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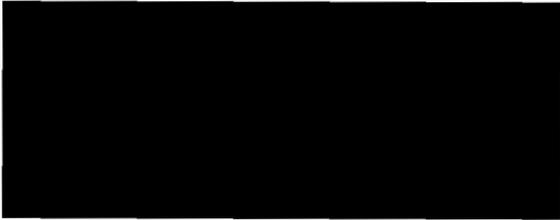
FILE: WAC 04 149 52140 Office: CALIFORNIA SERVICE CENTER Date: **SEP 13 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 is a contracting and engineering firm that installs fire sprinkler systems; it employs 20 personnel; and its gross annual income is approximately two million dollars. 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 October 25, 2004, 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 an excerpt from the Department of Labor's *Occupational Outlook Handbook's (Handbook)* report on the occupation of financial analysts and personal financial advisors. 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 April 29, 2004 and supporting documentation; (2) the director's July 7, 2004 request for further evidence (RFE); (3) counsel's August 16, 2004 response to the director's RFE; (4) the director's October 25, 2004 denial decision; and (5) counsel's brief and documentation 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:

- (I) 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 an April 16, 2004 letter appended to the Form I-129, stated that it needed to hire a financial analyst who:

[W]ill be responsible for the application of the principles of finance, analyze past and present financial operations and estimate future revenue and expenditures to prepare a budget.

* * *

[W]ill be performing professional functions which include asset liability management, profitability analysis and management reporting. This includes the analysis of our current financial status, development of a financial plan based on analysis of data, and discussion of financial options with management. Specifically, she will analyze records of present and past administrative commitments, and obligations incurred to project future revenues and expenses. She will prepare and submit documents to implement selected plans and advise management on matters such as effective use of resources and assumptions underlying budget forecasts.

On July 7, 2004, the director requested, among other things: a detailed description of the work done, including specific job duties, the percentage of time allocated to each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to do the job, as well as an explanation for why the work done requires the services of a person who has a college degree or its equivalent in the occupational field. The director also requested a copy of the petitioner's line and block organizational chart showing the petitioner's hierarchy and staffing levels as well as a list of all employees by name and job title.

In a response dated August 16, 2004, counsel for the petitioner indicated that:

The position of Financial Analyst will require the Beneficiary to identify key financing issues including analysis of whether department budgets and budget forecasts are being met. The Financial Analyst will further prepare tables tracking financial accountability and evaluate whether projects are being completed in a timely fashion. Noncompliance with projected timetables is ultimately costlier and more inefficient for [the petitioner], therefore, the Financial Analyst must carefully evaluate budgets, time tables [sic] and budget forecasts to ascertain whether financial assets are being utilized efficiently.

Furthermore, [the beneficiary] will evaluate loss and gain variances in profits to properly inform budget forecasts and to analyze budgetary spending. As each department has an independent budget, budgetary forecast, asset and spending procedures, the Financial Analyst will work independently to analyze loss and gain variances within each department. [The beneficiary] will also analyze departmental spending to establish more effective corporate financial standards. The profit and loss evaluations of each department will be analyzed for overall effect on [the petitioner's] overall fiscal accountability and budgetary spending.

[The beneficiary] will be independently responsible for all financial issues of [the petitioner] including budgeting, analysis of sales quotas, sales forecasting, evaluation of materials purchases and analysis of transactional variances. Further, [the beneficiary] will evaluate the company's tax liability in light of the company's overall financial strategy. Moreover, [the beneficiary] will evaluate the company's financial goals through analysis of the budgets for each department and division and by acting as an independent corporate analyst charged with analyzing the company's financial health and establishing financial accountability.

[The beneficiary] will provide financial guidance to [the petitioner] and she will inform corporate decision[-]making and business strategies. [The beneficiary] will prepare annual budgets for designated business units. Toward this end, [the beneficiary] will oversee the preparation of financial reports, assist in corporate investment activities and implement cash management strategies. [The beneficiary's] responsibilities will also require her to coordinate data within the business unit, analyze data and prepare schedules for management.

As Financial Analyst, [the beneficiary] will develop models for gathering and analyzing budgeting data. [The beneficiary] will analyze the company's finances and counsel [the petitioner's] management as to the company's assets, investment, financial performance and business decision.

Furthermore, [the beneficiary] will analyze monthly, quarterly and year to date operation results. This includes comparison of budgets and budget forecasts as well as identifying variances and issues. [The beneficiary] will also provide specific preparation for management reporting and written variance analysis. The Financial Analyst will provide ad hoc reporting as requested.

On a day-to-day basis, [the beneficiary] will prepare and develop analysis of operating results and report results to management. Moreover, [the beneficiary] will prepare monthly forecasts

for specific business lines. This includes coordinating data with managers, data analysis and issue identification. [The beneficiary] will also conduct special projects analysis including financial modeling of new business initiatives, project profitability and surveys.

Moreover, [the beneficiary] will be responsible for developing benchmarks and business indicators from internal reports, industry periodicals and other relevant sources. [The beneficiary] will provide senior management with recommendations and alternatives to maximize revenue and profits.

The position of Financial Analyst requires a high level of responsibility because the Financial Analyst provides analysis and guidance to management and leads management in making investment and financial planning decisions. Such a position of trust and accountability cannot be allocated to an individual with less than a baccalaureate degree because the position is directly accountable to the company's financial planning, status and fiscal health.

Counsel added that the specific duties of the position include:

- 20% Perform financial analysis of [the petitioner's] finances and budgeting; Research and analyze pricing, cost and investment.
- 20% Research economic efficiency and develop plans increasing profitability; Analyze assets, liabilities and expenditures.
- 20% Conduct financial research and analysis regarding business operations, expenditures, profits and investment strategies.
- 20% Identify investment strategies, cost cutting mechanisms and avenues for improving profitability based upon past financial performance and corporate economic forecasts; Review budget and forecasts for accuracy.
- 15% Prepare thorough analysis of research results and report to management.
- 5% Report results to management.

The petitioner also provided a list of its employees and their positions and a copy of its organizational chart. The employee list identified by name, a president, vice-president, financial analyst, accountant, two designers, a shop supervisor, a foreman, and 18 individuals in the field. The organizational chart showed two corporate officers, a marketing department, including marketing, estimating, sales, and contracts divisions; an engineering department including coordination, design, and drafting divisions; an accounting department including bookkeeping, "A/R," "A/P", and payroll divisions; a production department including job assignment, site supervisor, foreman, and site crew; a purchasing department including fabrication, shop supervisor, and delivery divisions; and the financial analyst position. The organizational chart did not identify the employees in each position.

On October 25, 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 further determined that without substantial funds to invest, CIS could not determine what duties the beneficiary would actually perform. The director also observed that the petitioner's list of employees and the petitioner's organizational chart contained unresolved discrepancies. Finally, the director noted the prior approval of the beneficiary's classification in the proffered position but determined that the petitioner had not established that the beneficiary should continue in a specialty occupation position.

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 contends that the resemblance of the description to that of the *Handbook's* report regarding financial analysts weighs in favor of determining the position is a specialty occupation. Counsel asserts that the nature of the petitioner's business is not in and of itself determinative of whether the petitioner requires the services of a financial analyst and notes that the *Handbook* does not provide absolute guidance regarding the only types of business that may need the services of a financial analyst. Counsel cites two district court decisions that do not adopt the premise that the nature or size of an operation is rationally related to the need for a professional. Counsel also asserts that although financial analysts are ultimately responsible for making investments with a company's capital, the *Handbook* notes that financial analysts also perform other duties including reading company financial statements and analyzing commodity prices, sales, costs, expenses, and tax rates to determine a company's value and to project future earnings. Counsel repeats portions of the description of the duties of the proffered position, contends the beneficiary performs those duties, and argues that to question the beneficiary's performance of those duties because of the incorrect perception that the petitioner is unable to make investments is fallacious.

Counsel's assertions are not persuasive. Neither the director nor counsel nor the petitioner in this matter correctly identifies the title of the proffered position when evaluating the duties of the proffered position's duties. Upon review, 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. The petitioner's description of the proffered position indicates that the individual in the position will analyze the petitioner's financial status, develop a financial plan for the petitioner, analyze past and future obligations to project future revenues and expenses, all duties that relate to the work performed by budget analysts. The AAO finds the duties of the proffered position, which are largely focused on the petitioner's budget and financial operations, reflect the work performed by budget analysts. As indicated by the *Handbook*:

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 initial description of the duties of the proffered position indicated that the beneficiary "will be responsible for the application of the principles of finance, analyze past and present financial operations and estimate future revenue and expenditures to prepare a budget;" "will analyze records of present and past administrative commitments, and obligations incurred to project future revenues and expenses;" and "will prepare and submit documents to implement selected plans and advise management on matters such as effective use of resources and assumptions underlying budget forecasts." These duties track the duties of a company budget analyst, not an individual who is primarily concerned with investing a company's monies. The lengthy outline of the proffered position submitted in response to the director's RFE also utilized the phraseology the *Handbook* employs in describing the occupation of a budget analyst. Moreover, counsel's allocation of the "financial analyst's" time showed the beneficiary's duties to be focused on analyzing the petitioner's finances and budgeting, economic efficiency, analyzing assets, liabilities, and expenditures, identifying investment strategies, cost cutting mechanisms, and avenues for improving profitability, and reviewing the budget and forecasts for accuracy. Again, these statements pertain to the duties of a budget analyst who examines budgets and seeks ways to improve efficiency and increase profits.

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 description of the proffered position is not that of a financial analyst but that of a budget analyst.

The petitioner's description of the proffered position includes the same general terminology used in the *Handbook*. When discussing an occupational title such as budget analyst, the petitioner cannot repeat portions of the generalized descriptions found in the *Handbook*. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a

beneficiary in relation to its particular business interests. In the instant matter, the petitioner has not offered a description of duties beyond a generalized outline.

Moreover, upon close review of the lengthy description, the description refers to "each department" and how "[t]he profit and loss evaluations of each department will be analyzed for overall effect on [the petitioner's] overall fiscal accountability and budgetary spending." However, the petitioner has provided inconsistent evidence regarding its organizational structure and its employees. The petitioner's organizational chart shows multiple departments and divisions, including a marketing department, containing marketing, estimating, sales, and contracts divisions; an engineering department including coordination, design, and drafting divisions; an accounting department including bookkeeping, "A/R," "A/P", and payroll divisions; a production department including job assignment, site supervisor, foreman, and site crew; a purchasing department including fabrication, shop supervisor, and delivery divisions; as well as the claimed financial analyst position. The petitioner's list of employees and their job duties do not include employees' positions that correspond to all the various departments. Thus, the AAO questions how the individual in the proffered position would analyze departments that do not include employees. The generic description provided by the petitioner can apply and be used interchangeably to describe the duties of a budget analyst in a myriad number of companies; however, the description does not focus on the specific requirements of this petitioner who has 20 employees and a 2002 gross annual income of approximately 2 million dollars.

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, leads to the absurd result of petitioners indiscriminately labeling and summarizing 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.

In this matter, the petitioner has provided a generic rather than detailed job description; it cannot, therefore, 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 identifying key financing issues, evaluation of budgets, timetables, and budget forecasts, analyzing budgetary spending for each department, 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 does 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO declines to speculate on how the ill-defined duties impact the day-to-day activities of the petitioner.

The AAO briefly addresses the *Handbook's* discussion of the educational requirements for the actual proffered position to determine whether the position of a budget analyst imposes a specific degree requirement on the beneficiary. For budget analysts, the *Handbook* reports that:

Private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, but many prefer or require a master's degree Sometimes a degree in a field closely related to that of the employing industry or organization, such as engineering, may be preferred. Some firms prefer candidates with a degree in business because business courses emphasize quantitative and analytical skills Occasionally, budget-related or finance-related work experience can be substituted for formal education.

As the *Handbook* clearly indicates that the position of budget analyst does not require a degree in a specific specialty, the AAO concludes that the proffered position does not qualify as a specialty occupation under the first criterion – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The petitioner in this matter has not provided sufficient detailed evidence of the duties of the position nor evidence that the proffered position requires a degree in a specific specialty to demonstrate that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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. Without a meaningful job description, the petitioner has not established the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguished the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. The petitioner has not established 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 that the petitioner previously obtained an H-1B approval for the beneficiary in this position, but as will be discussed below, the beneficiary's educational evaluation is questionable. The petitioner has failed to provide consistent evidence regarding its employees and their positions and thus, cannot 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, counsel and the petitioner's iteration of the duties of a budget analyst cannot, 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).

As observed above, the petitioner previously obtained an H-1B classification for the beneficiary. As the director correctly noted, this record of proceeding does not contain all of the supporting evidence submitted in the prior matter. In the absence of all of the corroborating evidence contained in the record of the previous proceeding(s), the documents submitted by counsel are not sufficient to enable the AAO to determine that the petition(s) were parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). When 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). If the other nonimmigrant petitions were approved based on identical facts that are contained in the current record, those approvals would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. The AAO is not required to approve applications or 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). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. No evidence has been submitted to establish that the beneficiary has a U.S. degree in the specialty or a foreign degree equivalent to a U.S. degree in the specialty, nor is the beneficiary required to have a license to perform the duties of the proffered position. Therefore, the AAO will focus on the evidence submitted by the petitioner that responds to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

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

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner submitted an evaluation from eValReports, dated April 22, 2001. This evaluation service reviewed a copy of the beneficiary's diploma from [REDACTED] in the Philippines, certifying that the beneficiary was awarded a bachelor's of art degree in international studies, as well a copy of a letter from [REDACTED] certifying that the beneficiary had been employed as a "finance manager" from March 1991 to December 2000. The evaluator indicates that the beneficiary's bachelor's degree in international studies and her employment experience as a finance manager could be considered, for immigration purposes, the equivalent of a bachelor's degree in business administration with a major in finance. However, 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). The eValReports service does not indicate that the evaluator has authority to grant college-level credit for training and/or experience. Thus, the evaluation fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position.

Neither does the record contain any evidence that can serve as evidence of the beneficiary's ability to meet the requirements at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) through (4). Thus, the AAO now turns to a consideration of section (5) -- whether the beneficiary has acquired the equivalent of a degree in the specialty through a combination of education, specialized training, and/or work experience in areas related to the specialty and has achieved recognition of her expertise in the specialty occupation as a result of such training and experience.

When evaluating a beneficiary's qualifications under the fifth section of 8 C.F.R. § 214.2(h)(4)(iii)(D), CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. The record contains a certificate of attendance issued to the beneficiary for attending a seminar on basic accounting, a certificate of training issued to the beneficiary for completing "business research analysis," a certificate of attendance issued to the beneficiary for attending a seminar on financial management, and a certificate of participation issued to the beneficiary for attending a seminar on financial accounting. The AAO has reviewed these certificates, the petitioner's transcripts related to her college diploma from Maryknoll College Foundation, Inc. in the Philippines, and the beneficiary's prior employer's letter regarding her work experience.

Upon review, the AAO cannot conclude that the beneficiary's training and/or work experience is the equivalent of four years of college-level training or 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 certificates of training and/or attendance do not evaluate the beneficiary's knowledge of accounting or finance principles gained through attendance; the transcripts do not include evidence of coursework related to a financial or business discipline; and the letter from the beneficiary's prior employer does not provide a description of her duties sufficient to establish that the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required by the specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. As the eValReports evaluator appears to have considered even less information than is before the AAO, the AAO will not consider that opinion in reaching its conclusions regarding the nature of the beneficiary's previous employment. Where an opinion is in any way questionable, the AAO may discount it or give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation per 8 C.F.R. § 214.2(h)(4)(iii)(C). For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.