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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

DATE: OCT 06 2011

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

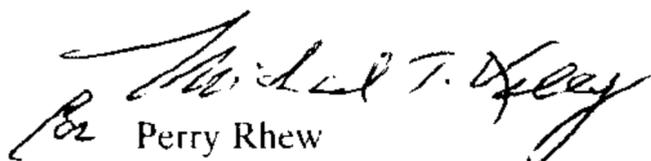


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) summarily dismissed the petitioner's appeal, finding that the petitioner had failed to submit a timely brief. A review of the record demonstrated that the petitioner had in fact submitted a timely brief in support of the appeal and, as such, the AAO hereby reopens the petition *sua sponte*. The appeal will be dismissed. The petition will be denied.

The petitioner is a retailer of food, automotive and household goods. It seeks to employ the beneficiary as an accountant. 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). The director denied the petition, determining that the proffered position was not a specialty occupation.

On appeal, counsel for the petitioner submits a brief and contends that the director's findings were erroneous.

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 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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 proffered position. Applying this standard, USCIS 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The petitioner claims that as a retailer of food, automotive and household goods, its gross sales for 2008 totaled \$180,000. It further claimed to employ six persons, and states that it requires the services of an accountant in order to "accomplish the goal of becoming a major participant in the retail business." The petitioner indicated that the beneficiary's job duties will be as follows:

In this position, [the beneficiary's] responsibilities will consist of (i) compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards; (ii) preparing entries and reconciling general (sic)[;] (iii) maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit and loss, and cash flow statement; (iv) auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets; (v) preparing compliance reports for taxing authorities; and (vi) analyzing operating statements, review cost control programs, and make strategy recommendations to management.

The petitioner further claimed that the beneficiary possessed both a bachelor's degree and a master's degree in business administration, and was thereby qualified to perform the duties of the proffered position.

In the RFE dated April 29, 2009, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed evidence demonstrating that the proffered position was a specialty occupation, including but not limited to information pertaining to the petitioner's business, its hiring practices, and whether it employed accountants in the past. The director also requested evidence demonstrating that the petitioner had sufficient, full-time H-1B caliber work available for the beneficiary.

In response, the petitioner through counsel submitted a letter dated June 10, 2009 in which it addressed the director's requests. Counsel stated that the petitioner currently used an outside Certified Public Accountant (CPA) for its accounting duties, but clarified that, due to the "complexity of the voluminous transactions" of the petitioner, an in-house accountant was required. Counsel further stated that, in addition to accounting duties, the beneficiary would also assist the petitioner by advising upper management with cost saving and investment strategies, a service which was previously performed by independent contractors.

Regarding the beneficiary's position, the following chart including the percentage of time the beneficiary would devote to each duty was submitted:

DESCRIPTION	TIME %
Compiling and analyzing financial information and preparing financial reports by applying principles of generally accepted accounting standards	30%
Preparing entries and reconciling general ledger, maintaining payable and receivable records, detailing assets, liabilities, capital, and preparing detailed balance sheet, profit and loss, and cash flow statement	25%
Auditing orders, contracts, individual transactions and preparing depreciation schedules to apply to capital assets	10%
Preparing compliance reports for taxing authorities	5%
Reconciling cash and sales reports, prepare cash flow statements and deposits	5%
Analyzing operating statements, review cost control programs, and make strategy recommendations to management.	25%

Counsel also submitted additional documentary evidence, such as internet advertisements for job vacancy announcements that the petitioner believed were akin to that of the proffered position in similar organizations.

On September 22, 2009, the director denied the petition. The director found that the evidence of record failed to demonstrate that the duties of the proffered position were complex enough to qualify as a specialty occupation. Moreover, the director concluded that the evidence did not demonstrate that the petitioner's enterprise required the services of a full-time accountant. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's denial was erroneous. Specifically, counsel contends that the position is in fact an accounting position, and reiterates many of the statements contained in response to the RFE in his appeal brief.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Factors considered by the AAO when determining this criterion include whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific 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 proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the vague and general 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.¹

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 more likely than not require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it apparently 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:

Some 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 accountant positions by demonstrating their accounting skills on the job.

Most beginning accountants and auditors may work under supervision or closely with an experienced accountant or auditor before gaining more independence and responsibility.

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

¹ *Occupational Outlook Handbook*, 2010-2011 Edition, at www.bls.gov/oco/ocos001.htm (last accessed August 3, 2011).

Clerks who can carry out a wider range of bookkeeping and accounting activities will be in greater demand than specialized clerks. For example, demand for full-charge bookkeepers is expected to increase, because they can perform a wider variety of financial transactions, including payroll and billing. Certified Bookkeepers (CBs) and those with several years of accounting or bookkeeping experience who have demonstrated that they can handle a range of tasks will have the best job prospects.²

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, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant, as correctly noted by the director. The AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 728 (E.D. Mich. 2006). In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient 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 or higher in accounting or its equivalent.

At the time of filing, the petitioner stated that it commenced operations as a retailer in 2008 and currently employed six persons. It further claimed to have a gross annual income of \$180,000 for the two-month period in which it had been conducting business. However, no documentation, such as tax records, financial reports, or other business records are contained in the record to support the petitioner's contentions. Moreover, the petitioner, through counsel, admitted in response to the RFE that an outside CPA is currently performing the accounting tasks of the petitioner.

The petitioner also indicates that it has plans for further expansion and that it is the rapid and continuing growth of the company that necessitates a full-time accountant. The AAO acknowledges that the process of expanding a business's operations could potentially establish financial and operational complexities that would require a degreed accountant. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose such a degree requirement on the beneficiary. However, the fact that an independent CPA is currently performing the accounting duties of the petitioner, coupled with the lack of any documentary evidence pertaining to the petitioner's sales, income, and revenue, does not shed light on the complexity of the accounting work to be performed by the beneficiary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden

² *Occupational Outlook Handbook*, 2010-2011 Edition, at www.bls.gov/oco/ocos144.htm (Last accessed August 3, 2011).

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)).

Based on the lack of documentation outlining the nature and scope of the petitioner's operations, coupled with the petitioner's employment of an independent CPA and independent contractors to provide investment advice to the petitioner, it appears that the proffered position's duties will more likely than not be those of a bookkeeper.

The *Handbook* describes the position of bookkeeper as follows:

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. Additionally, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

This description of duties appears to accurately describe the duties of the proffered position.

The *Handbook* describes the educational requirements of a bookkeeper as follows:

Employers usually require bookkeeping, accounting, and auditing clerks to have at least a high school diploma and some accounting coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.

Education and training. Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor's degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted.

According to the *Handbook*, a bachelor's degree in a specific specialty is not required for entry into the proffered position.

Moreover, the petitioner indicated in its April 1, 2009 letter of support that the duties of the position could be performed by an individual with a degree in accounting, business administration, or related field. When a job, like that of an accountant for the petitioner, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a

job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Accordingly, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed accountant. As discussed above, and despite the petitioner's claims to the contrary, the proffered position appears more likely than not to be that of a bookkeeper, a position which does not require an individual who holds a degree in a specific specialty. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Factors considered by the AAO when determining this criterion 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)).

The petitioner submitted twenty job postings to establish its degree requirement as the norm within its industry under the first prong of the criterion. However, a review of these postings does not demonstrate that organizations similar in size and scope to the petitioner (i.e., retail establishments engaged in the sale of food, automotive, and household goods that employ six persons) routinely employ degreed accountants. For example, the job postings submitted include vacancy announcement for the position of accountant at established retailers such as [REDACTED]

[REDACTED] whose size and scope far exceeds that of the petitioner. Moreover, the petitioner also submits numerous postings for jewelry stores, gas stations/convenience stores, a cell phone store, and one for Madam Tussaud's museum, an internationally-known attraction. On appeal, counsel asserts that these postings satisfy the requirements under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), and specifically likens the petitioner's business to the smaller retailers included in the postings (gas stations, convenience stores, jewelry retailers). However, as stated

above, the record is devoid of evidence regarding the exact nature of the petitioner's business, thereby precluding the AAO from likening the petitioner to these businesses. Moreover, the postings from these retailers provide no information regarding the size, scope and nature of their business operations, thereby rendering it impossible to conduct a legitimate comparison of business practices. Consequently, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner's failure to submit sufficient information related to its claimed business expansion plans precludes it from establishing that the position's complexity or unique nature distinguish it from accounting-related employment that is performed with less than a four-year degree in a specific specialty or its equivalent. 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)). Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it 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 matter, the petitioner indicated that an independent CPA has been performing its accounting duties to date, thus confirming that the petitioner has not previously hired an internal accountant. Therefore, the evidence does not establish that the petitioner has ever employed a corporate/management accountant on a full-time basis. Since the petitioner has not established that it previously employed a degreed accountant in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).³

³ To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain

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. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or a junior accountant. 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 beyond those of a bookkeeper or at most a junior accountant not equipped with bachelor's or higher degree, or the equivalent, in accounting or a closely related specialty.

In reaching its decision, the AAO has again considered the petitioner's letter dated April 1, 2009, counsel's response to the RFE dated June 10, 2009, and counsel's statements on appeal. All statements provide a vague and generalized overview of accounting duties. There is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulations to qualify as a specialty occupation. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical bookkeeper or junior accountant or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree or its equivalent in accounting. The totality of the record does not establish the proffered position is a specialty occupation based on a claimed complex and unique nature as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.