



U.S. Citizenship
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Services

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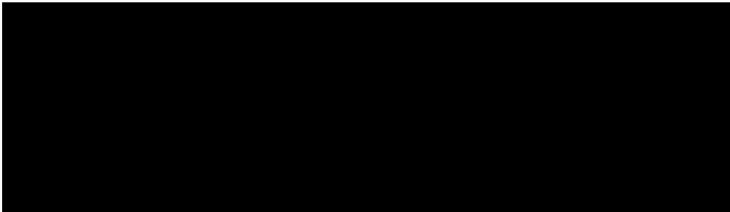
FILE: WAC 04 075 52362 Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2007

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.

James Blunzinger, for

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 engaged in the import and export of print fabrics, employs three individuals,¹ and has a gross annual income of \$260,000. The petitioner seeks to employ the beneficiary as a budget 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, received on January 21, 2004; (2) the director's request for additional evidence, dated March 8, 2004; (3) counsel's response to the director's request for evidence and supporting documentation, dated May 24, 2004; (3) the director's denial letter, dated July 13, 2004; and (4) the first Form I-290B, received on August 18, 2004, and supporting documentation; (5) the Notice of Rejected Appeal, dated August 24, 2004; (6) the second Form I-290B, received on December 21, 2004; and, (6) a Motion to Reopen/Reconsider letter by the director, dated June 19, 2006, indicating that the appeal was timely filed and should be considered by AAO. The AAO reviewed the record in its entirety before reaching its decision.

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

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

¹ Although the Form I-129 indicates that the petitioner employs three individuals, the evidence of record indicates two current employees. The beneficiary is to be the third employee.

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proposed position.

To determine whether a particular position qualifies as a specialty occupation, CIS does not simply rely on the position's title. The specific duties of the proposed 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 proposed position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as a budget accountant. In a letter of support, dated December 12, 2003, the petitioner described the beneficiary's proposed duties as follows:

- Analyze financial information of the company and work with the owner/administrator in preparing budgets, cost and asset management [sic]

- Develop, analyze, and execute budgets to allocate current resources, find the most efficient distribution of funds and resources, and estimate future financial requirements
- Analyze operation trends, cost revenues, financial commitments[,] and obligations incurred to project future revenues and expenses
- Examine, analyze, and seek new ways to improve efficiency and increase profits, and evaluate the company's priorities and financial resources
- Develop, maintain, and analyze budgets and prepare periodic reports comparing budget costs to actual costs; prepare periodic and cash budgets, and compute break-even point
- Monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified; recommend for new or revised plans and procedures.

In his May 24, 2004 response to the director's request for evidence, previous counsel further described the proposed duties as follows:

Analyze financial information detailing assets, liabilities and capital and prepare balance sheet, financial statements, profit and loss statements and other reports to summarize current and projected company financial position using computer software. Apply the matching rule to the allocation of expired cost for capital and expenditures and revenue expenditures. Account for the disposal of depreciable assets. Apply the matching rule to goodwill. Classify variable costs, semi-variable cost and fixed asserts. Compute the break-even points. Use contribution margin analysis to estimate levels of sales that will produce planned profits. Monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified to recommend for new or revised plans and procedures. **45%**

Analyze financial information to prepare entries to accounts. Apply horizontal analysis, trend analysis and vertical analysis to financial statements. Apply ratio analysis to financial statements in the study of the company's liquidity, profitability, long-term solvency and market tests. **15%**

Set up voucher system to give documentary proof and written authorization for business transactions. Establish a petty cash fund and prepare petty cash vouchers for each expenditure. Reimburse petty cash fund at specific intervals. Track down losses on uncollectible accounts (bad debts) and match them against company's profits. Estimate uncollectible accounts expense. Write off uncollectible accounts. Account for cash and short-term investments. **25%**

Analyze the forms, records, procedures, processing methods, and reports used by the business. Make minor or major revision where appropriate. Integrate control measure

throughout the accounting system. Advise owner of the tax advantages and disadvantages of certain business decisions. **5%**

Maintain budgeting systems which provide control of expenditures made to carry out activities, such as advertising and marketing, production, maintenance and to project activities of the company. Negotiate Dental HMO and Medical contracts, negotiate fee and prepare fee schedule for health services. **10%**

The director denied the petition on July 13, 2004, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In his denial, the director also found that the petitioner's business lacks the organizational complexity to warrant the services of an accountant, and that it does not engage in the type of business for which an accountant would typically be required.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 AAO find that the proffered position is not a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The petitioner has stated that the proposed position is that of an accountant. To determine whether the duties of the proposed position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *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.

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, and 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 petitioner's 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.

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.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

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.

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.²

² 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.

To determine whether the accounting knowledge required by the proposed position rises above that which may be acquired through experience or an associate's degree in accounting,³ the AAO turns to the record 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.

As noted previously, the petitioner is a retail store of fabrics with two employees and a gross annual income of \$260,000. Though the size of a company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. The responsibilities associated with a two-person-employee company with a gross annual income of \$260,000 differ considerably from the responsibilities associated with a much larger income, as well as from the responsibilities of performing accounting work for multiple clients. The record here does not support a finding that the petitioner will 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 petitioner has not demonstrated that its business, despite its relatively limited income, has the complexity of financial operations to require a degree in accounting.

Moreover, the record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as unique accounting systems or financial requirements that would add complexity to the beneficiary's duties. Neither does it indicate that the petitioner is currently required to manage outstanding business loans, or to deal with complex financial agreements or other issues that might complicate its financial situation. Therefore, the petitioner has not demonstrated that its business has the complexity of financial operations to require a degree in accounting.

The evidence of record does not convey any details about the specific matters upon which the beneficiary works, or, consequently, any indication about the level of accounting knowledge required to address those matters. For instance, there is no information about the specific nature of the petitioner's operations, the types and volume of its transactions, the nature of its financial statements, the spectrum of costs to be managed, the extent of the petitioner's financial dealings, the range of the petitioner's financial records, the number and types of accounts the petitioner maintains, specific types of data which the beneficiary would analyze, the size of the petitioner's budget, the number of the petitioner's budget elements, or the nature of the budget/expenses variance issues and trends. There is no evidence of record that establishes specific types of analysis or judgment required of the beneficiary, or that substantiates a correlation

³According to the website of Skyline College, a community college located in San Mateo, California (<http://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.

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 least a bachelor's degree, or its equivalent, in accounting or a related specialty. The record of proceeding lacks evidence from which the AAO can conclude that the beneficiary would serve in an accountant or any other occupational category for which the *Handbook* recognizes the need for at least a bachelor's degree level of knowledge in accounting.

It is impossible for the AAO to determine where the proffered position fits within the wide spectrum of jobs requiring different levels of accounting knowledge. The evidence of record fails to convey that the beneficiary's specific performance of the record's list of generalized duties would require the theoretical and practical application of highly specialized knowledge attained by at least a bachelor's degree or the equivalent in accounting or any other specific specialty.

Having submitted no evidence to support its statements regarding its business and income, the petitioner has failed to demonstrate that its financial operations are of sufficient complexity to indicate that it would employ the beneficiary in a position requiring a level of accounting knowledge that may only be obtained through a baccalaureate degree in accountancy. Accordingly, the duties of the proffered position are not established as those of a degreed accountant. Instead, they appear 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. Moreover, financial clerks such as bookkeeping, accounting, and auditing clerks, who are not normally required to possess four-year degrees, normally perform many of the duties of the proposed position. 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.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted a "certification" from a competitor, Triple Textile, stating that the position of budget accountant is a "necessary common position in our similarly sized business of import and export of fabrics," and that the position requires a baccalaureate or higher degree. However, the petitioner has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To

meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

The certification letter from Triple Textile does not establish the petitioner's degree requirement as an industry norm. The letter only states that a bachelor's degree or higher is the normal requirement for the position of budget accountant, however, the letter did not specify that a degree in the accounting field is required. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position.

Also, the record fails to establish that Triple Textile is a company that is "similar" to the petitioner; a retail store with two employees. Although the letter states that Triple Textile is a "similarly sized business," the petitioner did not provide any documentation to support this assertion. There is insufficient evidence to establish that Triple Textile is similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, even if the AAO were to find that this company is similar to the petitioner, one letter is insufficient to establish an industry-wide standard.

Finally, Triple Textile's letter does not indicate that the duties and responsibilities of its budget accountant position and does not support a meaningful comparison of the actual performance and specialty knowledge requirements to those of the proposed position. Thus, this letter is insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations.

The petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Therefore, the AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. There has been no demonstration that the proposed position is more complex or unique than a junior accountant or bookkeeping, accounting and auditing clerk positions in other, similar organizations, which would not normally require a degreed individual. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty, and the evidence of record does not establish the proposed position as unique from or more complex than such positions.

As already discussed, the record does not relate specific work associated with the generalized duties described by the petitioner, and the record does not contain any documents that exemplify the nature of the proposed accounting work. Consequently, there is no evidence of complexity or uniqueness to satisfy the instant criterion, and the petitioner has not established that the proffered position can only be performed by a person with at least a bachelor's degree in accounting or a related specialty. Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In its response to the director's request for evidence, the petitioner indicated that the position of budget accountant is a newly-created position, which precludes approval under the third criteria.

In the director's request for evidence, it specifically requested evidence to establish that the petitioner has a past practice of hiring persons with a bachelor's degree, or higher, to perform the proffered position. In its response, the petitioner stated, "due to the petitioner's expansion program it has the need to employ an individual to fill the new position." As this is a newly-created position, the petitioner was unable to submit documentation regarding the past employment practices for this position.

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 or 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 in any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Based on the foregoing discussion, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As noted previously, the petitioner has not demonstrated a unique accounting system, established complex financial obligations or agreements, or otherwise established that the complexity of its financial operations require a person with a four-year degree in accounting. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of accounting positions not requiring or usually associated with at least a bachelor's degree in accounting. 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. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO notes that the petitioner has submitted an advisory opinion from [REDACTED] Professor of Finance of Seattle Pacific University, dated May 11, 2004. The opinion letter asserts that the

position of budget accountant “typically would require, as a minimum, a bachelor’s degree and the degree most appropriate for such a position would be in accounting.” [REDACTED] indicates in his letter that he reviewed a “significant profile of the position offered and his [the beneficiary] educational history.” However, the author does not submit a copy of the documents he reviewed. In addition, the petitioner does not establish that the author is an expert in this area.

The AAO finds that an inadequate factual foundation to support [REDACTED] opinion has been established. He does not note the location or size of the petitioner, nor indicate whether he reviewed company information about the petitioner, visited its site, reviewed the job duties of any individuals working in positions similar to the position proposed here, or interviewed anyone affiliated with the petitioner. Nor does he describe the duties of the proposed position in any detail. The extent of his knowledge of the proposed position is, therefore, questionable. Thus, the petitioner has not established the reliability and accuracy of his pronouncements and this submission is therefore not probative of any of the specialty occupation criteria. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary’s qualifications to perform its duties are inconsequential. Accordingly, the AAO will 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.