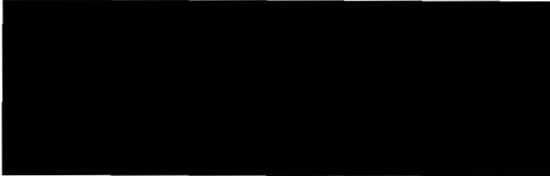


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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 202 51406 Office: CALIFORNIA SERVICE CENTER Date: **AUG 25 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 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 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 sole proprietorship that operates three gas stations/convenience stores and a rental business property, was established in 1990, has 11 employees, \$2.1 million in gross income, and \$10,350 net income at the time of filing. In order to continue to employ the beneficiary as an accountant, the petitioner has filed this petition to continue the beneficiary's H-1B classification pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the evidence of record did not establish that the proffered position satisfies at least one of the specialty occupation criteria outlined at 8 C.F.R § 214.2(h)(4)(iii)(A). The director stated that accountant and auditor positions are specialty occupations, and he recognized that the duties that the petitioner identified with the proffered position resemble those of an accountant as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. However, the director determined that the evidence did not substantiate that the beneficiary would actually perform the work of an accountant.

On appeal, counsel submits a brief in which he asserts that the evidence of record supports approval of the petition for extension. Counsel contends that the director erred in not recognizing that the proffered position is for a degreed accountant.

For the reasons discussed below, the AAO has determined that the director was correct to dismiss the petition for failure to establish that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied.

The AAO bases this decision upon its review of the entire record as now constituted, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to RFE; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief on appeal.

At the outset, the AAO notes that while it finds that the director was correct to deny the petition for failure to establish the proffered position as a specialty occupation, it disagrees with some of the analysis the director employed in reaching his decision. The AAO notes that the director erred in concluding that the petitioner does not have the organizational complexity, nor the type of business that would require an accountant. The 2006-2007 *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "[n]ation's firms are run efficiently, its public records kept accurately, and its taxes paid on time."¹

As will be discussed below, the AAO has determined that the evidence of record does not establish that the beneficiary has been and would continue to be employed in a specialty-occupation accounting position, that is one that requires the theoretical and practical application of at least a bachelor's degree level of knowledge in accounting or related specialty.

¹ *Occupational Outlook Handbook*, 2006-2007 Edition.

The issue before the AAO is whether the 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 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 (1) 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 (2) 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.

Consonant with the Act, 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all requires a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa certification.

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. To interpret the regulations any other way would lead to absurd results: If CIS were limited to reviewing a petitioner's self-imposed employment requirement, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388.

The petitioner seeks the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129, and the petitioner's June 27, 2004 letter in support of the petition. As stated in the letter of support, the duties of the proffered position would require the beneficiary to continue "managing our accounting records and improving our accounting practices, using Ruby Verifone, Gasboy, and Wayne System Software." The letter also stated that the beneficiary performs the following job duties:

- Analyze and complete financial information, documenting transactions of our four businesses;
- Analyze financial information regarding assets, liabilities, and capital;
- Prepare balance sheets, profit and loss statements, and other reports summarizing current and projected financial status;
- Prepare financial statements, budgets, and forecasts;
- Audit contracts, orders, and vouchers;
- Analyze expenditures and perform cost analysis; and
- Perform monthly variance analysis report and make recommendations to improve the company's overall financial health.

As evident in the list above, the petitioner has identified multiple duties, but has described them in exclusively generalized and generic terms that do not relate specific work that the beneficiary would perform or provide details of concrete business issues or problems that the beneficiary would have to address. **The following are demonstrative examples. The petitioner provides no details about "the accounting system" that the petitioner is required to maintain and improve.** No examples are provided of any accounting management or improvement contributions that have required, or in the future would require, the beneficiary to apply a bachelor's degree level of accounting knowledge. No substantive information is provided about the "financial information" or the analysis thereon involved, beyond gross income amounts and tax information which are not indicative of a requirement for at least a bachelor's degree in accounting or a related specialty. The record contains no examples or detailed descriptions of the

“financial statements, budgets, and forecast,” or of the “expenditures” analysis that the petitioner asserts as requiring the services of an accountant with a bachelor’s degree in the specialty. There is no explanation of the nature of the cited software programs and no evidence that its use requires a specialty degree.

The descriptions of the duties that comprise this particular proffered position consists of abstract functions that do not substantiate the level of knowledge that they would require in the actual practice of addressing specific matters in this particular petitioner’s business. As they do not communicate the actual work that the beneficiary would do, these duty descriptions do not establish that the beneficiary would perform accounting work at a specialty occupation level. That is, they do not demonstrate that the beneficiary would have to theoretically and practically apply at least a bachelor’s level of specialized knowledge in accounting or a related specialty.

There is no evidence of record that establishes specific types of analysis or judgment required of the beneficiary, or that substantiates a correlation between such analysis or judgment and a bachelor’s degree level in accounting or a related specialty. Therefore, there is no factual basis for the AAO to determine the proffered position is one that normally would require at least a bachelor’s degree, or its equivalent, in accounting or a related specialty.

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner’s characterization of its employment, the AAO turns to the Department of Labor’s 2006-2007 *Occupational Outlook Handbook (Handbook)* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[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.²

The AAO finds the above discussion to be generally reflected in the petitioner’s description of the duties of the proffered position and agrees that the petitioner’s employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proffered position would impose a degree requirement on the beneficiary. The question is not whether the position requires a knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor’s degree, or its equivalent, in accounting.

² *Ibid.*

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or its equivalent, in a specific specialty closely related to the position's duties. For an accounting position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

Counsel's reliance upon the Specific Vocational Preparation (SVP) professional rating assigned to the accountant profession by the *Dictionary of Occupational Titles (DOT)* is not merited by the meaning that the *DOT* assigns to the rating. 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. It 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. Further, the SVP rating of 8 assigned by the *DOT* to the occupation of accountant does not indicate that a bachelor's degree in a specific specialty is required. 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.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on accounting work as presented in the 2006-2007 *Handbook* sections on accountants and auditors and bookkeepers, accounting, and auditing clerks.

The *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks and junior accountants. This statement on full-charge bookkeepers illustrates the fact that not all accounting work or all work done by accountants requires a person with a bachelor's degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

The *Handbook's* 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.³

Further, the *Handbook* indicates that certification as a management accountant does not require a bachelor’s degree in accounting. The *Handbook* section on accountants and auditors includes this statement:

The Institute of Management Accountants (IMA) confers the Certified Management Accountant (CMA) designation upon applicants who complete a bachelor’s degree or who attain a minimum score or higher on specified graduate school entrance exams. Applicants, who must have worked at least 2 years in management accounting, also must pass a four-part examination, agree to meet continuing education requirements, and comply with standards of professional conduct. The CMA exam provides an in-depth measure of competence in areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management. The CMA program is administered by the Institute of Certified Management Accountants, an affiliate of the IMA.

The IMA’s Internet site (<http://www.imanet.org>), referenced at the end of the *Handbook’s* section on accountants and auditors, states that the bachelor’s degree required for certification may be in any field.

Accordingly, the generically stated duties of the proffered position are not established as those of a degreed accountant. The business financials consist primarily of compiling, recording, reconciling and maintaining accounting records. The duties of the proffered position are not established as sufficiently complex to indicate that the beneficiary’s work would involve the theoretical and practical application of at least a bachelor’s degree of highly specialized accounting knowledge. Nothing in the record establishes the exact level of accounting knowledge required for performance of the proffered position, and the evidence establishes that the position could adequately be performed by junior accountants or other echelons of accounting employees without a bachelor’s degree, or the equivalent, in a specific specialty.

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,⁴ the AAO turns to the record

³ 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.

⁴According 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

for information regarding the nature of the petitioner's business operations. In cases where a petitioner's business is relatively small, like that in the instant case, 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.

The AAO has reviewed the record for evidence of the petitioner's financial and business operations to determine whether the accounting employment described by the petitioner would impose a degree requirement on the beneficiary.

The record fails to offer evidence of the specific financial requirements associated with the petitioner's gas station / convenience stores and rental property, including whether its businesses have separate accounting systems or unique financial requirements that would add complexity to the beneficiary's accounting duties. Neither does the record indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex rental/lease agreements for gas station/convenience store equipment or space that might complicate its financial dealings. It is not evident from any documentation in the record that, despite its relatively limited income, the petitioner has the complexity of financial operations to require a degree in accounting. It is noted in particular that it is not self-evident that the petitioner's business tax returns or any of the business matters underlying them are so complex as to require an accountant equipped with at least a bachelor's degree in accounting or a related specialty.⁵

In light of the *Handbook's* information, the petitioner's exclusively generic information about the proposed duties, and the limited information presented about the petitioner's business, the AAO finds that the petitioner has not established that the proposed position is one that normally would require at least a bachelor's degree, or its equivalent, in accounting or a related degree. Also, to the extent that it is described in the record, the proffered position does not comport with any occupation addressed in the *Handbook* that would be cognizable as a specialty occupation under relevant CIS regulation.

Therefore, the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that its specific degree requirement is

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.

⁵ The petitioner provided IRS Form 1040, individual income tax returns for its owner. The return shows a Schedule C for each of the 4 businesses operated as sole proprietorships. The AAO notes that the tax returns do not indicate a business with complex financials comprised of three gas station / convenience store businesses and a rental property. The AAO further notes that counsel's assertion that the businesses' gross income exceed \$6 million in sales is questionable. The gross income reported on the Schedules C total \$3.2 million, and \$31,880 on Schedule E. The AAO also notes that the I-129 shows net income of \$10,350 for 2002.

common to its industry in parallel positions among similar organizations. In the instant case, counsel, in the appeal brief, as in the response to the director's request for evidence, asserted that the *Handbook's* discussion of the degree requirement for the occupation of accountants established the proffered position as a specialty occupation under the criterion's first prong. The AAO does not agree.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook*, reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." 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)).

As already indicated, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. The record does not include any submissions from firms, individuals, or a professional association in the petitioner's industry attesting to recruitment and hiring practices.

The petitioner submitted 7 Internet job postings for accounting positions. These do not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(A)(2). All of the advertisements are from employers in fields unrelated to the petitioner's. One is a software company, one is a healthcare company, one is a manufacturer seeking an accountant to handle royalty and licensing accounting, one is a multi-national retail conglomerate, one is a technology company, and the other is from a staffing firm. In contrast, the petitioner is seeking an accountant for its combination gas station / convenience stores and its rental property.

Further, neither the duties of the advertised positions nor those of the proffered position are specific enough for a reasonable comparison of the positions to which they relate. Finally, the number of advertisements are too small to establish an industry-wide sample.

Counsel asserts that the petitioner's business is similar to the businesses in the advertisements. However, the petitioner provides no information that would establish the firms in the advertisements as organizations of comparable size and complexity to the petitioner. Furthermore, there is no evidence to show that the proposed duties of the proffered position are similar to the duties described in the advertisements. The advertisements provide generalized descriptions of duties, such as "will be working on licensing and royalty accounting" and "develop procedures to manage returns and other inventory and sales related processes". As the educational requirements for the positions advertised and for the proffered position are not specific to the work to be performed, the position cannot be established as a specialty occupation under the first prong of the second criterion. No other evidence of record establishes the first prong of the second criterion. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *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 AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- the position is so complex or unique that it can be performed only by an individual with a degree. As indicated in the previous comments about the exclusively generic information about the duties comprising the proffered

position and about the *Handbook's* information about the range of educational backgrounds involved in a variety of accounting work, the evidence of record does not establish that the position possesses the complexity or uniqueness required by this criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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 the instant case, the petitioner has submitted no evidence regarding its hiring practices. Counsel, however, has contended that the petitioner has, in the past, hired full time accountants with the minimum of a baccalaureate degree in accounting, business, or a related field for the proffered position.

Counsel's assertion to the effect that the petitioner has a history of recruiting and hiring as accountants only persons with at least a bachelor's degree in accounting or a related field carries no weight, as it is not substantiated by documentary evidence. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. As indicated in the earlier comments about the generic nature of the duty descriptions, the proposed duties are presented at a superficial level that is not indicative of the specialization and complexity required to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills other than those of a junior accountant. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner states that the petition should be approved because CIS has approved the petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the other H-1B petition was approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of

the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Bagg, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. 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.