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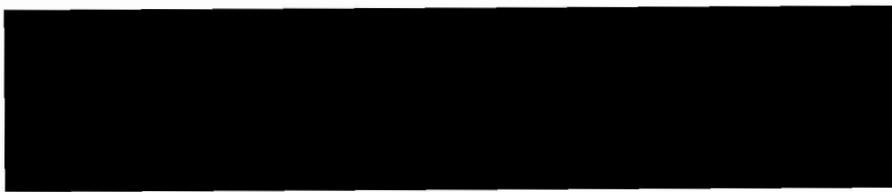
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FILE: WAC 06 232 52298 Office: CALIFORNIA SERVICE CENTER Date: **MAR 31 2008**

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

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 real estate and commercial investment business that seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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). The director denied the petition because the petitioner had not demonstrated that a reasonable and credible offer of sufficient employment exists or that the beneficiary is qualified to perform the duties of a specialty occupation. The director also found that the petitioner provided contradictory evidence pertaining to the nature of its business.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel and the petitioner's responses to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The first issue before the AAO is whether a specialty occupation is available for the beneficiary. 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 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) consistently 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 seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the petitioner’s March 27, 2006 letter in support of the petition and the petitioner’s December 4, 2006 response to the director’s RFE. As stated by the petitioner, the proposed duties and time allotments are as follows:

1. Apply principles of accounting to analyze financial information and to prepare financial reports (30%);
2. Prepare profit and loss statements, balance sheets, and monthly, quarterly, and annual financial reports (20%);
3. Analyze financial information detailing assets, liabilities, and capital, and project current and future financial positions (20%);

4. Apply principles of accounting to analyze past and present financial operations, and estimate future revenues and expenditures to budget (10%);
5. Document expected revenues and expenditures for submission to management [sic];
6. Advise management on matters such as effective use of resources and assumptions underlying budget forecasts (10%); and
7. Plan studies and collect data to determine business costs, such as inventory and labor, and provide management with results (10%).

The director found that the petitioner had not demonstrated that an accountant position is available for the beneficiary. The director also found that, although the petitioner initially identified its business as real estate and commercial investment, the additional evidence submitted in response to the director's RFE indicated that the petitioner was primarily engaged in the retail of food and liquor. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proposed duties, which entail the preparation of financial statements for the petitioner and its affiliates, are the duties of a professional accountant and thus require a bachelor's degree in business administration and accounting, or a related field. Counsel also states that the petitioner, which owns and operates a convenience store, a liquor store, a gas station, and a motel, correctly described its business activities as real estate and commercial investment.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first 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; 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 often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-07 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." Counsel and the petitioner have stated that the proffered position is that of an accountant and have offered a general description of the position that lists

duties typically performed by accountants. As discussed by the DOL, management accountants, the category of accounting most closely aligned to the duties described by the petitioner, are individuals who:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management . . . They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO acknowledges that part of the above discussion is generally reflected in the petitioner's description of the proffered position. A petitioner, however, cannot establish employment as a specialty occupation by describing the duties of the employment in the same general terms as discussed in sources outlining occupations. The petitioner does not detail specific tasks that would be performed by the beneficiary in connection with the petitioner's real estate and commercial investment business. The petitioner must detail its expectations of the proffered position and must provide evidence of the duties that comprise the proffered position as they relate specifically to the petitioner's business. Information on the petition reflects that the petitioner was established in 2005, has five employees and a gross annual income of \$200,000. On appeal, counsel states that the petitioner owns and operates a convenience store, a liquor store, a gas station, and a motel, and that the beneficiary would entail the preparation of financial statements for the petitioner and its affiliates. Counsel submits additional supporting evidence, including quarterly wage reports for the petitioner and its affiliates, and the petitioner's 2006 federal income tax return, which reflects \$2,141,839.00 in gross receipts or sales, no compensation of officers paid, and \$66,541 paid in salaries and wages.

A review of the *Handbook* finds that not all accounting employment is performed by degreed accountants. Its discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant®/Accredited Business Advisor® (ABA). Eligibility for the

eight-hour comprehensive examination for the ABA credential requires only three years of “verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.¹

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting,² the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, like that in the instant matter, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. As discussed above, information on the petitioner's 2006 federal income tax return reflects that the petitioner was incorporated 2005, paid \$66,541 in salaries and wages, paid no compensation of officers, and has a gross annual income of \$2,141,839. The record also contains quarterly wage reports for: Microm, Inc./Microtel Inn, reflecting 15 employees; OM Partner, LLC, reflecting 7 employees; and Omeka, Inc., reflecting 5 employees. The petitioner, however, has not provided documentary evidence to demonstrate that the petitioner is a business with complex financial requirements. The record does not contain evidence, such as audits, loan agreements or business plans that document the petitioner's business operations as complex. The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business, despite its relatively limited income and small size, has the complexity of financial operations to require that the proffered position requires a degree in accounting. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The duties of the proffered position are not established as those of a degreed accountant. Instead, they appear at most to be more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. 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

¹ Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

² According to the website for Skyline College, a community college located in San Mateo, CA (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the duties of the proffered position and their performance in the specific context of the petitioner's particular business operations constitute a position so complex or unique as to necessitate at least a bachelor's degree in a specific specialty. Rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that the proposed duties are specialized and professional requiring the attainment of a baccalaureate degree. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant. The proposed duties are described in exclusively generalized terms that are generic to accounting positions in general: The duties are not described at a level of specificity that would establish the requirement for the application of specialized knowledge usually associated with at least a bachelor's degree in accounting or a closely related specialty. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge usually associated with a baccalaureate or higher degree in a specific specialty. Therefore, 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 discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation or that the beneficiary is coming to the United States to perform services in a specialty occupation as required by the statute at section 101(a)(15)(H)(i)(b) of the Act; 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The final issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation.

The director found that the petitioner had not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation. Specifically, the petitioner had not established that the beneficiary has the equivalent of a degree based on his combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), as the petitioner had not provided an evaluation of the beneficiary's work experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

On appeal, counsel states, in part, that the beneficiary's education and employment experience are the equivalent of a U.S. bachelor's degree in commerce with a major in accounting. Counsel submits a new credentials evaluation as supporting documentation.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A credentials evaluation, dated April 30, 2007, from an evaluator of the Academic Standards Evaluation Services, LLC, concluding that the beneficiary's foreign bachelor's degree in commerce and his more than ten years of employment experience as an accountant/accounts manager are the equivalent of a U.S. Bachelor of Commerce degree with a major in accounting;
- A credentials evaluation, dated February 2, 2004, from an evaluator of the Worldwide Education Evaluators, Inc., concluding that the beneficiary's foreign bachelor's degree and more than ten years of progressively more responsible, full-time professional work experience are the equivalent of a U.S. bachelor's degree in business administration and accounting;
- Copies of the beneficiary's Bachelor of Commerce degree with the "optional subject" listed as advanced accounting and auditing, conferred on March 21, 1986 by an Indian institution, and related transcripts;
- A certificate of attendance at a five-day Microsoft Windows course held on January 15-19, 2001;
- A letter dated March 11, 1993, from the general manager of the Indian business, Swami Export, certifying that the beneficiary was employed as an accountant from June 1985 to March 1993; and
- A letter dated September 20, 1996, from the director of the Kenyan business, Anvi Emporium Ltd., certifying that the beneficiary was employed as an accounts manager from April 1993 to January 1996.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

The petitioner has not provided evidence that the beneficiary meets any of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3). Thus the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for 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.

The record contains two evaluations of the beneficiary's academic qualifications and experience, dated April 30, 2007 and February 2, 2004, respectively. As noted above, one evaluator concludes that the beneficiary's foreign bachelor's degree in commerce and his more than ten years of employment experience as an accountant/accounts manager are the equivalent of a U.S. Bachelor of Commerce degree with a major in accounting, and the other evaluator concludes that the beneficiary's foreign bachelor's degree and more than ten years of progressively more responsible, full-time professional work experience are the equivalent of a U.S. bachelor's degree in business administration and accounting. As discussed in the director's decision, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In this matter, the petitioner has not submitted such documentation.

Thus, the AAO must consider whether the beneficiary's work experience coupled with his education is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not. When evaluating a beneficiary's qualifications under the fifth criterion, 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 the length of the beneficiary's training and/or work experience, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the 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 authorities³ in the same specialty occupation; membership in a recognized foreign or

³ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's

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.

On appeal, counsel for the petitioner references two of the beneficiary's previous employers and asserts that the beneficiary's experience is equivalent to a U.S. Bachelor of Commerce degree with a major in accounting. A review of the March 11, 1993 letter from the general manager of Swami Export reveals a brief and general description of the beneficiary's responsibilities and testimony that the beneficiary proved himself to be sincere, hardworking and honest. A review of the September 20, 1996 letter from the director of Anvi Emporium Ltd. again reveals a brief and general description of the beneficiary's responsibilities and testimony that the beneficiary was hardworking, sincere, and optimistic. The letters from the beneficiary's former employers do not provide the requisite information regarding the beneficiary's daily duties and the progressively responsible experience gained while working at the business; neither do the letters describe the beneficiary's peers, supervisors, or subordinates' credentials. Further, the record contains no evidence to indicate that the beneficiary's expertise has been recognized in one of the ways discussed above. Thus, the record is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; or that the beneficiary's "expertise" in a specialty occupation has been recognized.

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this additional reason, the petition will not be approved.

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.

opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).