.

The petitioner must establish eligibility under the applicable statutory and regulatory provisions. 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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that a beneficiary must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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
- (4) Have education, specialized training, and/or progressively responsible experience that are 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.

For purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (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;³
- (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. . . .

³ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

The petitioner did not submit evidence to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(2)-(4). In the present matter, the petitioner relies upon an evaluation of the beneficiary's academic credentials and work experience conducted by [REDACTED]. However, upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to serve in a specialty occupation position.

In a letter dated September 15, 2011, [REDACTED] asserts that, based on an evaluation of the beneficiary's academic credentials and work experience, she "has attained the equivalent of a Bachelor's Degree in Accounting from an accredited institution of higher education in the United States." In reaching this conclusion, [REDACTED] notes that "[a] Bachelor's Degree in Accounting at an accredited institution of higher education in the United States typically requires a demanding curriculum consisting of courses in Professional Accounting, Tax Accounting, Derivatives and Risk Management, Advanced Valuation, Costing Techniques, Accounting Theory, Budgeting, Communications, and other related course work." He finds that the beneficiary "has acquired the same knowledge obtained in such a degree program by virtue of her professional training and experience." [REDACTED] then lists generalized job duties for three of the beneficiary's prior position, and concludes that "[a]fter assessing the specifics of [the beneficiary's] work experience in detail, it becomes apparent that the responsibilities throughout her career are indicative of university level course work in related subjects."

The AAO notes that [REDACTED] does not describe the documentation he relied on to assess the beneficiary's work experience.⁴ Further, the AAO observes that the job duties listed by [REDACTED] appear to be the same as those stated on the beneficiary's resume.⁵ There is no other information in the record regarding the beneficiary's work experience upon which [REDACTED] could have relied while undertaking his evaluation.⁶ The petitioner should note that the evidentiary weight of the beneficiary's curriculum vitae or resume is insignificant. It represents a claim by the beneficiary, rather than evidence to support that claim. The AAO notes that the beneficiary has not stated how many hours she worked at each place of employment, and observes that she claims to have been simultaneously employed at [REDACTED] and [REDACTED]. Based upon the

⁴ The first page of the evaluation states, "This evaluation report relies solely upon copies of documents provided by [the beneficiary] to be authentic and true copies of those documents." However, the evaluation does not provide any further information about specific documents [REDACTED] reviewed.

⁵ The duties are described in general terms. For instance, [REDACTED] states that the beneficiary was employed as a payroll officer and that "her responsibilities included reporting to a Human Resources Manager, coordinating with all departments for timekeeping and payroll, and other related duties."

⁶ The AAO notes that in response to the RFE, the petitioner provided declarations regarding the beneficiary's work experience. However, these declarations are dated subsequent to September 15, 2011, the date upon which [REDACTED] issued his evaluation.

⁷ Notably, [REDACTED] states that the beneficiary was employed with [REDACTED] from January 2007 to December 2009. However, the dates of employment as stated by [REDACTED] are inconsistent with the dates of the beneficiary's employment as provided in a declaration from the chief executive officer of [REDACTED].

information provided, the AAO is unable to ascertain how [REDACTED] was able to determine the exact nature of the duties that the beneficiary performed at her prior places of employment. The record lacks probative evidence substantiating [REDACTED] conclusion that "[the beneficiary's] work experience directly corresponds to the knowledge obtained by a student completing a Bachelor's Degree program in Accounting" which consists of a curriculum of courses (as stated by [REDACTED] in "Professional Accounting, Tax Accounting, Derivatives and Risk Management, Advanced Valuation, Costing Techniques, Accounting Theory, Budgeting, Communications, and other related course work." The evaluator's brief description of the beneficiary's professional experience does not present an adequate factual foundation for the opinion that he offers and it is not supported by evidence sufficient to corroborate his conclusion.

[REDACTED] claims that in his position at the [REDACTED] School of Business of the [REDACTED], he has "the authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities." In support of this assertion, the petitioner provided a letter from [REDACTED] the dean of the [REDACTED]. The letter is dated May 22, 2011. [REDACTED] states that [REDACTED] authorizes the granting of credit to students for completion of degree program requirements." The letter further reports that [REDACTED] is "qualified to evaluate foreign education and experience as to the academic equivalent in the United States." According to [REDACTED] the university "offers academic programs in which students are granted credit based on course work, training, and experience in a wide range of fields." Notably, the letter does not state that [REDACTED] has the authority to grant college-level credit for "work" experience nor that [REDACTED] has a program for granting such credit based on an individual's work experience

Moreover, the AAO notes that the [REDACTED] website indicates that the university does not award credit for experiential learning that is not undertaken under the supervision of [REDACTED] faculty. Specifically, the website includes a section entitled "Frequently Asked Questions" regarding transfer credit to the university. In response to the question "Can I receive credit . . . for work experience?" the website states the following:

The [REDACTED] does not award credit for non-traditional or experiential learning not supervised by our own faculty. Examples include internships, externships, practicum, or co-op work. Nor will we transfer credits awarded at other institutions for such work. In some instances, we may recommend sitting for a departmental exam or attempting to earn credit through the College-Level Examination Program.

[REDACTED] The Transfer Credit Center, available on the Internet at [REDACTED] (last accessed April 24, 2013).

There is no evidence in the record to suggest that the beneficiary's work was supervised by a [REDACTED] faculty member to render it eligible for college credit at the university. Further, the petitioner has not established that [REDACTED] is "an official [with] 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," as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Thus, the petitioner has not established that [REDACTED] is competent to evaluate the educational equivalency of the beneficiary's work experience for the purpose of this proceeding. Accordingly, the AAO accords no weight to the assessment of the beneficiary's work experience, and no weight to the ultimate conclusion of the evaluator that the beneficiary holds the equivalent of a U.S. bachelor's degree in accounting.

Aside from the decisive fact that the evidence of record does not establish the aforementioned evaluator as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) to evaluate the beneficiary's work experience, the AAO finds that the content of the evaluation regarding the beneficiary's experience would merit no weight even if the evaluator were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). As noted above, the evaluation is not supported by probative evidence to support the evaluator's claims regarding the beneficiary's professional experience.

The petitioner has failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I)-(4), and the AAO will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the regulation, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of professional recognition.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . 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 occupation⁸;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

⁸ *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).

- (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.

In response to the RFE, the petitioner submitted three declarations regarding the beneficiary's current and prior employment. Upon review of the declarations, the AAO finds that they provide insufficient information regarding the beneficiary's work history and duties (i.e., complexity of the job duties, level of judgment and understanding required to perform the job, amount and nature of supervision received, and supervisory responsibilities).

Notably, one of the declarations (undated) is from the petitioner's owner. The declaration states that an individual named [REDACTED] is familiar with the beneficiary's work because she personally supervised the beneficiary. However, there is no declaration from [REDACTED] in the record of proceeding.

The declaration from the petitioner's owner claims that the beneficiary began working for the petitioner in January 2011. He lists the beneficiary's duties as follows:

- Creating Purchase Orders
- Analyzing the company's performance on Profit and Loss reports and Balance Sheets
- Overseeing tracking of the company's inventory
- Compiling weekly and quarterly purchase and sales summary reports, and
- Other daily accounting functions, such as updating the company's general ledger on QuickBooks, verifying customer payments and credit limits, and handling payments to [the] vendors.

The declaration states that the petitioner "has six employees on its accounting staff." The petitioner indicates that the beneficiary supervises "the accounting duties of [the petitioner's] two accountants in [its] Miami, Florida branch, both of whom hold Bachelor's Degrees."⁹ The petitioner did not specify the fields of study for these employees. The petitioner claims that the "other accountant in [the] Los Angeles branch also has a Bachelor's Degree in Accounting." No documentation was provided to support the petitioner's claims with regard to the employees' credentials.

⁹ The AAO observes that the duties provided in this undated declaration regarding the beneficiary's prior and current work for the petitioner are far less specific than those provided regarding the proffered position, which the petitioner submitted in response to the RFE. The petitioner did not provide an explanation for the discrepancy.

The second declaration is from [REDACTED] and is dated March 12, 2012. [REDACTED] states that he is the CEO of [REDACTED] which is a trading company with two employees. [REDACTED] states that the beneficiary worked for the company from January 2007 to October 2009.¹⁰ However, within the text of the letter he claims the beneficiary worked "3 years with the company." No explanation was provided.

[REDACTED] describes the beneficiary's job duties as follows:

- Analyzing and documenting business transactions
- Preparing general ledger accounts
- Preparing monthly management reports such as balance sheets, profit and loss statements, and actual versus projected budget variance reports
- Documenting policies and control procedures and work cycles for designated areas
- Bank liaison
- Analyzing and auditing contracts, vouchers and orders and business transactions prior to settlement.

Finally, [REDACTED] states that the beneficiary "supervised and coordinated the other two of the accountants on staff and other clerical workers doing accounting work." No further information regarding such duties was provided. [REDACTED] states that he has more than five years of experience but does not provide any information regarding his academic credentials. He provides no information as to whether the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree in accounting or its equivalent.

The third declaration, dated April 9, 2012, is written by [REDACTED] president of [REDACTED] who currently resides in the Philippines, states that [REDACTED] is now closed. He describes [REDACTED] as "a trading company which began in February 2003." [REDACTED] does not provide any specifics regarding the company's business operations or corporate structure. He states that the beneficiary worked with the company from August 2004 until December 2010, and further states that he supervised the beneficiary and "interacted [with her] remotely." [REDACTED] states the following regarding the beneficiary's duties.

- At the beginning of her employment, [the beneficiary's] work as an accountant consisted mostly in bank reconciliation, payroll, accounts receivables, and accounts payable.
- Gradually, she took on more responsibility, including establishing and modifying the company's accounting policies and control procedures. She supervised the implementation and compliance with these policies.

¹⁰ The dates of employment as provided by the beneficiary on her resume are not consistent with the dates provided by [REDACTED]

(b)(6)

- By the end of her employment with [REDACTED] [the beneficiary] was analyzing complex financial information and preparing detailed financial reports for senior management. Her analysis generated reports on the company's assets and liabilities, balance sheet, and P&L (Profit and Loss) statements. [The beneficiary's] work was trusted by senior company officers and was the basis for high level strategic forecasting such as projecting the company's future financial position.

(The AAO slightly altered the formatting of the above text to include bullet points.) [REDACTED] claims that he has "five years of experience in the field and degrees in Electrical engineering and Financial Management." He does not provide any information as to the level of his degrees (e.g., associate's degree, baccalaureate, master's degree).

The AAO observes that the letters are devoid of information regarding the requirements (if any) for the past positions held by the beneficiary. Moreover, the AAO notes that the dates of the positions overlap, and thus the beneficiary was apparently simultaneously employed with more than one company. The letters do not indicate the number of hours per week that she was employed with each employer. Furthermore, the record lacks probative evidence regarding the academic credentials of the beneficiary's peers, supervisors and/or subordinates in her prior employment.

Upon review of the record, the petitioner has not provided sufficient corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Thus, 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 and that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a bachelor's degree (or higher) or its equivalent in the specialty occupation. Moreover, the petitioner failed to submit probative evidence establishing that the beneficiary has recognition of expertise in accounting. Upon review of the record of proceeding, the AAO finds that the petitioner has failed to establish that the beneficiary has at least a bachelor's degree in a specific specialty, or its equivalent. Accordingly, the appeal will be dismissed and the petition denied for this reason.

Beyond the decision of the director, the AAO notes that the record of proceeding contains discrepancies between what the petitioner and counsel claim about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated by the LCA submitted in support of petition. That is, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Accountants and Auditors" at a Level I (entry level) wage.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing-wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation. It is important to note that prevailing wage determinations start with an entry level wage (Level I) and progress to a wage that is commensurate with that of a Level II (qualified),

Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.¹¹ The U.S. Department of Labor (DOL) emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

In an undated letter submitted in response to the RFE, the petitioner stated that the beneficiary supervises three accounting staff personnel and "prepares reports that are critical to understand the company's current financial position." The petitioner's owner claims that the beneficiary reports to him, stating "[the beneficiary's] Accountant position reports to me . . . the owner [of the company]".¹² According to the petitioner, the beneficiary "makes recommendations on procedures

¹¹ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

¹² Notably, the petitioner submitted an organizational chart that indicates that the beneficiary supervises an accounting clerk and two individuals in accounting (not designated as accountants), and that she directly reports to the "Accounting/HR Manager" (not the owner). This is further confirmed in the owner's declaration, which states that [REDACTED] is familiar with the beneficiary's work because she personally supervised the beneficiary. No explanation was provided.

and practices to ensure that [the petitioner] is on course to meet its operational and financial goals." In addition, the petitioner asserted that the beneficiary must "have a high-level understanding of business practices in general and [the petitioner's] business operations in particular." In a brief dated April 24, 2012, counsel for the petitioner stated that the proffered position "requires a high level of skill and knowledge of generally accepted accounting principles." Thus, the petitioner and counsel have indicated that the proffered position requires a "high level" of knowledge and skill.

The level of knowledge required to perform the duties of the proffered position appears to be inconsistent with the requirements of a Level I position, which is appropriate for a "beginning level" employee with "only a basic understanding of the occupation." Further, the petitioner indicated that it will be relying heavily on the beneficiary's recommendations and work product to meet the petitioner's operational and financial goals. Such reliance on the beneficiary's work appears to surpass the expectations of a Level I position, as described above, in which the employee works under close supervision, performing routine tasks that require only a basic understanding of the occupation and limited exercise of judgment. Here, rather than the beneficiary's work being "monitored and reviewed for accuracy," the petitioner claims that it is relying on the accuracy of the beneficiary's work product to make business decisions. Further, the petitioner has indicated that as the lead accountant, the beneficiary supervises three employees.

The AAO must question the level of complexity, independent judgment and understanding required for the proffered position as the LCA is certified for a Level I entry-level position. The characterization of the position and the claimed duties and responsibilities as described by the petitioner and counsel conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and his work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the

Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment, understanding and requirements necessary for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

A review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved for this reason.

Finally, the AAO notes that on appeal, counsel asserts that the director "denied the Petitioner and Beneficiary's due process rights, and violated the APA in issuing this decision."¹³ Counsel provides

¹³ In addition, on appeal, counsel asserts that the director improperly issued an RFE requesting additional evidence to establish that the proffered position was properly characterized as a specialty occupation position. The AAO observes that the petitioner submitted a generic job description and inadequate supporting evidence with the initial Form I-129 petition. As the burden of proving eligibility for a visa petition lies entirely with the petitioner, the director correctly requested that the petitioner present evidence to establish that the proffered position qualified as a specialty occupation. The AAO further observes that

no further information but apparently is referring to the Due Process Clause of the Fifth Amendment of the United States Constitution, which guarantees minimal requirements of notice and hearing when action by the federal government might deprive one of a significant life, liberty, or property interest. A review of the record and the decision indicates that the petitioner and counsel have not shown that there has been "substantial prejudice." See *De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The petitioner has not demonstrated any error by the director in conducting the review of the petition. Nor has the petitioner demonstrated any resultant prejudice such as would constitute a due process violation. See *Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). Counsel's primary complaint is that the director denied the petition. However, the petitioner has not met its burden of proof to establish eligibility for the benefit sought, and the denial was the proper result under the applicable statutory and regulatory provisions. Accordingly, the claim is without merit. Furthermore, with respect to a constitutional due process challenge, the AAO has no authority to entertain constitutional challenges to a USCIS action. Cf. *Matter of Salazar-Regino*, 23 I&N Dec. 223, 231 (BIA 2002).

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 *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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.

counsel asserts on appeal that "[t]he RFE placed a large emphasis on establishing the position as a 'specialty occupation' and did not focus on [the beneficiary's] possession of a Bachelor's degree or its equivalent." However, counsel acknowledges that "[t]he RFE raised several issues in its first 3-pages regarding [the beneficiary's] qualifications to fulfill the 'specialty occupation' of accountant based on her educational attainment and experience." Upon review of the RFE, the AAO finds that the petitioner was provided with ample notice of the deficiencies of the instant petition, suggestions of evidence to be provided to sustain its burden, and the opportunity to respond.