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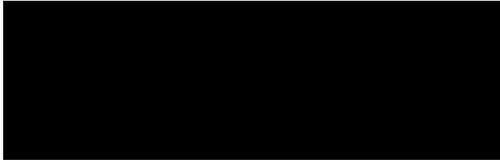
U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: LIN 03 023 52660 OFFICE: NEBRASKA SERVICE CENTER

DATE: DEC 17 2003

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Handwritten signature: Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a carpet and flooring company that currently employs four persons and has a gross annual income of \$350,000. It seeks to employ the beneficiary as an accounting management analyst for a period of three years. The director denied the petition for failing to establish that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality 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.

On the Form I-129, the petitioner listed the proffered position as "accounting management analyst," and described the proposed duties as follows:

Examine and evaluate records management system; evaluate findings; set up accounting systems for inventory, sales, expenses; adapt manual procedures to machine and computer processing.

With the Form I-129, the petitioner submitted a copy of a "Term and Conditions of Employment Contract," which described the proffered position as follows:

ASSIGNMENT: The employee will work as systems and accounting management analyst. Employee will analyze and advise management on management and accounting systems. Will set up record keeping systems for sales, expenses, inventory, payroll. Will convert all manual systems to machine and computer.

A number of other documents were submitted with the Form I-129, including copies of previously filed immigration forms, the beneficiary's resume, an evaluation of the beneficiary's foreign educational credentials, and the beneficiary's foreign diploma and academic transcript. These are not relevant to the specialty occupation issue.

The director issued a comprehensive request for additional evidence that would be relevant to the specialty occupation issue and the issue of the beneficiary's qualifications to serve in an H-1B specialty occupation.

In response, counsel submitted her own letter, which briefly introduced the petitioner's response, which consisted of a letter from the petitioner's president and these enclosures:

- (1) Immigration documents not relevant to the issue at hand;
- (2) A three-page "Accounting Management Analysis" job description;
- (3) A letter of recommendation from a previous employer for whom the beneficiary had worked as a marketing-management assistant;
- (4) A one-page evaluation of the beneficiary's foreign credentials, prepared by International Evaluation Services, LLC (plus the evaluator's resume);
- (5) A three-page printout from the Internet version of the Department of Labor's (DOL) *Occupational Outlook Handbook's* section on the financial manager occupation.
- (6) From an unidentified version of DOL's *Dictionary of Occupational Titles (DOT)*, a one-page excerpt which includes, with other information, SVP (Specific Vocational Preparation) ratings on occupations grouped under these three DOT industry classifications: Accounting and Auditing, Records Systems Analysis, and Risk and Profit Analysis.

- (7) Job postings which the petitioner presents as showing industry degree requirements for positions that are parallel to the one proffered here.
- (8) A "[r]evised" foreign-degree evaluation "with sources and credentials of the evaluator."
- (9) The beneficiary's "[t]ranscript with relevant subjects studied."

The job description document addressed the proffered position under three headings, "Job Summary", "Essential Functions," and "Qualifications, Skills, and Abilities (Beneficiary)."

According to the job summary section, the accounting management analyst would:

- Analyze financial information and prepare financial reports to determine or maintain record of assets, liabilities, profits and loss, tax liability or other financial activities within the company. (35%)
- Prepare tax returns. (15%)
- Compute, classify, and record numerical data to keep financial reports complete. Perform any combination of routine calculating, posting and verifying duties to obtain primary financial data for use in accounting record. (15%)
- Manage budget and finances of the company. (10%)
- Insure correct business functionality, requirements, and industry standard are addressed within the computer applications. (25%)
- Reports to the President, has final say on whether a consultant's programming results are meeting the client's requirements based upon the client's business needs. (15%)

The "Essential Functions" section of the job description document identified these duties:

- Computes taxes owed using personal computer and complete entries on forms following tax forms instructions on the computer.
- Consult tax law handbook or bulletins to determine procedures for preparations of atypical returns.

- Calculates accounting and other numerical data, such as amount customers owe sales totals and inventory data, using computer programs.
- Posts total to record and prepare[s] bills or invoices to be send [sic] to customers using Quickbooks.
- Complies with Federal, State, and company policies, procedures, and regulations.
- Uses debits and credits accounts.
- Evaluates records for accuracy of balances postings, calculations, and other records pertaining to business or operating transactions and bank reconciliation.
- Performs financial calculations such as amount due, balance, discounts, equity, and principal.
- Records financial transactions and other account information to update and maintain accounting records.
- Compiles data based on research techniques and on statistical compilations involving and [sic] understanding of operating units programs[,] policies[,] and procedures.
- Drafts financial, statistical, narrative, and other reports as requested.
- Generates timely financial statements.
- Assigns and distributes fiscal responsibilities, in consultation with the president.
- Develops and monitors budgets.
- Conducts periodic audits of per diems to actual expenses, and budget comparisons to actual.
- Responsible for all financial procedures and records. This responsibility includes:

Maintenance of checking accounts and invoices:

- a. Responsible for subsidiary ledgers: cash disbursements, cash receipts, accounts payable, month-end payroll summary, accounts receivable summary, and journal entries for adjustments to the general ledger.

- b. Responsible for current and capital fund general ledgers, trial balances, financial report, and balance sheets.
 - c. Preparing monthly reports that include accounts payable reconciliation, accounts receivable reconciliation, cash flow report, and balance sheet audits.
- Supervises and coordinates the activities of the underwriting staff, recommending measures to improve performance and increase efficiency.
 - Recommends or initiates personnel actions such as hiring, promotions, transfers, discharges, and disciplinary measures.
 - Assists in the analysis of financial impacts of risks on the company within authority, selecting appropriate techniques to minimize loss.
 - Prepares and submits various management reports.
 - Understands the role of business in the big picture and provides ideas and recommendations regarding the evolution of the business.
 - Responds to questions and influences the client regarding current and potential products.
 - Produces reports, timelines, and graphics using advanced functions of a personal computer. Creates reports from existing client databases to satisfy user requests, data sampling and project analysis.
 - Participates in industry and other professional networks to ensure awareness of industry standards, trends and best practices in order to strengthen organizational and technical knowledge.

The "Qualifications, Skills, and Abilities (Beneficiary)" apparently detail what the petitioner has determined to be aspects of the beneficiary's education and work experience that qualify her for the proffered position.

The director denied the petition because he determined that the evidence of record did not meet any of the specialty occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief which encloses: (1) a letter from the petitioner's president, responding to the denial; (2) a business 24-page "Business Plan" of the petitioner; and (3) three more advertisements which the petitioner deems to be for positions similar to the one proffered to the beneficiary.

Counsel first addresses the fact that the director did not find that there was an industry-wide degree requirement for the proffered position. Counsel asserts that the director erred in failing to consider the Internet advertisements that the petitioner had submitted as "evidence of an industry standard in requiring degree professionals in financial management." Likewise, counsel claims that the director erred by not considering "data from the U.S. Department of Labor Statistics," apparently referring to the excerpts submitted from the *Handbook* and the *DOT*. In this regard, counsel indicates that she is submitting the additional advertisements enclosed with the brief to further support her contention about an industry standard. With regard to the employer-advertisers being in businesses different from the petitioner, counsel states, "It should be noted that Aspen, the petitioner's business location, "is not considered a job market for equivalent positions in business management and there is a dearth of local postings."

Counsel notes that the business plan and letter from the petitioner's president were enclosed with the brief because they "establish the basis for requiring an accounting management analyst."

According to counsel, "the description of the position and the needs of the company" establish that the duties of the proffered position are "specialized and complex and usually associated with the attainment of a baccalaureate degree or higher." Counsel states:

[I]T is a position of trust, of exercising independent judgment, of complex and myriad duties involving large investments and of certain professional duties (accounting, finance, and business administration). Case law definitely supports the proposition that certain (not all) management positions are professional. This position requires not just a bookkeeping clerk, but a financial manager trained in a specialized field with a specialized course of study that leads to a baccalaureate or higher degree.

Counsel further asserts that the petitioner has also established "by clear and convincing evidence that the degree requirement is common in parallel positions among similar organizations, as upheld by data from the Bureau of Labor Statistics."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Before proceeding with an evidentiary discussion, it is important to note the type of baccalaureate or higher degree that a specialty occupation requires, as this is a central factor in understanding and applying each criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), specifies that a "specialty occupation" is one that requires not only (1) the theoretical and practical application of a body of highly specialized knowledge, but also (2) attainment of a bachelor's degree or higher, or the equivalent, in "the specific specialty." Thus, the required degree must be in a specific specialty, that is, in a discipline that contains a body of highly specialized knowledge that is necessary for performance of the proffered position. 8 C.F.R. § 214.2(h)(4)(ii) mirrors the Act by stating that the required degree must be in "a specific specialty." In this context, CIS correctly interprets "degree" in all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) as one in a specific specialty. This is a reasonable interpretation that is consistent with section 214(i)(1) of the Act. See *Tapis International v. INS*, 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

Therefore, unless it is in a specific specialty that relates to the position, a degree or degree-equivalent will not qualify a position as an H-1B specialty occupation.

As the following discussion will show, the evidence does not satisfy any of the specialty occupation criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

Counsel asserts, in part, that the DOT's SVP rating was not considered, even though submitted into the record. The DOT is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. 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. For this reason, the director did not err in discounting the DOT information.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a comprehensive and authoritative source of information about particular occupations' duties and educational requirements. Here the AAO consulted the 2002-2003 printed edition.

Counsel maintains that the "accounting management analyst" duties translate into a position in the financial manager occupation, which the *Handbook* addresses at pages 52-54. The director, on the other hand, determined that the proffered position was that of a bookkeeper, included in the section on "Bookkeeping, Accounting, and Auditing Clerks" at pages 390-392 of the *Handbook*. The AAO made its own independent determination, taking into account the conflicting points of view of counsel and the director, but ultimately guided by the evidence.

Based on a complete review of the record and careful consideration of the appeal and all of the submissions filed by the petitioner and counsel, the AAO has determined that the proffered position comports with the general occupation of financial clerk, addressed at pages 386-387 of the *Handbook*, and, more specifically, the bookkeeping, accounting, and auditing clerk occupation, which is a subset of the financial clerk occupation. The *Handbook's* "Nature of the Work" section, at page 390, is decisive:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge, from full-charge bookkeepers, who can maintain an entire company's books, to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and

increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, 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 the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks. Their titles often reflect the type of accounting they do, such as accounts payable clerk or accounts receivable clerk. In addition, responsibilities vary by level of experience. Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures. They post transactions in journals and on computer files and update these files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They also may review invoices and statements to ensure that all information is accurate and complete, and reconcile computer reports with operating reports.

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents for correct entry, mathematical accuracy, and proper codes. They also correct or note errors for accountants or other workers to adjust.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software on personal computers. They increasingly post charges to accounts on computer spreadsheets and databases, as manual posting to general ledgers is becoming obsolete. These workers now enter information from receipts or bills into computers, which is then stored either electronically, as computer printouts, or both. Widespread use of computers also has enabled bookkeeping, accounting, and

auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. Many of these functions require these clerks to write letters, make phone calls to customers or clients, and interact with colleagues. Therefore, good communication skills are becoming increasingly important.

None of the six "job summary" categories from the petitioner's job description sheet appear inconsistent with the work of a financial clerk, particularly in a small firm.

All of these "essential functions" from the job description sheet clearly fall within the purview of a financial clerk performing joint functions of a bookkeeping clerk, accounting clerk, and auditing clerk as described in the Handbook: taxes computation and tax-law handbook and bulletin consultation; calculation of accounting and other data, using computer programs; posting totals and preparing bills and invoices; use of debit and credit accounts; evaluation of the accuracy of business records and related calculations; performance of financial calculations, such as amount due, balance, discount, equity, and principal; preparation of records of financial transactions and other account data; compilation of data; maintenance of accounting records; generation of financial statements; periodic audits of per diem claims against actual expenses; maintenance of checking accounts and invoices; assistance in analysis of company's risks; and production of reports, timelines, and reports, through use of advanced functions of a personal computer.

With regard to the tax research and preparation function, there is no indication in the record that, at the time of the petition's filing, the petitioner required tax expertise. Indeed, the job description sheet indicates that the required tax information is readily available in a tax handbook.

Given the general extent to which the other "essential functions" are described on the job description document, there is no evidence that they would be outside the realm of duties expected of a person working and equipped to work as a financial clerk with bookkeeping and limited auditing and accounting responsibilities.

The AAO notes this statement on page 387 of the *Handbook*, from the section dealing with financial clerks in general:

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties.

With regard to the educational requirements of the financial clerks this statement, also from page 387 of the *Handbook*, clearly indicates that a financial clerk position does not require a

bachelor's degree or higher, or the equivalent, in any specific specialty:

Most financial clerks are required to have at least a high school diploma. However, having some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurement clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

The president's letter that is submitted on appeal does not shed substantially new light on the specialty occupation issue. In summary, the evidence does not establish that the proffered position normally requires a baccalaureate or higher degree, or the equivalent, as a minimum requirement for entry into the proffered position. Accordingly, the petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

Contrary to counsel's contention, the record does not establish that the proffered position is one for which a degree in a specific specialty is commonly required in the industry and in parallel positions among organizations similar to the petitioner.

As discussed earlier, "degree" in this and all of the 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria means one that is in a specific specialty whose highly specialized knowledge is required for performance of the proffered position.

Factors often considered by Citizen and Immigration Services (CIS) when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; 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." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

For a number of reasons the job advertisements submitted in the record are not probative of an industry-wide requirement for a degree in a specific specialty. The advertisements do not reference a common requirement for a degree in a specific specialty. As discussed earlier, "degree" in this and all of the 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria means one that is in a specific specialty whose highly specialized knowledge is required for performance of the proffered position. Starting with the advertisements filed with the reply to the request for additional information, they only specify the following degrees: "4 year degree," "Bachelor's degree," "4 yr deg.," "BA (4 year or equivalent)," "Bachelors degree," "College Degree," "Bachelor, accounting or equivalent," and "Bachelor's Degree in Accounting." Furthermore, the advertisements are too sparse in details to establish that their positions are parallel to the one proffered here. In any event, the number of advertisements is too small a sample to establish an industry-wide standard.

Also, as indicated in the discussion above, the *Handbook* indicates that the instant criterion cannot be met, because the proffered position does not require a degree in a specific specialty.

As also discussed above, the *DOT* document is not probative on the issue of an occupation's degree-specific educational requirements.

B. Degree necessitated by the complexity or uniqueness of the position.

Despite counsel's assertions, the record fails to establish that the proffered position is either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform it.

As enumerated and described in the record and reviewed in the light of the *Handbook*, the duties do not appear beyond what could be reasonably expected of a financial clerk. While the duties are multiple and diverse, they do not comprise a position that is especially complex or unique. The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3) .

The petitioner had no evidence to present on this issue, as this is the first offering of the proffered position.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (4) .

The AAO has reviewed and assessed the full range of duties depicted in the record. Despite counsel's assertions, the duties do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a bachelor's degree or higher in a specific specialty. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The last two pages of the Business Plan provides a two-part discussion on the proffered position's main purpose as being "to find ways to increase company profitability and keep it in the same direction."

The "Cash Flow Management" section of the Business speaks about the necessity to: (1) measure cash flow by weekly, quarterly, and yearly cash-flow projections; (2) improving the speeds by which (a) the floor product is finally installed for the customer, (b) receivables are thereby produced, and (c) receivables are translated into cash; (3) manage payables, by finding ways to monitor expenses and cut or control them; and (4) survive cash shortfalls, by arranging a line of credit at a bank ahead of time.

The "Tax Concerns" section focuses primarily on the need to (1) plan for taxes by "making accurate estimated tax payments to cover [the petitioner's] income, payroll, and other tax liability"; (2) ensure that depreciation rules are properly applied when the petitioner attains assets; (3) take advantages of all the tax deductions that the petitioner can legally claim; and (4) ensure that tax records and supporting documents are accurate and ready for an audit.

As should be evident from the above description of the two-part discussion of the financial management analyst, the Business Plan there presents no evidence that would place the proffered duties beyond the purview of a fiscal clerk performing bookkeeping, auditing, and accounting clerk functions. The same goes for the rest of the record.

The evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h) (4) (iii) (A) (4) .

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), and counsel's assertions are without merit. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361, *supra*. The petitioner has not sustained that burden.

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