



U.S. Citizenship
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FILE: WAC 05 187 50725 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2006

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 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, 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 avers: it wholesales and distributes apparel; it employs eight personnel; and its gross annual income is approximately \$17,948,625 and its net annual income is \$718,317. It seeks to employ the beneficiary as a financial analyst. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On August 18, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the director's decision is in error and submits a brief and copies of remittances to a claimed foreign subsidiary. The issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

The record contains: (1) the Form I-129 filed June 23, 2005 and supporting documentation; (2) the director's June 28, 2005 request for further evidence (RFE); (3) the petitioner's August 8, 2005 response to the director's RFE; (4) the director's August 19, 2005 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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

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

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

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

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

The petitioner seeks the beneficiary's services as a "financial analyst." To evidence the duties of the proffered position, the petitioner, in a June 17, 2005 letter appended to the petition and in a July 20, 2005 letter in response to the director's RFE, stated the duties of its financial analyst are:

- Provide analytical support to proposed changes in cost/profit standards;
- Provide financial analysis and recommendations;
- Evaluate financial and investment opportunities in different production methods and uses;
- Develop and devise the company expansion plan, and analyze the financial need to support the company expansion plan[;]
- Analyze, guide and support company's acquisitions of new technology[;]
- Develop long and short term financial strategies for the company[;]
- Understand company's business model and goals in the areas of finance, human resource and operation, in order to help optimize efficiency and profit, while fulfilling the goals of the company[.]

(Approximately 30% of time will be spent on these duties)

- Manage banking relationships, finance arrangements for research and development[;]
- Review financial transactions and monitor budgeting to ensure efficient and profitable operations, and to ensure expenditures stay within budget limitations;
- Provide cost containment strategies to meet financial targets[;]
- Analyze financial information to forecast business, industry, and economic conditions and trends for making financial decisions and make proper recommendations to the top management regarding the financial condition and future of the company[;]
- Track potential risks and opportunities and make educated recommendations on investment decisions[;]
- Work with key clients to understand their uses and needs, and integrate them into the company's decision making scheme[.]

(Approximately 30% of time will be spent on these duties)

- Research and evaluate the investment opportunities and current production figures to recommend investment timing and the target price to buy and sell order;
 - Evaluate and analyze the company's cash/liquid asset management, and determine, evaluate and recommend the company's loan to asset, profit margin and cost ratio[;]
 - Evaluate and recommend adjustment and modification of loan and equity financing portfolio[;]
 - Identify and diagnose quality control and deficiency issues and provide options for resolution[;]
 - Maintain operating records and databases involving inventory and performance[;]
 - Monitor new launch quantities and projected impact on field inventory[;]
 - Maintain accurate business records to ensure that proper controls are in place and procedures are followed in the recording of transactions.
- (Approximately 40% of time will be spent on these duties.)

In the petitioner's initial June 17, 2005 letter, the petitioner explained: "[the petitioner] along with the parent company and other subsidiary companies is a leading wholesale knit garment manufacturer and distributor with a client list comprising multinational corporation[s]," and "[the petitioner] has invested \$400,000 and directs the operation of [a] Mexico subsidiary;" and "[the petitioner] generated in excess of \$17.9 [m]illion in [r]evenue in 2004 and with [an] additional distribution contract is expected to exceed the 2004 revenue in 2005." The petitioner also provided a copy of its consolidated financial statements ending December 31, 2004 with independent auditors report. The auditors report noted:

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 8 to the consolidated financial statements, the Company has suffered net loss of \$3,403,806 during the year ended December 31, 2004 and, as of that date, had a working capital deficiency of \$13,374,287 and stockholders' [sic] deficiency of \$14,000,644. These conditions raise doubt about its ability to continue as a going concern.

Note 8 of the auditor's report reiterated the above information and indicated that the "[m]anagement of the Company is seeking to reduce its liabilities through improved profitability and continued financing from the Parent company."

In a July 20, 2005 response to the director's RFE, the petitioner restated the duties of the proffered position as provided initially and asserted that the position required advanced knowledge in economics, finance, mathematics, and business and that because it employed only one financial analyst it is imperative that the individual possess a minimum of a bachelor's degree to fulfill all the responsibilities and obligations of the position. In addition, the petitioner stated that the individual who had previously held the position of financial analyst had a bachelor of interdisciplinary studies in economics and communication from a Korean University.¹

¹ The petitioner provided a copy of the resume of the individual who had previously been employed in the proffered position. The individual's resume indicated that her employment, prior to employment with the petitioner, had been in the position of an accountant. The petitioner did not provide copies of her transcripts

The petitioner also provided an excerpt from the *Dictionary of Occupational Titles (DOT)* for accountant, budget, and economist positions and asserted that these similar positions all have a specific vocational preparation (SVP) of 8 that corresponds to a four-year degree. The petitioner indicated that it did not have access to the requirements of its competitors regarding job positions but could provide copies of job announcements from other garment manufacturers who were seeking financial analysts. The record contains two job announcements: (1) a job announcement for a financial analyst listed by a distributor of sportswear that provided a brief and general description of the position and noted that the manufacturer required the successful candidate to have five to seven years of experience as a financial analyst or related role and a bachelor's or master's degree in finance, information technology, mathematics or a related discipline; and (2) a job announcement for a senior financial analyst for a marketer of uniforms and work clothing that provided a broad description of the position and listed "bachelor's degree" for the educational level requested.

The petitioner further noted that its eight employees all had college degrees and that the company "provides administrative guidance between [the] parent company as well as administering its [subsidiary] production plant in Mexico" and that the financial analyst is "responsible to carry [out] the dutie[s] outlined for the U.S. company in conjunction with its operation in Mexico." The petitioner also provided its organizational chart as the director had requested.

On August 19, 2005, the director denied the petition determining that while the petitioner listed duties that resembled duties performed by a financial analyst, the evidence failed to substantiate that the petitioner's business engaged in the type of business that would require a regular full-time or part-time financial analyst. The director observed that financial analysts assess the economic performance of companies and industries for firms and institutions with money to invest and the record did not substantiate that the petitioner had capital of its own to invest. The director determined that without substantial funds to invest, CIS could not determine what duties the beneficiary would actually perform. The director observed that with only six² employees, the beneficiary's performance of any specialty occupation duties would be incidental to the primary functions of the employment. The director further determined that sole reliance on the *Handbook's* description of the duties of a financial analyst is misplaced. The director concluded that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner notes the director's apparent acknowledgement that the description of the proffered position's duties resembles that of a financial analyst. Counsel asserts that careful examination of the proffered position's job duties shows that the job duties are tailored and specific to the petitioner's business. Counsel challenges the director's observation that the performance of specialty occupation duties would be incidental to the position. Counsel points out that the petitioner provided a percentage breakdown of the time the beneficiary would be performing financial analysis and management and questions how the director came to a contrary conclusion. Counsel contends that the director erred when not considering that the petitioner handles distribution and sales across the United States, has multinational corporations among its clients, and directs the activities of its subsidiary company. Counsel notes that the needs of the petitioner's business are based on its subjective needs and that CIS should interpret the needs and duties based on an

or educational evaluations.

² The petitioner claims to employ eight employees and its California Form DE-6, Employer's Quarterly Wage and Withholding Report for the quarter prior to filing of the petition lists eight employees.

objective standard. Counsel further claims that the director's subjective conclusion that the petitioner's small size would require the beneficiary to perform duties that do not need a baccalaureate degree are not based on the facts of record. Counsel references district court cases that indicate CIS lacks the expertise to assess a company's business plans and judge whether plans for expansions or upgrading services and clientele warrant the hiring of professional personnel. Counsel provides copies of remittances to a claimed foreign subsidiary to show that the petitioner is not a small company but part of an international operation.

Counsel's assertions are not persuasive. The AAO finds, contrary to counsel's assertion, that upon careful examination of the list of duties of the proffered position, the petitioner has not provided evidence or information tailoring the generic description of duties to the petitioner's particular needs. It is not possible to determine from the outline of duties described that the individual in the proffered position will primarily or incidentally perform tasks comprising the tasks of a specialty occupation. The petitioner does not describe how the duties of the proffered position impact the petitioner's distribution and sales or how the duties of the proffered position involve the activities, financial or otherwise, of the claimed subsidiary company. The AAO declines to speculate on what the individual in the proffered position will be required to do in relation to the petitioner's business. The petitioner bears the burden of proof in these matters. Section 291 of the Act, 8 U.S.C. § 1361.

In addition, the AAO observes that the record does not contain evidence of an additional distribution contract entered into subsequent to 2004, does not contain sufficient documentary evidence establishing the relationship between the petitioner and a foreign subsidiary, and does not contain an explanation of the significance of remittances to a foreign company. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the majority of the duties, as described, do not reflect the employment of a financial analyst, an occupation discussed in the 2006-2007 edition of the *Handbook* under the occupation of financial analysts and personal financial advisors, as follows:

Financial analysts and personal financial advisors provide analysis and guidance to businesses and individuals to help them with their investment decisions. Both types of specialists gather financial information, analyze it, and make recommendations to their clients *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest

Financial analysts, also called *securities analysts* and *investment analysts*, work for banks, insurance companies, mutual and pension funds, securities firms, and other businesses, helping these companies or their clients make investment decisions. Financial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and to project its future earnings. They often meet with company officials to gain a better insight into the firm's prospects and to determine its managerial effectiveness. Usually, financial analysts study an entire industry, assessing current trends in business practices, products, and industry competition. They must keep

abreast of new regulations or policies that may affect the industry, as well as monitor the economy to determine its effect on earnings.

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, and develop forecasts. On the basis of their results, they write reports and make presentations, usually making recommendations to buy or sell a particular investment or security. Senior analysts may even be the ones who decide to buy or sell if they are responsible for managing the company's or client's assets. Other analysts use the data they find to measure the financial risks associated with making a particular investment decision.

The above description shows that a financial manager focuses on analysis and guidance to businesses and individuals to help them with their investment decisions and in analyzing financial data, spotting trends, and developing forecasts in order to make recommendations to buy or sell a particular investment or security. The duties of a financial analyst pertain more to outward investments in other companies or securities, rather than the inward focus of increasing the profitability of a particular company. Although the petitioner includes general references in its description such as: "[t]rack potential risks and opportunities and make educated recommendations on investment decisions," and "[r]esearch and evaluate the investment opportunities and current production figures to recommend investment timing and the target price to buy and sell order," the petitioner offers no information regarding the daily tasks associated with these duties. In addition, the petitioner does not offer evidence that shows the petitioner is in a position to make investment decisions relating to the purchase of other companies or securities; rather the record contains evidence that the petitioner is in a financially perilous position.

The majority of the duties listed include the general tasks described for the occupation of a budget analyst. The *Handbook* describes the occupation of a budget analyst as:

Budget analysts can be found in private industry, nonprofit organizations, and the public sector. In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits

* * *

Analysts examine the budget estimates or proposals for completeness; accuracy; and conformance with established procedures, regulations, and organizational objectives They also examine past and current budgets and research economic and financial developments that affect the organization's spending. This process enables analysts to evaluate proposals in terms of the organization's priorities and financial resources.

* * *

[A]nalysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual performance, budget analysts may write a report providing reasons for the variations, along with recommendations for new or revised budget procedures. To avoid or alleviate deficits, budget analysts may recommend program cuts or reallocation of excess funds. They also inform program managers and others within their organization of

the status and availability of funds in different budget accounts. Before any changes are made to an existing program, or before a new one is implemented, a budget analyst must assess the program's efficiency and effectiveness. Analysts also may be involved in long-range planning activities such as projecting future budget needs.

* * *

Budget analysts have seen their role broadened as limited funding has led to downsizing and restructuring throughout private industry and government. Not only do they develop guidelines and policies governing the formulation and maintenance of the budget, but they also measure organizational performance, assess the effects of various programs and policies on the budget, and help draft budget-related legislation . . .

The petitioner's description of the proffered position indicates that the individual in the position will: "[r]eview financial transactions and monitor budgeting to ensure efficient and profitable operations, and to ensure expenditures stay within budget limitations;" "[p]rovide cost containment strategies to meet financial targets;" "[p]rovide analytical support to proposed changes in cost/profit standards;" "[d]evelop long and short term financial strategies for the company;" and "[a]nalyze financial information to forecast business, industry, and economic conditions and trends for making financial decisions and make proper recommendations to the top management regarding the financial condition and future of the company." In addition, the petitioner noted the beneficiary will "[e]valuate and analyze the company's cash/liquid asset management, and determine, evaluate and recommend the company's loan to asset, profit margin and cost ratio" and "[e]valuate and recommend adjustment and modification of loan and equity financing portfolio," and generically "[p]rovide financial analysis and recommendations." These are duties generally described in the *Handbook* as that of a budget analyst, not of an individual who is primarily concerned with investing a company's monies.

Moreover the petitioner includes some duties that appear to relate to the occupation of a "management analyst" as defined in the *Handbook* as:

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management

* * *

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity

* * *

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include

annual revenues, employment, or expenditures and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem.

The petitioner's inclusion of duties such as: "[u]nderstand company's business model and goals in the areas of finance, human resource and operation, in order to help optimize efficiency and profit, while fulfilling the goals of the company;" "[i]dentify and diagnose quality control and deficiency issues and provide options for resolutions;" "[e]valuate financial and investment opportunities in different production methods and uses;" and "[m]onitor new launch quantities and projected impact on field inventory" suggests that the proffered position may include elements of a management analyst's occupation.

The petitioner has also listed duties that do not seem to relate to the petitioner's own financial and business situation. For example, the petitioner indicated that the proffered position would include developing and devising an expansion plan, analyzing and supporting acquisitions of new technology, and manage banking relationships and finance arrangements for research and development. However, the auditor's report shows that the company is in financial difficulties and the record does not substantiate that the petitioner is expanding. The petitioner has not indicated how it is involved in research and development or acquiring new technology, if at all.

To determine whether a particular job qualifies as a specialty occupation, CIS does not 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. In this matter, the petitioner's general description of the duties of the proffered position is more akin to that of a budget analyst with some elements of a management analyst. It includes some duties that are so generic they cannot be assigned to a particular occupation. The description does not resemble that of a financial analyst as described in the *Handbook*.

In addition, the petitioner's description of the proffered position does not describe the specific duties and responsibilities to be performed by a beneficiary in relation to the petitioner's particular business interests. In the instant matter, the petitioner has not offered a description of duties beyond a generalized outline. The petitioner fails to include information or documentary evidence to take into account its particular financial circumstances. The petitioner fails to explain how the individual in the proffered position would address the various issues facing the petitioner. Instead the petitioner relies on a garden-variety list of tasks that do not provide an understanding of the actual duties of the proffered position. The generic description provided by the petitioner can apply and be used interchangeably to describe the duties of a budget/management analyst in a myriad number of companies; the description does not focus on the specific requirements of this petitioner who has eight employees and an auditor's report for the year ending in 2004 that questions the petitioner's ability to continue doing business due to its working capital and stockholder's deficiencies.

The AAO cannot accept a broad overview of an occupation as definitive of a particular occupation's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered

position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, would allow petitioners to indiscriminately label and summarize positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The AAO will not address the two referenced district court decisions, as the basis of this decision does not rely on the nature or size of the petitioner to conclude that the proffered position does not meet any of the requirements for a specialty occupation. Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

To reiterate, upon close review of the description provided, the petitioner has opted to describe aspects of various occupations without providing a description of the specific duties included in the proffered position that are directly related to the petitioner's business. Therefore, the petitioner cannot establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not relate the nonspecific responsibilities of providing financial analysis and recommendations, developing long and short term financial strategies for the company, analyzing financial information, and making proper recommendations to the top management regarding the financial condition and future of the company, to the specifics of the petitioner's business nor does the petitioner define how these general duties apply to a specific discipline. Nor does the petitioner provide evidence of what the beneficiary would do on a day-to-day basis. Only a detailed job description will suffice to meet the burden of proof in these proceedings. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The AAO declines to speculate on how the ill-defined duties would impact the day-to-day activities of the petitioner.

As previously discussed, the AAO requires information regarding the actual responsibilities of a proffered position to make its determination regarding the nature of that position and its degree requirements, if any. Without such information, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. As the record in the instant matter offers no meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of a financial/budget/management analyst. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO acknowledges counsel's reference to *DOT* and the SVP level of 8 for accounting, budget, and economist positions. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the position generally described would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The record does not contain any evidence to establish this criterion. The AAO acknowledges that the petitioner has submitted two job announcements for the position of financial analyst. However, neither job announcement provides a comprehensive description of the duties of the advertised position; this failure along with the petitioner's generic description of the position does not establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner does not attempt to distinguish the duties of the proffered position as more complex or unique than similar employment in its industry. The petitioner has not established either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Neither has the petitioner provided evidence that it previously employed degreed individuals to perform the duties of the proffered position. The AAO acknowledges the petitioner's claim that the prior employee in this position had a foreign degree. However, the petitioner did not provide documentary evidence of the former employee's credentials and further, as discussed above, the description of the proffered position fails to delineate the actual tasks associated with the position. This, coupled with the prior employee's indication on her resume that her experience consisted of work in "accounting positions," raises additional questions regarding the experience and education that the petitioner actually requires for the proffered position. The petitioner has failed to provide sufficient evidence to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Neither has the petitioner satisfied the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties. Again, the petitioner's generalized iteration of the duties does not, without further detail, establish that the proffered position's duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously observed, the description of the petitioner's proffered position is general and provides no understanding of how the duties relate to the specific needs of the petitioner. The

petitioner has not provided sufficient information to establish that the duties as generally described are duties that correspond to a position that is so complex or unique that only an individual with a degree in a specific specialty can perform them. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. 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. Accordingly, the director's decision will be affirmed.

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