



U.S. Citizenship
and Immigration
Services



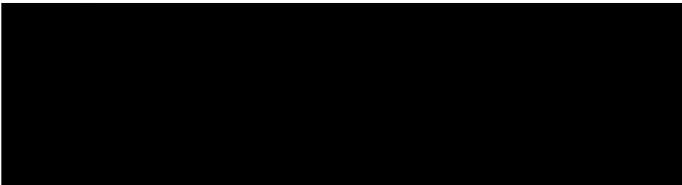
FILE: WAC 03 001 52977 Office: CALIFORNIA SERVICE CENTER Date:

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

DEC 20 2004

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:



PUBLIC COPY

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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a care facility for the elderly, with six locations and ten employees. It seeks to hire the beneficiary as a budget analyst. The director denied the petition because he determined the proffered position did not meet the criteria required for classification as a specialty occupation and that the beneficiary did not qualify to perform services in a specialty occupation. He also concluded that the petitioner had failed to establish that it qualified as a U.S. employer of the beneficiary. On appeal, counsel submits a brief and additional documentation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with supporting evidence. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is the determination of whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a budget analyst. Evidence of the beneficiary’s duties includes: the Form I-129; a September 25, 2002 support letter from the petitioner accompanying the Form I-129; and counsel’s response to the director’s request for evidence, including a October 25, 2003 letter from the petitioner.

The petitioner has stated that its proffered position must be filled by an individual who will be able to analyze and establish standard operating procedures for controlling costs, and develop programs to reduce costs. Specifically, the position will require the beneficiary to:

- Analyze accounting records to determine financial resources;
- Review operating budgets periodically to analyze trends affecting budget needs and advise staff on cost analysis and fiscal allocations;
- Review and evaluate the care and board home services, determining areas that may require modification or improvement and then formulating plans to provide the most efficient use of the workforce, without sacrificing quality;
- Conduct feasibility studies on specific business opportunities and establish product costs;
- Apply mathematical analysis to determine validity and reliability of sampling and work study statistics; and
- Aid in increasing business revenue, decrease overhead and improve operational efficiency.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; 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.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In his denial, the director concurred with the petitioner's description of its position as that of budget analyst. However, noting the occupation did not require a degree in a specific specialty, he concluded that the petitioner's position failed to qualify as a specialty occupation under any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Following its own review, the AAO also concludes that the description of the proffered position is that of budget analyst and, like the director, notes the generic degree requirement, as discussed in the 2004-2005 edition of the *Handbook*:

Private firms...generally require candidates for budget analyst positions to have at least a bachelor's degree.... Sometimes, a degree in a field closely related to that of the employing industry or organization, such as engineering, may be preferred. Some firms prefer candidates with a degree in business because business courses emphasize quantitative and analytical skills.

On appeal, counsel asserts that the proffered position of budget analyst is, by its very nature, a specialty occupation and that it meets the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii) based on the generic baccalaureate degree requirement noted in the *Handbook*. However, when a job, like that of budget analyst, can be performed by a range of degrees or a degree of generalized title without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As already noted, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A) to require a degree in a specific specialty that is directly related to the proffered position.

As the *Handbook* clearly indicates that the position of budget analyst does not require a degree in a specific specialty, the AAO concludes that the proffered position does not qualify as a specialty occupation under the first criterion – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To determine whether the petitioner can establish that its position meets the second criterion – that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the

proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the AAO has reviewed the six Internet job postings submitted by counsel in response to the director’s request for evidence and considered counsel’s assertions on appeal that the *Handbook* provides evidence of the degree as an industry norm.

The job descriptions submitted by counsel do not, however, provide proof that businesses similar to the petitioner’s and with parallel positions require the services of individuals with baccalaureate degrees. After reviewing these job announcements, the AAO finds they reflect the employment needs of a variety of organizations with operations unrelated to the petitioner’s business and either do not provide enough detail to determine whether the positions advertised are parallel to that described by the petitioner, or clearly describe positions that are not parallel to the petitioner’s.

Further, counsel’s assertions regarding the evidence provided by the *Handbook* are not persuasive. The *Handbook* language cited by counsel – private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor’s degree – is not responsive to the requirements of the second criterion. As interpreted by CIS, the second criterion requires a petitioner to establish that a degree in a specific specialty directly related to the proffered position is common to its industry. The language of the *Handbook*, which discusses only the generic degree requirement for budget analysts, cannot, therefore, serve as proof of an industry norm.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner’s ability to meet the third criterion, the AAO normally 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 case, the director, in his request for evidence, asked the petitioner to submit present and past job announcements or classified advertisements for the proffered position, showing that it requires applicants to have the minimum of a baccalaureate or higher degree or its equivalent in the specialty.

In response to the director’s request for evidence, the petitioner provided no documentation of the type requested. Instead counsel stated that the petitioner did not advertise its proffered position, but found the beneficiary through an informal “word of mouth” process. Although informal, the process, as asserted by counsel, included a requirement that applicants hold a bachelor’s degree. On appeal, counsel states that CIS ignored evidence submitted by the petitioner that the proffered position is that of a budget analyst and that the petitioner has “an actual and practical need for someone with Beneficiary’s experience.”

While the AAO acknowledges that the petitioner has clearly stated its desire to hire a budget analyst, the AAO notes that it is not the petitioner’s self-described employment needs that dictate whether a position qualifies as a specialty occupation under Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). That determination can only be made through the application of the four criteria set forth at 8 C.F.R. §

214.2(h)(4)(iii)(A). Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree.

In light of the petitioner's failure to provide any evidence regarding its normal hiring practices or the informal process through which it sought the services of the beneficiary, the AAO must conclude it has failed to meet the requirements of the third criterion. Counsel's assertions that the informal, word of mouth process used to identify the beneficiary included a degree requirement cannot serve as proof of the petitioner's hiring practices. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 503, 506 (BIA 1980). Further, counsel's statements regarding the generic degree requirement imposed on applicants for the petitioner's job appear to undermine those made by the petitioner in its support letters. In those letters, the petitioner specifically asserted that it required an individual with a bachelor's degree "in majors that consist of accounting, finance, business management and economic type courses."

The fourth criterion requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has reviewed the duties of the proffered position as described by the petitioner in its September 25, 2002 and October 24, 2003 letters, as well as counsel's response to the director's request for evidence and her discussion of this criterion on appeal.

The proffered position has already been determined to be that of budget analyst, an occupation where the minimum educational requirement for employment is a generic bachelor's degree, a requirement that does not qualify it as a specialty occupation. On appeal, counsel seeks to overcome this determination by asserting that the significant specialization and complexity of the petitioner's position are normally associated with a bachelor's or higher degree.

The AAO does not, however, find counsel's general description of the duties of a budget analyst in her response to the director's request for evidence and on appeal to be persuasive. Neither the specific duties described by the petitioner, nor the more generic description provided by counsel lead the AAO to conclude that they are more specialized or complex than those associated with the occupation of budget analyst as described in the *Handbook*. Further, counsel's own description of the generic degree requirement imposed by the petitioner during its informal job search undermines her contention, on appeal, that the duties of the proffered position are so specialized and complex that they qualify it as a specialty occupation. Having found the petitioner's position to involve no duties that differentiate it from that of the budget analyst position described in the *Handbook*, the AAO concludes that the petitioner has failed to meet the requirements of the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to the issue of whether the beneficiary whom the petitioner seeks to employ is qualified to perform the duties of the proffered position, had it been found to be a specialty occupation.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the

Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

No evidence has been submitted to establish that the beneficiary holds a U.S. degree in the specialty or a foreign degree equivalent to a U.S. degree in the specialty, nor is the beneficiary required to have a license to perform the duties of the proffered position. Therefore, the AAO will focus on the evidence submitted by the petitioner that responds to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

When a beneficiary is determined to lack the specific degree required by a specialty occupation, the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D) to determine whether the individual may still qualify to perform the proffered position. A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

At the time of filing, counsel submitted an academic equivalency evaluation of the beneficiary's academic and work experience from Morningside Evaluations and Consulting, prepared by [REDACTED]. In her response to the director's request for evidence, she supplemented that evaluation with another from [REDACTED] at the State University of New York at Buffalo. Both evaluations found the beneficiary to have the equivalency of a bachelor's degree in business administration based on his combined academic and employment background.

At the time of his decision, the director stated that the beneficiary held a foreign degree determined to be the equivalent of a U.S. baccalaureate in political science, but that the degree did not qualify the beneficiary to work in the proffered position. The AAO notes that counsel has identified this error and that the evaluations provided by counsel state that the beneficiary has the equivalency of a bachelor's degree in business administration. Therefore, the director's finding that the beneficiary has been determined to have the equivalent of a bachelor's degree in political science is withdrawn, as well as his determination that the beneficiary's degree does not qualify him to perform the duties of a budget analyst.

However, the AAO's review of the equivalency evaluations provided by counsel has determined that neither can serve as evidence of the beneficiary's ability to meet the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) and (3). The evaluation provided by [REDACTED] for Morningside Evaluations and Consulting finds the beneficiary to have completed academic coursework equivalent to three years of academic study at an accredited U.S. university or college and that his six years of employment are the equivalent of two years of bachelor's level academic training in business administration. Although the AAO accepts Morningside's evaluation of the beneficiary's educational background as the equivalent of three years at the college-level, its evaluation of the beneficiary's work experience will be discounted. Per 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the AAO recognizes a foreign credential evaluation service's opinion only to the extent that it evaluates education.

The AAO notes that, in his evaluation, [REDACTED] states only that he has the authority to grant college-level credit for training and/or experience, not the authority to award academic credit for work experience. However, even if [REDACTED] had claimed this additional authority, his evaluation would still have been

discounted. For the AAO to accept an academic equivalency based on education and work experience, there must be independent confirmation in the record of the evaluator's authority to provide that evaluation. Assertions of the evaluator do not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D). Confirmation must come from a dean, provost, or other appropriate authority at a college or university that has a program that grants college-level credit based on foreign educational credentials, training and/or employment experience.

The second evaluation of the beneficiary's academic and employment background, authored by Dr. Samuel L. Tiras, also lacks the independent supporting documentation just noted. While Dr. Tiras' opinion is relevant to this proceeding, there is no evidence in the record that he is qualified to award academic credit based on education and/or work experience. In the absence of a letter from someone in a position of authority at his academic institution stating his qualifications and the existence of an accreditation program, his evaluation also cannot serve as evidence that the beneficiary has the equivalent of a U.S. degree. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Therefore, neither equivalency evaluation provided by counsel serves to establish that the beneficiary has the equivalent of a U.S. baccalaureate degree in business administration. The AAO also notes, however, that even if the preceding evaluations had been found sufficient to support a finding that the beneficiary's combined education and work history were equivalent to a U.S. bachelor's degree in business administration, it would not have established that the beneficiary holds a degree in a specialty occupation. CIS does not recognize a generalized business degree that does not have a specific concentration in marketing, finance or some other specific area of business as a degree required to perform a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988)

As the academic equivalency documentation submitted by counsel fails to satisfy the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) and (3), and the petitioner has submitted no results of college-level equivalency examinations or special credit programs, or certifications or registrations in the occupation that might satisfy sections (2) and (4), the AAO now turns to a consideration of section (5) -- whether the beneficiary has acquired the equivalent of a degree in the specialty through a combination of education, specialized training, and/or work experience in areas related to the specialty and has achieved recognition of his expertise in the specialty occupation as a result of such training and experience.

When evaluating a beneficiary's qualifications under the fifth section of 8 C.F.R. § 214.2(h)(4)(iii)(D), CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a

foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO has already accepted Morningside's evaluation that the beneficiary has the equivalent of three years of college-level education. In that the beneficiary's field of study was unrelated to the duties of the proffered position of budget analyst, the AAO must determine whether the beneficiary's six years of employment, when combined with his education, provide him with the equivalent of a U.S. degree directly related to the position of budget analyst. To make its determination, the AAO has again reviewed the academic evaluations provided by counsel, the description of the duties associated with the beneficiary's previous employment, the letters provided by the beneficiary's coworkers and the certificates submitted by counsel in response to the director's request for evidence. Based on this record, the AAO concludes that the petitioner has not established that the beneficiary's education and previous employment are equivalent to a completion of a U.S. baccalaureate or higher degree in a specialty occupation.

The two academic evaluations of the beneficiary's six-year history of employment state that, during these years, he served in positions of "advanced professional responsibility and sophistication, together with peers, under the supervision of managers, at a level of employment commensurate with Bachelor's level training." The AAO notes, however, that the on-the-job experience that may be substituted for education under 8 C.F.R. § 214.2(d)(h)(4)(iii)(5) must include the theoretical and practical application of specialized knowledge. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Based on its own review of the record, the AAO finds that the letters from the beneficiary's former employer and coworkers do not provide enough descriptive detail to make a determination about the nature of his previous employment, nor whether his experience was gained while working with peers, supervisors or subordinates who have degrees in a financial specialty. Further, the certificates submitted by counsel do not document the beneficiary's expertise in financial matters, but rather his participation in several business seminars. As neither evaluator appears to have reviewed any information beyond that which is now before the AAO, the AAO did not consider their opinions in reaching its conclusions regarding the nature of the beneficiary's previous employment. Where an opinion is in any way questionable, the AAO may discount it or give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO now turns to the final issue raised in the director's denial – whether the petitioner qualifies as a U.S. employer at 8 C.F.R. § 214.2(h)(4)(ii). In his denial, the director determined the petitioner was not eligible to file an H-1B petition because it was not clear that the petitioner would be the beneficiary's employer. Referring to the petitioner's recent history in filing immigrant and nonimmigrant visa petitions, the director noted that the petitioner had filed 17 petitions for immigrant and nonimmigrant visa beneficiaries and, of the seven granted to date, only one appeared to be employed by the petitioner. He, therefore, found the evidence before him insufficient to establish that the petitioner intended to employ the beneficiary.

On appeal, counsel responds to the director's concerns, stating that five of the employees for whom the petitioner has petitioned are working at its assisted care sites and that the petitioner intends to directly employ the beneficiary as a budget analyst. Although counsel acknowledges that four individuals who were the

beneficiaries of previously approved petitions are no longer working for the petitioner, she states that their locations are unknown to the petitioner and that each left without informing the petitioner.

To determine whether the petitioner qualifies as a U.S. employer with regard to the beneficiary, the AAO relies on the requirements at 8 C.F.R. § 214.2(h)(4)(ii) which describe a U.S. employer as an entity that:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax Identification Number.

The AAO notes that the director requested the petitioner to submit copies of the quarterly wage reports for all employees for the last quarter accepted by the State of Arizona, with the names, social security numbers and number of weeks worked for all employees. In response, the petitioner submitted one such report dated September 30, 2002, another for the quarter ending December 31, 2002, and a third, from a different address, for the quarter ending March 31, 2003.

CIS records reflect that of the petitions filed and approved as of the date of the director's request for evidence, the petitioner had presented evidence of employing four of the beneficiaries. CIS records also reflect that the other petitions that had been filed by the petitioner had been denied or abandoned. Currently, the petitioner has six approved H-1B petitions. However, the validity dates of the visas of five of these petitions post-date the record of proceeding before the director and the petitioner has not been requested to provide proof of employment for these beneficiaries. Thus, while the AAO finds the director to have legitimate concerns about the petitioner's multiple H-1B filings and the implications of those filings with respect to its intention to employ the beneficiary, the current record of proceeding does not reflect that the petitioner is not a U.S. employer per the requirements of 8 C.F.R. § 214.2(h)(4)(ii). Accordingly, the finding of the director in this regard is withdrawn.

As already noted, the AAO withdraws both the finding of the district director that the beneficiary held the equivalent of a U.S. degree in political science and was, therefore, unqualified to perform the duties of the proffered position, and that the petitioner has failed to establish that it qualifies as a U.S. employer with regard to the beneficiary. However, the petitioner has failed to establish that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) and that the beneficiary is qualified to perform the duties of the specialty occupation per 8 C.F.R. § 214.2(h)(4)(iii)(C). 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. The petitioner has not sustained that burden.

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